

Case No. _____

In the Supreme Court of Nevada

JACUZZI, INC. doing business as JACUZZI
LUXURY BATH,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the
State of Nevada, in and for the County of Clark;
and THE HONORABLE CRYSTAL ELLER, District
Judge,

Respondents,

and

ROBERT ANSARA, as special administrator of
the ESTATE OF SHERRY LYNN CUNNISON,
deceased; ROBERT ANSARA, as special
administrator of the ESTATE OF MICHAEL
SMITH, deceased heir to the ESTATE OF SHERRY
LYNN CUNNISON, deceased; and DEBORAH
TAMANTINI, individually and heir to the Estate
of SHERRY LYNN CUNNISON, deceased,

Real Parties in Interest.

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**PETITIONER'S APPENDIX
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9	Plaintiffs' Reply in Support of Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's Answer for Repeated, Continuous and Blatant Discovery Abuses on Order Shortening Time	01/29/19	4 5	922–1000 1001–1213
17	Plaintiffs' Reply in Support of Their Motion for Reconsideration Re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc.'s Answer and Motion for Clarification Regarding the Scope of the Forensic Computer Search	06/14/19	8	1779–1790
67	Plaintiffs' Reply to: (1) Defendant Jacuzzi, Inc. dba Jacuzzi Luxury Bath's Brief Responding to Plaintiffs' Request for Inflammatory, Irrelevant, Unsubstantiated, or Otherwise Inappropriate Jury Instructions; and (2) Defendant FirstStreet For Boomers & Beyond, Inc., AITHR Dealer, Inc., and Hale Benton's Objections to Plaintiffs' Demand for Certain Jury Instructions and Rulings on Motions in Limine Based on Court Striking Jacuzzi's	11/10/20	28	6906–6923

	Answer Re: Liability			
63	Plaintiffs' Response to Defendant Jacuzzi Inc. d/b/a Jacuzzi Luxury Bath's Objections to Plaintiff's [sic] Proposed "Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer as to Liability Only" Submitted October 9, 2020	10/20/20	27	6713–6750
56	Plaintiffs' Response to Defendant Jacuzzi's Notice of Waiver of Phase 2 Hearing and Request to Have Phase 2 of Evidentiary Hearing Vacated	09/21/20	27	6562–6572
25	Plaintiffs' Supplement to Motion to Expand Scope of Evidentiary Hearing	08/20/19	9	2242–2244
30	Recorder's Transcript of Evidentiary Hearing – Day 1	09/16/19	17	4011–4193
58	Recorder's Transcript of Evidentiary Hearing – Day 1	09/22/20	27	6574–6635
31	Recorder's Transcript of Evidentiary Hearing – Day 2	09/17/19	17 18	4194–4250 4251–4436
32	Recorder's Transcript of Evidentiary Hearing – Day 3	09/18/19	18 19	4437–4500 4501–4584
36	Recorder's Transcript of Evidentiary Hearing – Day 4	10/01/19	19	4596–4736
21	Recorder's Transcript of Hearing Pursuant to Defendant Jacuzzi's Request Filed 6-13-19, Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's Request for Status Check; Plaintiffs' Motion for Reconsideration Re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc.'s Answer and Motion for Clarification Regarding the Scope of the Forensic Computer Search	07/01/19	8	1887–1973
52	Recorder's Transcript of Pending Motions	06/29/20	27	6509–6549

61	Recorder's Transcript of Pending Motions	10/05/20	27	6639–6671
94	Recorder's Transcript of Pending Motions	07/14/21	32 33	7893–8000 8001–8019
90	Reply in Support of “Countermotion to Clarify Issues that the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial”	06/30/21	32	7862–7888
50	Reply to Plaintiffs’ (1) response to Jacuzzi’s Objections to Proposed Order, and (2) Opposition to Jacuzzi’s Motion to Clarify the Parameters of Any Waiver of Attorney-Client Privilege	06/24/20	26 27	6495–6500 6501–6506
3	Second Amended Complaint	05/09/16	1	24–33
4	Third Amended Complaint	01/31/17	1	34–49
10	Transcript of All Pending Motions	02/04/19	5 6	1214–1250 1251–1315
20	Transcript of Proceedings – Defendant Jacuzzi, Inc.’s Request for Status Check; Plaintiffs’ Motion for Reconsideration Regarding Plaintiffs’ Renewed Motion to Strike Defendant Jacuzzi, Inc.’s Answer and Motion for Clarification Regarding the Scope of the Forensic Computer Search	07/01/19	8	1794–1886
74	Transcript of Proceedings: Jury Instructions	12/21/20	29	7119–7171
68	Transcript of Proceedings: Motion to Strike	11/19/20	28 29	6924–7000 7001–7010
71	Transcript of Proceedings: Motions in Limine: Jacuzzi’s Nos. 1, 4, 13, 16, and 21/First Street’s No. 4; Jury Instructions	12/07/20	29	7050–7115

CERTIFICATE OF SERVICE

I certify that on October 5, 2021, I submitted the foregoing
“Petitioner’s Appendix” for filing *via* the Court’s eFlex electronic filing
system. Electronic notification will be sent to the following:

Benjamin P. Cloward
RICHARD HARRIS LAW FIRM
801 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Real Parties in Interest

I further certify that I served a copy of this document by mailing a
true and correct copy thereof, postage prepaid, at Las Vegas, Nevada,
addressed as follows:

The Honorable Crystal Eller
DISTRICT COURT JUDGE – DEPT. 19
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

1 **IV. CONCLUSION**

2 Plaintiffs request that the Court re-order an evidentiary hearing in light of Jacuzzi's
3 intentional failure to disclose the New Incident. Plaintiffs request that the scope of the hearing to
4 include the facts and circumstances of the New Incident, the Chopper communications, and the
5 facts and circumstances regarding the discovery conduct regarding the same. Plaintiffs should be
6 permitted to conduct discovery on these issues, including discovery regarding any documents and
7 communications between the Defendants and their defense or corporate counsel so that the Court
8 can truly determine the extent of the Defendants' involvement in the discovery efforts in this case.

9 Finally, regardless of the Court's decision regarding the evidentiary hearing, Plaintiffs
10 request that the Court expand the scope of the Forensic Search to include the time frame from
11 2008 to present and Order a Special Discovery Schedule.

12 DATED THIS 13th day of March, 2019.

RICHARD HARRIS LAW FIRM


13
14 
15 BENJAMIN P. CLOWARD, ESQ.
16 Nevada Bar No. 11087
17 801 South Fourth Street
18 Las Vegas, Nevada 89101
19 *Attorneys for Plaintiffs*
20
21
22
23
24
25
26
27
28

EXHIBIT 11

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11/15/2018 2:05 PM

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1 Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
2 Alexandria L. Layton, Nevada Bar No. 14228
SNELL & WILMER L.L.P.
3 3883 Howard Hughes Parkway, Suite 1100
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6 Email: alayton@swlaw.com
7 *Attorneys for Defendant/Cross-Defendant*
8 *Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 ROBERT ANSARA, as Special Administrator
of the Estate of SHERRY LYNN CUNNISON,
12 Deceased; ROBERT ANSARA, as Special
Administrator of the Estate of MICHAEL
13 SMITH, Deceased heir to the Estate of
SHERRY LYNN CUNNISON, Deceased; and
14 DEBORAH TAMANTINI individually, and
heir to the Estate of SHERRY LYNN
15 CUNNISON, Deceased,

CASE NO.: A-16-731244-C
DEPT. NO.: II

DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS

Plaintiffs,

vs.

18 FIRST STREET FOR BOOMERS &
BEYOND, INC.; AITHR DEALER, INC.;
19 HALE BENTON, individually; HOMECCLICK,
LLC; JACUZZI INC., doing business as
20 JACUZZI LUXURY BATH; BESTWAY
BUILDING & REMODELING, INC.;
21 WILLIAM BUDD, individually and as
BUDDS PLUMBING; DOES 1 through 20;
22 ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
23 MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
24 CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

4811-2503-7681

Snell & Wilmer

LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

001753

001753

1 **HEARING DATE:** August 29, 2018

2 **HEARING TIME:** 9:00 a.m.

3 **ATTORNEYS FOR PLAINTIFF:** Ian Estrada, Richard Harris Law Firm

4 **ATTORNEYS FOR DEFENDANT:** Joshua D. Cools, Snell & Wilmer L.L.P.

5 Also present was Meghan Goodwin, Armstrong, Delk, Balkenbush & Eisinger, attorneys
6 for Defendants FirstStreet for Boomers & Beyond, Inc. and AITHR Dealer, Inc.

7
8 **I.**

9 **FINDINGS**

10 The following motions having come before the Discovery Commissioner on August 29,
11 2018, the Discovery Commissioner finds:

12 1. Jacuzzi produced documents related to the Commissioner's order at the July 30,
13 2018 hearing and Plaintiffs' Motion to Strike Defendant Jacuzzi, Inc. dba Jacuzzi Luxury Bath's
14 Answer.

15 2. Jacuzzi's counsel represented to the Discovery Commissioner that the records
16 were produced with redactions of certain information, including personal identifying information.

17 3. Plaintiffs' counsel requested (1) that Plaintiffs be permitted have an independent
18 third party conduct a forensic search of Jacuzzi's computer system; and (2) that Jacuzzi be
19 ordered to produce unredacted versions of the documents Jacuzzi recently disclosed pursuant to
20 the Discovery Commissioner's order at the July 30, 2018 hearing on Plaintiffs' Motion to Strike
21 Jacuzzi, Inc. dba Jacuzzi Luxury Baths' Answer. The Discovery Commissioner denied Plaintiffs'
22 requests at this time and advised that Plaintiffs can file the appropriate motions if they believed
23 they are entitled to such relief.

24 *The Motion to Compel unredacted records*
25 */// should be brought before the Discovery Commissioner and*
26 */// the Motion to Strike an Answer as it is a case terminating*
27 */// Sanction should be brought before the District Court Judge. M*

27 *///*

28 *///*

Ansara/Cunnison v. Jacuzzi, et al.

A-16-731244-C

II.

RECOMMENDATIONS

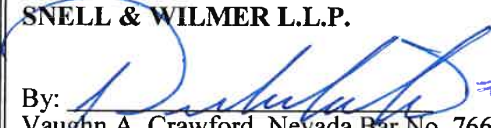
IT IS THEREFORE RECOMMENDED that Plaintiff's Motion to Strike Jacuzzi's Answer be denied without prejudice.

DATED this 14 day of November, 2018.


DISCOVERY COMMISSIONER

Prepared and Submitted by:

SNELL & WILMER L.L.P.

By:  #5928
Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
Alexandria L. Layton, Nevada Bar No. 14228
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
*Attorneys for Defendant/Cross-Defendant
Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

Approved as to Form and Content by:

RICHARD HARRIS LAW FIRM

By: _____
Benjamin P. Cloward, NV Bar No. 11087
801 S. Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiffs

THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER

By: _____
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*Attorneys for Defendants/Cross-Defendants
First Street for Boomers & Beyond, Inc. and Aithr Dealer, Inc.*

Ansara/Cunnison v. Jacuzzi, et al.

A-16-731244-C

II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Plaintiff's Motion to Strike Jacuzzi's Answer be denied without prejudice.

DATED this _____ day of _____, 2018.

DISCOVERY COMMISSIONER

Prepared and Submitted by:

SNELL & WILMER L.L.P.

By: _____

Vaughn A. Crawford, Nevada Bar No. 7665
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Approved as to Form and Content by:

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By: _____ #12575

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First Street for Boomers & Beyond, Inc. and Aithr Dealer, Inc.*

Ansara/Cunnison v. Jacuzzi, et al.

A-16-731244-C

II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Plaintiff's Motion to Strike Jacuzzi's Answer be denied without prejudice.

DATED this _____ day of _____, 2018.

DISCOVERY COMMISSIONER

Prepared and Submitted by:

SNELL & WILMER L.L.P.

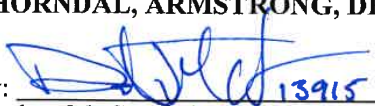
By: _____
Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
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Las Vegas, NV 89169
*Attorneys for Defendant/Cross-Defendant
Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

Approved as to Form and Content by:

RICHARD HARRIS LAW FIRM

By: _____
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801 S. Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiffs

THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER

By:  13915 for
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*Attorneys for Defendants/Cross-Defendants
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Snell & Wilmer

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N O T I C E

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

The Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 20____:

_____ Placed in the folder of counsel in the Clerk's office on the _____ day of _____, 20____.

✓ _____ Electronically served counsel on November 15, 2018, Pursuant to N.E.F.C.R. Rule 9.

By Natilie Lee
Commissioner Designee

001758

001758

CASE NAME: ANSARA v. FIRST STREET
CASE NUMBER: A-16-731244-C

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

— The parties having waived the right to object thereto,

— No timely objection having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

— Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

— IT IS HEREBY ORDERED the Discovery Commissioner's Report & Recommendations are affirmed and adopted.

— IT IS HEREBY ORDERED the Discovery Commissioner's Report And Recommendations are affirmed and adopted as modified In the following manner. (attached hereto)

— IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for _____, 20____, at __:__a.m.

Dated this _____ day of _____, 20____.

DISTRICT COURT JUDGE

Dugan, Sonja

From: efilingmail@tylerhost.net
Sent: Thursday, November 15, 2018 2:06 PM
To: Dugan, Sonja
Subject: Notification of Service for Case: A-16-731244-C, Robert Ansara, Plaintiff(s)vs.First Street for Boomers & Beyond Inc, Defendant(s) for filing Service Only, Envelope Number: 3448621

Notification of Service

Case Number: A-16-731244-C

Case Style: Robert Ansara, Plaintiff(s)vs.First Street for Boomers & Beyond Inc, Defendant(s)

Envelope Number: 3448621



This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	A-16-731244-C
Case Style	Robert Ansara, Plaintiff(s)vs.First Street for Boomers & Beyond Inc, Defendant(s)
Date/Time Submitted	11/15/2018 2:04 PM PST
Filing Type	Service Only
Filing Description	Discovery Commissioners Report and Recommendations
Filed By	Discovery Commissioner
Service Contacts	Robert Ansara: Charles Allen (callen@charlesallenlawfirm.com) Nicole Griffin (ngriffin@richardharrislaw.com) Angeli Gozon (angeli@richardharrislaw.com) Ian Estrada (ian@richardharrislaw.com) Cat Barnhill (catherine@richardharrislaw.com) First Street for Boomers & Beyond Inc: Michael Hetey (mch@thorndal.com) Patti Pinotti (plp@thorndal.com)

Jacuzzi Inc:

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Sonja Dugan (sdugan@swlaw.com)

Joshua Cools (jcools@swlaw.com)

Docket Docket (docket_las@swlaw.com)

Julia Diaz (jdiaz@swlaw.com)

Vaughn Crawford (vcrawford@swlaw.com)

Karen Haratani (kharatani@swlaw.com)

Other Service Contacts not associated with a party on the case:

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Lilia Ingleberger . (lingleberger@skanewilcox.com)

Lorrie Johnson . (LDJ@thorndal.com)

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	<p>Susana Nutt . (snutt@lipsonneilson.com)</p> <p>Vaughn A. Crawford . (vcrawford@swlaw.com)</p> <p>zdocteam . (zdocteam@richardharrislaw.com)</p> <p>Philip Goodhart (png@thorndal.com)</p> <p>Timothy Lepore (timothy.lepore@rmkb.com)</p> <p>Arthur Bortz (arthur.bortz@rmkb.com)</p> <p>Peggy Kurilla (peggy.kurilla@rmkb.com)</p> <p>Anthony Arriola (anthony.arriola@rmkb.com)</p>
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EXHIBIT 12

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A-13-691375-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability**COURT MINUTES****December 14, 2016**

A-13-691375-C

David Anastasi, Plaintiff(s)

vs.

Boulevard Invest LLC, Defendant(s)

December 14, 2016**11:00 AM****Telephonic Conference****Telephone Conference: At the
Request of Court Re: Trial Date****HEARD BY:** Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Klein**RECORDER:** Judy Chappell**PARTIES****PRESENT:**

Arledge, Jennifer Willis

Attorney for Deft/PHW

Carter, Brett A.

Attorney for Plaintiffs

Hall, Michael R.

Attorney for Deft/PHW

Kahn, David S.

Attorney for Deft/PHW

Smith, Lawrence J.

Attorney for Plaintiffs

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Kahn noted he discussed with his clients regarding a potential conflict and if the wanted new counsel and the Defendants did not want other counsel at this time. Court noted it would not reset the trial if they consider new counsel at a later time.

Colloquy regarding scheduling issues and setting the trial dates. Court noted it would not set a firm trial. Court further noted witnesses may appear by a video conference and that Counsel would need to arrange it. Court further noted the Medical Malpractice Sweeps are in February 2017 and may change the trial scheduling. Counsel agreed late October and part of November would be an available time for all parties. Counsel would prefer to start the trial the week of 10/30/17 and estimated 3 to 4 trial weeks. At the request of Counsel, COURT ORDERED, Trial SET. The Judicial Executive Assistant (JEA) to issue the trial order.

Discovery Issues: Mr. Kahn noted he had turned over disclosures to Plaintiffs and Plaintiff's have subpoena the defense attorneys and the law firms work product and Mr. Kahn may have to assert his attorney client privilege. Further Mr. Kahn noted if the Court ordered the attorney work product waived then an order should be submitted addressing this discovery provisions and its limitations and he would intend on filing a Motion to Reconsider. Mr. Carter noted there were multiple issues

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Minutes Date: December 14, 2016

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A-13-691375-C

and documents never produced that were turned over in another case and Plaintiffs still do not have the records regarding the floor sealant after they took over the property and was not sure if this was intentional. Court noted the similar issue in the other case of not producing the documents and both Defendant and Defense Counsel forgot to disclose, seems to have the burden shift. Colloquy regarding Defendant having knowledge and Defendant being the same Defendant in the other case. Court clarified it would not order counsel to waive the attorney client privilege, parties would need additional discovery and the issue to be addressed is; if Defendant is going to blame Defense Counsel or not. Mr. Kahn is going through every file in the firm regarding this Client, page by page, to see what was disclosed in every case. Further arguments. Court noted the burden is now the Defendants to prove why they were not disclosed and don't see why the Plaintiff's need to get into the attorney client issues. Court finds if the Defendant is not blaming counsel then it's all attributed to the Defendant regarding the multiple failures to disclose. Colloquy regarding Plaintiff's submitting the order from the last hearing. Counsel may need to amend the order. Court directed Counsel to submit the order within the first week in January. Colloquy regarding Plaintiff's questions for the Defense Attorney's depositions. Court noted the questions are overbroad. Court noted everything is attributed to the Defendant and further stated multiple issues are not an accident. COURT ORDERED, Matter SET for a status check: regarding the discovery issues and Counsel to inquire weather, Defendant Corporation is asserting alleged failure to disclose are due to defense counsel.

01/18/17 1:00 PM TELEPHONE CONFERENCE

09/14/17 9:30 AM PRE-TRIAL CONFERENCE

10/03/17 9:30 AM CALENDAR CALL

10/09/17 1:30 PM JURY TRIAL (3 TO 4 WEEKS)

A-13-691375-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Premises Liability**COURT MINUTES****January 18, 2017**

A-13-691375-C

David Anastasi, Plaintiff(s)

vs.

Boulevard Invest LLC, Defendant(s)

January 18, 2017**1:00 PM****Telephonic Conference****Telephone Conference Re:
Defendant's Disclosures &
Production Issues****HEARD BY:** Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Klein**RECORDER:** Judy Chappell**PARTIES****PRESENT:**

Arledge, Jennifer Willis

Attorney for Deft/Caesars

Carter, Brett A.

Attorney for Plaintiffs

Hall, Michael R.

Attorney for Deft/Caesars

Kahn, David S.

Attorney for Deft/Caesars

Lachman, Scott

Attorney for Deft/PHW LV

Michel Esq, Carol P.

Attorney for Deft/PHW LV

Smith, Lawrence J.

Attorney for Plaintiffs

JOURNAL ENTRIES

- All Parties appearing by telephone. Upon Court's inquiry of the Defendant Corporation alleging failure to disclose due to Defense Counsel. Ms. Michel advised she represents Planet Hollywood for this matter and there was no willful intention withholding information Defendants relied on Wilson & Elser. Court noted there were depositions and testimony regarding substances to be used in a prior case not disclosed by anyone and the corporation was aware of it and did not disclose it and the issue now is the attorney client privilege, there are multiple occurrences and if the corporation is relying on the attorney counsel then Plaintiff would have to take the depositions of the attorneys. Ms. Michel explained and stated they would not be waiving its privilege and did not believe the factors had been met. Ms. Michel noted the Plaintiff's could depose Counsel on how they got the information and the prior cases without waiving the attorney client privilege and would agree to additional discovery. Mr. Carter noted there were individuals at Planet Hollywood still employed in both cases and did not know why the information was not produced. Mr. Carter further noted he was not sure how to

PRINT DATE: 01/26/2017

Page 1 of 2

Minutes Date: January 18, 2017

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A-13-691375-C

proceed with the depositions until this was flushed out. Colloquy regarding the prior hearings and canceled trial date. Court noted the extreme seriousness of the matter. Ms. Michel stated her Client is not solely responsible and it maybe due to the advice of Counsel and will not waive the attorney client privilege. Court noted Counsel will have the right to take up this Courts decision. Ms. Michel requested a stay. Court directed Counsel to file a motion for stay with good reason. Court will allow limited discovery, depositions of the attorneys regarding this issue. Mr. Carter to prepare the order and pass it by Defendants. Mr. Kahn stated there was already an order to conduct the depositions and we have been producing the information and so far no disputes. Colloquy regarding the language in the order, being limited and attorney client privileged waived as to the lack of discovery disclosed. Upon Counsel's concerns, the Court noted it would have no problem holding the depositions in the Courthouse and Counsel may call the Judicial Executive Assistant, (JEA) to schedule it. Further arguments regarding the preparing of the order. Court directed Mr. Carter to prepare the order and if Counsel objects to the order, Counsel will have to appear in Court for further arguments.

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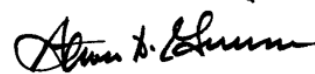
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EXHIBIT 13

001768

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CLERK OF THE COURT

ORDER
BRETT A. CARTER, ESQ.
Nevada Bar No. 5904
LAWRENCE J. SMITH, ESQ.
Nevada Bar No. 6505
BERTOLDO BAKER CARTER & SMITH
7408 West Sahara Avenue
Las Vegas, Nevada 89117
Phone Number: (702) 800-0000
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Email address:
Carter@NVLegalJustice.com
Lindsay@NVLegalJustice.com
Attorneys for Plaintiffs
ANASTASI

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID P. ANASTASI and CONCETTA ANASTASI, CASE NO. A-13-691375-C

DEPT. NO. 28

Plaintiffs,

vs.

PHW LAS VEGAS LLC., a Nevada Limited Liability Corporation Doing Business as Planet Hollywood Resort and Casino; CAESARS ENTERTAINMENT CORPORATION, a Delaware Corporation Doing Business as Planet Hollywood Resort and Casino; DOES I through X, inclusive; and ROE BUSINESS ENTITIES I through X, inclusive,

Defendants.

ORDER

This matter having come on for telephonic hearing January 18, 2017, at the hour of 1:00 p.m.; the Plaintiffs appearing by and through their attorneys of record, BRETT A. CARTER, ESQ., and LAWRENCE J. SMITH, ESQ., of the law firm of BERTOLDO, BAKER, CARTER & SMITH; Defendants PHW LAS VEGAS LLC and CAESARS ENTERTAINMENT



1 CORPORATION, appearing by and through their attorneys of record, DAVID KAHN, ESQ.,
2 JENNIFER WILLIS ARLEDGE, ESQ., of the law firm of WILSON ELSEER MOSKOWITZ
3 EDELMAN & DICKER LLP, MICHAEL HALL, ESQ., of the law firm of HALL, JAFFE &
4 CLAYTON, LLP, and, as independent counsel for defendants, CAROL P. MICHEL, ESQ., and
5 SCOTT R. LACHMAN, ESQ., of the law firm of WEINBERG WHEELER HUDGINS GUNN &
6 DIAL LLC; oral argument by the parties; and the Court having been apprised of the matter and for
7 good cause appearing,
8

9 This matter having come on the Court's calendar for a status check hearing following the
10 December 14, 2016 telephonic hearing, at such time the Court had ordered Defendant PHW Las
11 Vegas LLC (hereinafter referred to as PHW) to determine and advise the Court no later than
12 January 18, 2017, whether the failure to disclose discovery, as the subject of Plaintiffs' Motion to
13 Strike Defendant PHW's Answer dated November 2, 2016, was due in whole or in part to the acts
14 and omissions of PHW's counsel, Ms. Arledge and the firm of Wilson Elser et al..
15

16 Ms. Michel advised the Court that PHW was relying upon the guidance and direction of its
17 counsel, Ms. Arledge and the firm of Wilson Elser et al., respecting the information that was
18 necessary to accurately and appropriately disclose information, documents and witnesses pursuant
19 to N.R.C.P. 16.1 and respond to Plaintiffs' interrogatories, requests to produce, depositions duces
20 tecum, and other discovery efforts in regard to surfacing, resurfacing, sealing, installation,
21 modifications or maintenance for the front plaza.
22

23 Plaintiffs served written discovery in regard to surfacing, resurfacing, sealing, installation,
24 modifications and maintenance for the front plaza, specifically requesting information, documents
25 and/or witnesses pertaining to the following: (a) identity of and contact information for all entities
26 and persons, from initial construction to present, who designed, installed, resurfaced, and/or
27 otherwise maintained the front plaza; (b) the design, installation, construction, modifications and
28

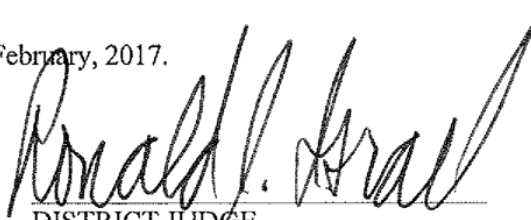
BERTOLDO BAKER CARTER & SMITH
 7408 West Sahara Avenue
 Las Vegas, Nevada 89117
 702-228-2600 • Fax 702-228-2333

1 maintenance from the date of initial construction to present on the plaza walkways; (c) the
 2 maintenance and modification history since original construction to include maintenance history
 3 (e.g., cleaning, sealing); (d) modifications and maintenance information, specifically requesting the
 4 identification of the sealant which has last been used on the plaza in the area where plaintiff fell;
 5 and (e) any and all records of the sealant application used in the area.

6
 7 IT IS HEREBY ORDERED as follows:

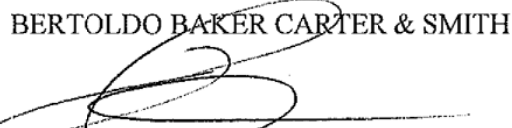
- 8 1. Limited to the discovery issues which were raised as the subject of Plaintiffs' Motion
 9 to Strike Defendant' PHW's Answer filed November 2, 2016 regarding surfacing,
 10 resurfacing, sealing, installation, modifications or maintenance for the front plaza as
 11 referenced above, , the attorney-client privilege is waived for this limited purpose
 12 only between PHW and its attorneys representing PHW and assisting with PHW's
 13 NRCP 16.1 disclosures and discovery efforts in this case through the date of the
 14 filing of the Motion to Strike.

15 DATED this 16 day of February, 2017.

16
 17
 18 
 19 DISTRICT JUDGE
 20 A-13691375-C

21 Respectfully submitted by:

22 BERTOLDO BAKER CARTER & SMITH

23
 24 
 25 BRETT A. CARTER, ESQ
 26 Nevada Bar No. 5904
 27 7408 W. Sahara Avenue
 28 Las Vegas, Nevada 89117
 Attorney for Plaintiffs
 ANASTASI

BERTOLDO BAZZAR & SMITH
 7408 West Sahara Avenue
 Las Vegas, Nevada 89117
 702-228-2600 • Fax 702-228-2333

ORDER continued
ANASTASI v. PHW Las Vegas LLC, et al.
 CASE NO.: A-13-691375-C

Approved as to form and content:



Carol P. Michel, Esq.
 Scott R. Lachman, Esq.
 Timothy A. Mott, Esq.
 WEINBERG, WHEELER, HUDGINS,
 GUNN & DIAL LLC
 6385 S. Rainbow Blvd., Suite 400
 Las Vegas Nevada 89118
 Attorneys for Defendants
 PHW LAS VEGAS, LLC. and
 CAESARS ENTERTAINMENT CORPORATION

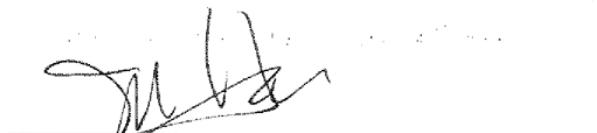

 Michael R. Hall, Esq.
 HALL JAFFE & CLAYTON
 7425 Peak Drive
 Las Vegas Nevada 89128
 Attorneys for Defendants
 PHW LAS VEGAS, LLC. and
 CAESARS ENTERTAINMENT CORPORATION

EXHIBIT 14

001773

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AFFIDAVIT

The within named person (Affiant), Ira Victor, who is a resident of Washoe County, State of Nevada, personally came and appeared before me, the undersigned Notary Public, and makes this his statement, testimony and General Affidavit under oath or affirmation, in good faith, and under penalty of perjury, of sincere belief and personal knowledge that the following matters, facts, and things set forth are true and correct, to the best of his knowledge:

On December 7, 2018, at 10:00 a.m. Pacific time, I participated in a meet and confer conference call to discuss electronic discovery in the case of Cunnison vs. Jacuzzi Inc, doing business as Jacuzzi Luxury Bath. I am Plaintiff's consultant.

Joining me on the call representing the Plaintiff were my colleagues Yuval Brash and Bill Wilder, whose Affidavits accompany mine.

Mark Allen, Vice President of Information Technology for Jacuzzi was on the call on behalf of Defense.

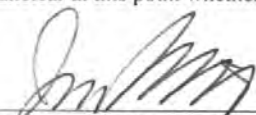
In response to routine questions regarding Jacuzzi's stored data, Mr. Allen informed us that he was instructed only to determine from us a list of desired search queries, which he would then conduct on Jacuzzi product warranty databases.

Mr. Allen declined to answer the majority of our questions, and characterized them as related to "discovery," a discussion of which would be contrary to his instructions. He reiterated that he was authorized only to discuss specific searches of warranty records.

During the call, which lasted approximate thirty minutes, we asked a necessary series of foundational questions. It is a generally accepted practice in e-discovery to lay the foundation as follows, prior to identifying specific categories and sources of evidence:

1. What technical processes have been used to preserve data by the adverse party prior to an ediscovery meet and confer?
2. In the event that searches have been conducted, (they have, according to Defense counsel), what search queries did the adverse party use and what results were indicated?
3. What systems were used in Defendant's regular course of business to store and process data? This information is part of an "inventory of information assets," which is a term of art describing the regular on-premise and cloud-based movement and storage of electronic data. The inventory of assets becomes the basis for narrowing scope and identifying where potentially relevant data is located.
4. The inventory of information assets also includes a description of processes used in Defendant's regular course of business to back-up data its systems.

It is unclear at this point whether Jacuzzi's warranty database(s) contain potentially relevant information.



Signature of Affiant

12-10-18

Date

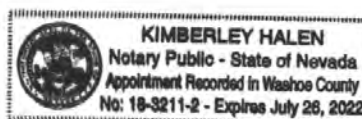
ACKNOWLEDGEMENT OF NOTARY

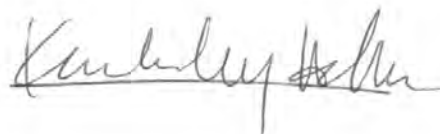
STATE OF Nevada

COUNTY OF Washoe

Subscribed and sworn to, or affirmed, before me on this 10th day of December, 20 18 by Affiant

Ira Victor Spivack





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EXHIBIT 15

001775

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ELECTRONICALLY SERVED
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WEINBERG WHEELER
HUDGINS GUNN & DIAL
TRIAL LAWYERS

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bllewellyn@wwhgd.com
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March 13, 2019

Benjamin P. Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Re: *Robert Ansara, as Special Administrator of the Estate of Sherry
Lynn Cunnison, et al. v. Firststreet for Boomers & Beyond, Inc., et al.*
Case No.: A-16-731244-C

Dear Mr. Cloward,

Pursuant to our conference call of March 8, 2019, I am memorializing and submitting to you the terms of our proposal to move forward with the forensic review of Jacuzzi's customer relation databases.

1. The purpose of this meeting is to effectuate the forensic review as previously recommended by the Discovery Commissioner on October 16, 2018, and as modified by the Discovery Commissioner by the Report and Recommendations signed on January 3, 2019. Judge Richard Scotti ordered the adoption of the Discovery Commissioner's October 16, 2018 Report and Recommendations on November 5, 2018, and directed further protocol for the search in a minute order entered on March 4, 2019 at 10:00 a.m.
2. The parties agree to meet at the office of Weinberg, Wheeler, Hudgins, Gunn & Dial, 6385 South Rainbow Blvd., #400, Las Vegas, NV 89118 on March 18, 2019 at 10:00 a.m. Mark Allen, Vice President of Information Technology for Jacuzzi, will be present on behalf of Jacuzzi, Inc. Digital forensics consultant, Ira Victor, will be present on behalf of Plaintiffs. Ira Victor has requested his associate be present by means of teleconferencing. Counsel for Plaintiffs and Jacuzzi, Inc. will attend this meeting.
3. Pursuant to Plaintiffs' request, at the time of this meeting, Defendant Jacuzzi, Inc. will produce an "inventory of information assets" for Jacuzzi Inc. The inventory will be presented on a projector or oversized computer monitor so that it will be viewable by all in attendance.



WEINBERG WHEELER
HUDGINS GUNN & DIAL
TRIAL LAWYERS

Benjamin P. Cloward, Esq.
March 13, 2019
Page 2

4. If sensitive or privileged information will be accessed during the meeting, Jacuzzi, Inc. may disable the projector or oversized computer monitor so that such material is not viewable by individuals present on behalf of Plaintiffs.
5. During this meeting, Plaintiffs' representatives will not copy, photograph, or otherwise record any of the information presented. Plaintiffs' representatives are permitted to take notes for the purpose of any subsequent Court intervention on the issue of the scope of the forensic review. At the conclusion of this meeting, Plaintiffs' representatives will not be permitted to take the inventory of assets or associated materials with them. Plaintiffs' representatives will be able to take with them any notes that are created during the course of this meeting.
6. Mr. Allen and Mr. Victor will review and discuss the servers and systems within the inventory. After their review, Mr. Victor will propose a list of servers and systems to be searched in the pending forensic review. Jacuzzi Inc. and their representatives will evaluate Mr. Victor's proposal for the propriety of its scope under the Discovery Commissioner's recommendation and Judge Scotti's minute order, as well as for issues of privilege, relevance, and overbreadth.
7. The parties will attempt to reach an agreement as to the servers and systems to be searched. In the event that an agreement cannot be reached, the parties will seek a Court order to define the scope of the servers and systems that may be searched in the forensic review.
8. At the conclusion of the meeting, counsel for Jacuzzi Inc. will print and seal the information reviewed, in the event that it must be produced for the Court's review. The parties will initial each page of any documents that are printed and sealed.
9. Plaintiffs have agreed to provide a list of initial proposed search terms to be used in the forensic search. Plaintiffs will produce these proposed terms to Jacuzzi for review at the beginning of, or no later than midweek, the week of March 11, 2019. The Plaintiffs reserve their right to modify this list pending their review of the asset inventory.
10. Plaintiffs have agreed that, at the time of the ensuing forensic search, Jacuzzi personnel will execute the search on Jacuzzi's servers. Plaintiffs' digital forensics consultant(s) will be permitted to observe the search.
11. The parties are still in the process of determining the logistics of the forensic review. The parties will meet and confer on these issues as soon as practicable after the March 18, 2019 meeting.



WEINBERG WHEELER
HUDGINS GUNN & DIAL
TRIAL LAWYERS

Benjamin P. Cloward, Esq.
March 13, 2019
Page 3

Please advise if you are agreeable to these terms, or if we need to further work on the parameters of this meeting.

Respectfully yours,

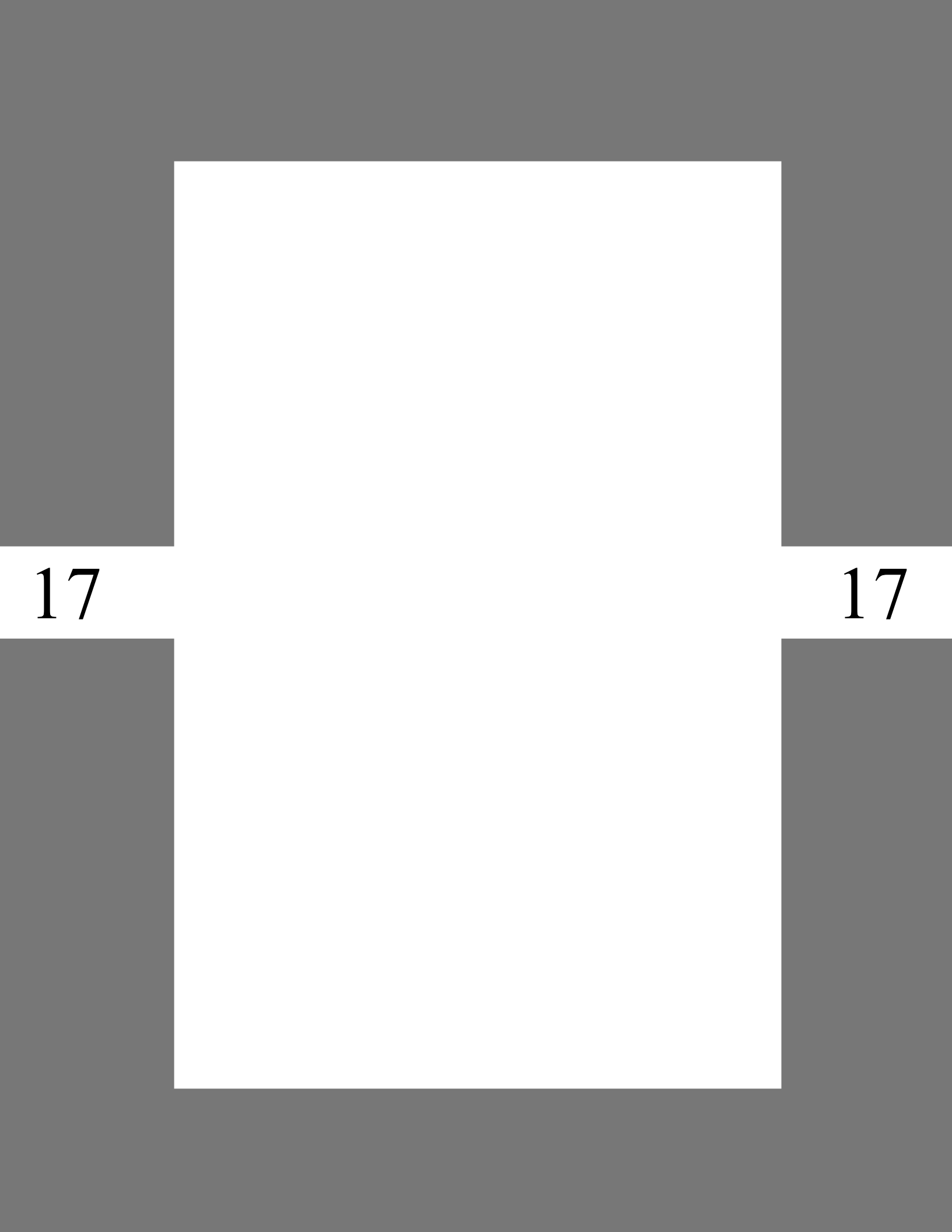
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

D. Lee Roberts, Jr., Esq.
Brittany M. Llewellyn, Esq.

cc: All Counsel

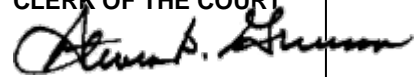
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17



RIS
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
RICHARD HARRIS LAW FIRM
801 South Fourth Street
Las Vegas, Nevada 89101
Phone: (702) 444-4444
Fax: (702) 444-4455
E-Mail: Benjamin@RichardHarrisLaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator
of the Estate of SHERRY LYNN CUNNISON,
Deceased; MICHAEL SMITH, individually,
and heir to the Estate of SHERRY LYNN
CUNNISON, Deceased; and DEBORAH
TAMANTINI, Individually; and heir to the
Estate of SHERRY LYNN CUNNISON,
Deceased,

Plaintiff,

vs.

FIRST STREET FOR BOOMERS &
BEYOND, INC.; AITHR DEALER, INC.;
HALE BENTON, Individually;
HOMECCLICK, LLC; JACUZZI INC., doing
business as JACUZZI LUXURY BATH;
BESTWAY BUILDING & REMODELING,
INC.; WILLIAM BUDD, Individually and as
BUDDS PLUMBING; DOES 1 through 20;
DOE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20,
inclusive,

Defendants.

AND ALL RELATED MATTERS

CASE NO.: A-16-731244-C
DEPT NO.: II

**PLAINTIFFS' REPLY IN SUPPORT
OF THEIR MOTION FOR
RECONSIDERATION RE:
PLAINTIFFS' RENEWED MOTION
TO STRIKE DEFENDANT
JACUZZI, INC.'S ANSWER**

and

**MOTION FOR CLARIFICATION
REGARDING THE SCOPE OF THE
FORENSIC COMPUTER SEARCH**

1 Plaintiffs, by and through their attorney of record, BENJAMIN P. CLOWARD, ESQ., of
2 RICHARD HARRIS LAW FIRM, hereby submit Plaintiffs' Reply in Support of their Motion for
3 Reconsideration re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc.'s Answer and
4 Motion for Clarification Regarding the Scope of the Forensic Computer Search.

5 This Reply is made and based on the papers and pleadings on file herein, the following
6 Memorandum of Points and Authorities, and the oral argument of counsel at any hearing on this
7 Motion.

8 DATED THIS 14th day of June, 2019.

9 **RICHARD HARRIS LAW FIRM**

10
11 /s/ Benjamin P. Cloward
12 BENJAMIN P. CLOWARD, ESQ.
13 Nevada Bar No. 11087
14 801 South Fourth Street
15 Las Vegas, Nevada 89101
16 *Attorneys for Plaintiffs*
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Jacuzzi Inc. d/b/a Jacuzzi Luxury Bath's ("Jacuzzi") Opposition is a microcosm of the gamesmanship and evasiveness that Plaintiffs have had to battle throughout this litigation. By the time Jacuzzi learned of the New Incident in October 2018, Plaintiffs and Jacuzzi had already been through of a litany of discovery disputes which centered around Plaintiffs' repeated attempts to obtain other-incidents evidence. By October 2018, Plaintiffs had already served written discovery requests seeking similar incidents evidence and Plaintiffs had already deposed Jacuzzi's corporate witnesses in which Plaintiffs specifically sought testimony regarding other similar incidents. Moreover, Plaintiffs had already filed their first Motion to Strike Jacuzzi's Answer, and former Discovery Commissioner Bulla ordered Jacuzzi to perform another search for other incidents. Then came Jacuzzi's Motion for Protective Order (filed Sept. 11, 2018) regarding Plaintiffs' discovery requests (which sought other similar incidents evidence) and Jacuzzi's Motion for Protective Order (filed Oct. 12, 2018) regarding Plaintiffs' Salesforce Subpoena. The parties then had an almost three-hour hearing in front of this Court regarding Plaintiffs' Renewed Motion to Strike which centered, again, around Jacuzzi's failure to disclose other incidents evidence. Now, even after all the discovery motions, hearings before former Commissioner Bulla, motions to strike, and the almost three-hour hearing before this Court, Jacuzzi still refuses to acknowledge that it was required to disclose an incident involving an end-user who died after "getting stuck" in a Jacuzzi walk-in tub.

II. STATEMENT OF FACTS

A. Jacuzzi Should Have Disclosed the New Incident Immediately

Jacuzzi's Opposition shows that Jacuzzi remains entrenched in its hyper-technical, evasive, and deceptive discovery tactics. When Plaintiffs asked for information regarding similar incidents, Jacuzzi self-limited the scope of its responses to prior incidents only.¹ When Plaintiffs asked for the identities of all dealers, Jacuzzi self-limited its response to only reveal AITHR (and

¹ See generally, Pls.' Renewed Mot. to Strike, filed Jan. 10, 2019.

1 then unilaterally conclude that the other independent dealers were irrelevant to this case).² When
 2 Plaintiffs asked for customer complaints, Jacuzzi self-limited its response to only complaints
 3 involving injury or death and withheld the Jerre Chopper complaints and the Leonard Baize
 4 lawsuit filed in Texas by claiming that these cases did not result in injury or death.³ Now, Jacuzzi
 5 claims that it did not have to disclose an incident involving death because it was not required to
 6 disclose incidents involving death unless the decedent's family made an injury claim, warranty
 7 claim, or filed a lawsuit. In fact, Jacuzzi seems to argue that it has gone above and beyond the
 8 call of duty by disclosing the New Incident and that it only disclosed the New Incident "out of an
 9 abundance of caution." Plaintiffs are unable to understand how a death incident involving a
 10 person getting stuck in a Jacuzzi tub was only disclosed "in an abundance of caution."

11 Additionally, Jacuzzi takes the curious position that it did not have to disclose the New
 12 Incident voluntarily because it took place in October 2018, after the date when Commissioner
 13 Bulla ordered Jacuzzi to disclose incidents from "2008 to present." Jacuzzi has taken the position
 14 that when Discovery Commissioner Bulla or a DCRR states "2008 to present," the term "present"
 15 means "today's date." Therefore, Jacuzzi asserts that Commissioner Bulla only contemplated the
 16 search from 2008 to September 19, 2018, because Commissioner Bulla ordered the search from
 17 "2008 to present" at a hearing on September 19, 2018. According to Jacuzzi, "[t]he timeframe
 18 for the search was from "2008 to present"—September 19, 2018."

19 Using this strained logic, Jacuzzi explains its failure to disclose a death incident as
 20 follows:

21 The Discovery Commissioner ordered Jacuzzi to produce all "bodily injury
 22 and wrongful death claims. (Underline in original). No claim or lawsuit has
 23 been filed against Jacuzzi related to the blood clot incident, and whether the
 24 use of the tub and the death are related is sheer speculation. Thus, it did not
 25 fall within the scope of the Discovery Commissioner's order—Jacuzzi
 26 complied with the directive to identify personal injury or death claims
 27 related to Jacuzzi's walk-in tub products from 2008 to September 19, 2018

27 ² See, *Id.*

28 ³ See, *Id.*

(“to present”).⁴

It is this exact type of evasive conduct and swift dealing that has frustrated Plaintiffs’ discovery in this case.

B. Commissioner Bulla and this Court Never Limited Jacuzzi’s Disclosure Requirement to Only Incidents Resulting in a “Claim”

In reality, Jacuzzi knew, or should have known, that it was required to disclose the New Incident immediately. An excerpt from the September 19, 2018, hearing transcript before Commissioner Bulla reveals the absurdity of Jacuzzi’s position. Jacuzzi filed a Motion for Protective Order regarding certain written discovery requests. In particular, Jacuzzi sought protection as to the following Requests for Production of Documents:

REQUEST FOR PRODUCTION NO. 24:

All documents containing information pertaining to any other lawsuit to which you were a named party regarding a consumer’s use of one of your walk-In tubs.

REQUEST FOR PRODUCTION NO. 25:

All documents containing information pertaining to any other insurance claim to which you were a named party regarding a consumer’s use of one of your walk-In tubs.

REQUEST FOR PRODUCTION NO. 41:

All reports, logs, etc. memorializing any incident involving consumer use of any of your Walk-in Tubs, for the period from January 1, 2012 to the present.

REQUEST FOR PRODUCTION NO. 42:

All reports that you received from the U.S. Consumer Product Safety Commission regarding your Walk-in Tubs from January 1, 2012 to the present.

REQUEST FOR PRODUCTION NO. 43:

All documents relating to complaints made to you about your Walk-In Tubs from January 1, 2012 to the present.

Commissioner Bulla found that Plaintiffs were entitled to the information sought from the

⁴ See, Jacuzzi’s Opp’n. at 12:10-16.

time period 2008 to present. Commissioner Bulla also found that Plaintiffs are entitled to any information pertaining to any incident involving bodily injury or death. There was no limitation to incidents that led to any sort of warranty claim, bodily injury liability claim, or lawsuit. An excerpt from the September 19, 2018, hearing shows:

DISCOVERY COMMISSIONER: Then when I get to Request No. 24, 25, 41, 42 and 43⁵, which were basically grouped together as well, I think part of the concern was it was overly broad. I think we need to limit them, those requests to this particular tub, 2008 to the present. And I think I had already defined serious bodily injury or wrongful death. I think instead of putting the serious in front of it I'm just going to say bodily injury or wrongful death. I think somebody broke a toe or something.

MR. CLOWARD: Yeah.

DISCOVERY COMMISSIONER: I mean, I think that's something that would have been or should have been disclosed and it was now disclosed. It's a subsequent accident, though, it's not a previous one.

MR. CLOWARD: Sure.

DISCOVERY COMMISSIONER: But I think to the extent that somebody had an injury in one of these tubs and/or wrongful death, I think that's your parameter. And the time frame is from 2008 to the present. So with those two conditions in place, I think if you need to you need to supplement Request to Produce 24, 25, 41, 42 and 43.⁶

Requests 24 to 43, some of these requests do have time frames in them. I'll leave those alone. But for the ones that don't, it's 2008 to the present and it's where there is wrongful death or bodily injury. So with those parameters in place, I do expect supplements to the extent there are any.⁷

And I also want to make sure you double check to see, if you had any written complaints that came in, where those are because I think that's something that you need to take a look at again with fresh eyes. You know, 2008 to the present, was there a physical injury involved or a wrongful death.⁸

For No. 24, 25, 41, 42 and 43, you need to answer those with the parameters of if there is not a date given in the request, it's from 2008 to the present.

⁶ See, Ex. 16 to Pls.' Mot., Tr. of Hr'g, Sept. 19, 2018, at 11:3-18.

⁷ See, Ex. 16 to Pls.' Mot., Tr. of Hr'g, Sept. 19, 2018, at 13:22-14:1

⁸ See, Ex. 16 to Pls.' Mot., Tr. of Hr'g, Sept. 19, 2018, at 23:2-6.

Any of the requests that involve wrongful death or serious bodily -- not serious, must bodily injury. Bodily injury; wrongful death.⁹

There was simply no limitation to incidents which later resulted in a warranty or injury claim. In fact, RFPDs 41 and 43 specifically sought “incidents” and “complaints.”¹⁰ Simply put, Commissioner Bulla ruled that Jacuzzi must disclose all incidents or complaints from 2008 to present involving injury or death. Jacuzzi was required to disclose the New Incident immediately.

II. LEGAL ARGUMENT

Jacuzzi’s argument that it only had to disclose “claims” up until September 19, 2018 (the date they claim is Commissioner Bulla meant when she stated “present”) illustrates Jacuzzi’s “catch me if you can” approach to litigation. Once again, Plaintiffs find themselves in a situation where, even after court orders to disclose any and all incidents involving injury or death, Jacuzzi feels it can withhold an incident involving death and then argue that it is somehow going above and beyond the call of duty by disclosing an incident involving death simply because no warranty claim or lawsuit has been filed. Jacuzzi was involved in each and every hearing before the discovery commissioner – where the discussions have always centered around other incidents and other customer complaints, **not warranty claims, liability claims, or lawsuits**. Former Discovery Commissioner Bulla **never** stated that Jacuzzi was only required to disclose incidents involving insurance claims or lawsuits. It is this exact conduct that requires reconsideration of the Court’s Minute Orders.

A. The Court Has Inherent Authority to Reconsider Prior Orders

A Court has inherent authority to reconsider its prior orders.¹¹ “A court may, for sufficient cause shown, amend, correct, resettle, modify or vacate, as the case may be, an order previously made and entered on the motion in the progress of the cause or proceeding.”¹²

B. The “New Incident” is Evidence that Warrants Reconsideration

As discussed above, Jacuzzi’s failure to disclose the New Incident is new evidence that the Court

⁹ See, **Ex. 16** to Pls.’ Mot., Tr. of Hr’g, Sept. 19, 2018, at 24:15-18.

¹⁰ See, fn. 5.

¹¹ *Trial v. Faretto*, 91 Nev. 401 (1975).

¹² *Id.*

1 did not have available until March 7, 2019. Jacuzzi argues that this is not “new” evidence because Jacuzzi
 2 disclosed it days before this Court’s second Minute Order. While that may be true, the fact remains that
 3 the Court did not have this information at the time of the 3-hour oral argument **even though Jacuzzi was**
 4 **aware of the New Incident** at the time of the February 4, 2019 hearing.

5 Jacuzzi’s failure to disclose the New Incident until March 7, 2019, is highly relevant to
 6 the issues this Court considered in Plaintiffs’ Renewed Motion to Strike. It is relevant to this
 7 Court’s finding that Jacuzzi did not egregiously and intentionally in concealing and withholding
 8 relevant information throughout this litigation. Therefore, because this new information was not
 9 available at the time the Court made its decision on Plaintiffs’ Renewed Motion to Strike, it is
 10 necessary for this Court to reconsider its March 12, 2019, Minute Order and order that the
 11 Evidentiary Hearing go forward.

12 **C. The Scope of the Forensic Examination Should Include 2008 to the Present**

13 As set out in Plaintiffs’ Motion, the time scope of the forensic search has always been
 14 from 2008 to present. Originally, former Discovery Commissioner Bulla recommended (and this
 15 court subsequently affirmed and adopted) a forensic search from 2008 *to present*. Notably,
 16 Jacuzzi’s Opposition does not address Commissioner Bulla’s clear and unambiguous statements
 17 regarding the timeframe of the search:

18 DISCOVERY COMMISSIONER: We have to somehow define the
 19 parameters of the search to the tub at issue or a similar type of tub, but really
 20 the products liability case, I guess the design is one of the issues. **But it’s**
 21 **not just what happened before this event, it’s actually, you know, what**
 22 **is relevant to the design of the product that it could also be what occurs**
 23 **after the event.**

24 MR. COOLS: Certainly. But the admissibility of those is on a different
 25 basis.

26 DISCOVERY COMMISSIONER: Absolutely. I agree with that.

27 ***

28 DISCOVERY COMMISSIONER: So that seems to me a logical place to
 start if we have to figure out which computers to look at. And it seems to
 me in the ordinary course of business we’re looking at the call-in center

computers or whoever is taking the initial claim as part of the ordinary course of business before it gets to the lawyer. The lawyer is a different issue and we'll have to talk about that in a minute. But I think that for now we have to have some way of searching the initial claims that were made or reported to Jacuzzi that were documented in the computer system. Now, it's possible if you go back to that computer system, you, without the assistance of an I.T. person, although I would probably have one do it, just search and find out what's on there. **And I think we need to put them in a particular time frame and I think I had actually done that at the last hearing.**

MR. COOLS: **2008 to the present is what you previously indicated.**

DISCOVERY COMMISSIONER: **Okay.**¹³

Accordingly, the Report & Recommendation (DCRR) states:

IT IS ORDERED that a third-party vendor may be permitted to perform a forensic analysis of the computer systems that contain the data/information relating to initial customer complaints provided that the cost is within a reasonable range. Jacuzzi and Plaintiffs shall meet and confer to determine mutually agreeable search parameters. **The time frame for the search will be from 2008 to present.**¹⁴

It is important to note that **Jacuzzi does not dispute that Commissioner Bulla ordered a search from 2008 to present.** Rather, Jacuzzi tries to convince this Court that Plaintiffs are trying to expand the search beyond what was originally contemplated.¹⁵

Plaintiffs simply request that the Court allow the forensic search as originally contemplated because incidents after the subject incident are relevant to Plaintiffs' claims. Evidence of subsequent, similar incidents involving the same condition are relevant to the issues

¹³ See, Ex. 16, Tr. of Hr'g, Sept. 19, 2018, at 6:23-7:6 and 8:10-22.

¹⁴ See, Ex. 11 to Pls. Mot., Disc. Comm'rs. R. & R., Nov. 6, 2018, at 2:19-23

¹⁵ It is important to note that Jacuzzi's approach to this issue is another example of Jacuzzi's self-interested interpretation of the rules and orders. On one hand, Jacuzzi argues that Plaintiffs' instant Motion is procedurally improper because this Court's Minute Order has not been reduced to a final written and signed order with a no notice of entry of order. Jacuzzi cites the Nevada Supreme Court's holding in *Div. of Child & Family Servs. v. Eighth Judicial Dist. Court*, 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004), for the proposition that a "dispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy, must be written, signed, and filed before they become effective." Therefore, Jacuzzi argues that Plaintiffs cannot seek reconsideration of a non-final order. On the other hand, Jacuzzi argues that the same, non-final Minute Order now alters the scope of the previously ordered forensic search. Based on Jacuzzi's argument, the forensic search should proceed without consideration of this Court's Minute Order.

of causation and whether there is a defective and dangerous condition.¹⁶ A subsequent accident at the same or a similar place, under the same or similar conditions, is just as relevant as a prior accident to show the condition was in fact dangerous or defective or that the injury was caused by the condition.¹⁷ Therefore, as former Discovery Commissioner Bulla found, subsequent incidents are equally as important as prior incidents and the time frame of the search must be from 2008 to present.

D. The Court Should Order an Evidentiary Hearing

Based on the foregoing, Plaintiffs request an evidentiary hearing regarding the facts and circumstances of the New Incident, the Chopper communications (as originally ordered), and the facts and circumstances regarding Jacuzzi's discovery conduct on those issues. Plaintiffs also request leave to conduct discovery on these issues, including discovery regarding any documents and communications between the Defendants and their in-house or retained corporate counsel so that the Court can ascertain the level of involvement Jacuzzi's Counsel has played in these willful and deliberate efforts to thwart legitimate discovery.

IV. CONCLUSION

On the one hand, Jacuzzi argues that Plaintiffs cannot seek reconsideration of the March 12, 2019 Minute Order because it has not been reduced to a written, signed order. Yet, on the other hand, Jacuzzi argues that the same Minute Order now controls the scope of the forensic search. This opportunistic approach to litigation continues to limit Plaintiffs' ability to conduct meaningful discovery. It frustrates the purpose of discovery – especially in a product liability case where a large portion of relevant information is in the defendant's control. It is these types of cases, and this case in particular, that requires the absolute good faith participation of the parties.

Plaintiffs request that the Court re-order an evidentiary hearing in light of Jacuzzi's intentional failure to disclose the New Incident. Plaintiffs request that the scope of the hearing

¹⁶ See *Reingold v. Wet N' Wild Nevada, Inc.*, at 113 Nev. 967, 969, 944 P.2d 800, 802 (citing *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 415, 470 P.2d 135, 139 (1970)).

¹⁷ See, *Ginnis* at 86 Nev. 415, 470 P.2d 139 (citing B.E. Witkin, California Evidence §353 (2d ed. 1966); see also B.E. Witkin, California Evidence §389 (3d ed. 1986)).

1 include the facts and circumstances of the New Incident, the Chopper communications, and the
2 facts and circumstances regarding the discovery conduct regarding the same. Plaintiffs should be
3 permitted to conduct discovery on these issues, including discovery regarding any documents and
4 communications between the Defendants and their defense or corporate counsel so that the Court
5 can truly determine the extent of the Defendants' involvement in the discovery efforts in this case.

6 Finally, regardless of the Court's decision regarding the evidentiary hearing, Plaintiffs
7 request that the Court expand the scope of the Forensic Search to include the time frame from
8 2008 to the present date.

9 DATED THIS 14th day of June, 2019.

RICHARD HARRIS LAW FIRM

/s/ Benjamin P. Cloward

BENJAMIN P. CLOWARD, ESQ.

Nevada Bar No. 11087

801 South Fourth Street

Las Vegas, Nevada 89101

Attorneys for Plaintiffs



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RICHARD HARRIS
LAW FIRM

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the amendment to EDCR 7.26, and Administrative Order 14-2, I hereby certify that on this 14th day of June, 2019, I caused to be served a true copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION RE: PLAINTIFFS' RENEWED MOTION TO STRIKE DEFENDANT JACUZZI, INC.'S ANSWER and MOTION FOR CLARIFICATION REGARDING THE SCOPE OF THE FORENSIC COMPUTER SEARCH** as follows:

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below; and/or

☒ Electronic Service — in accordance with Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion Rules (N.E.F.C.R.).

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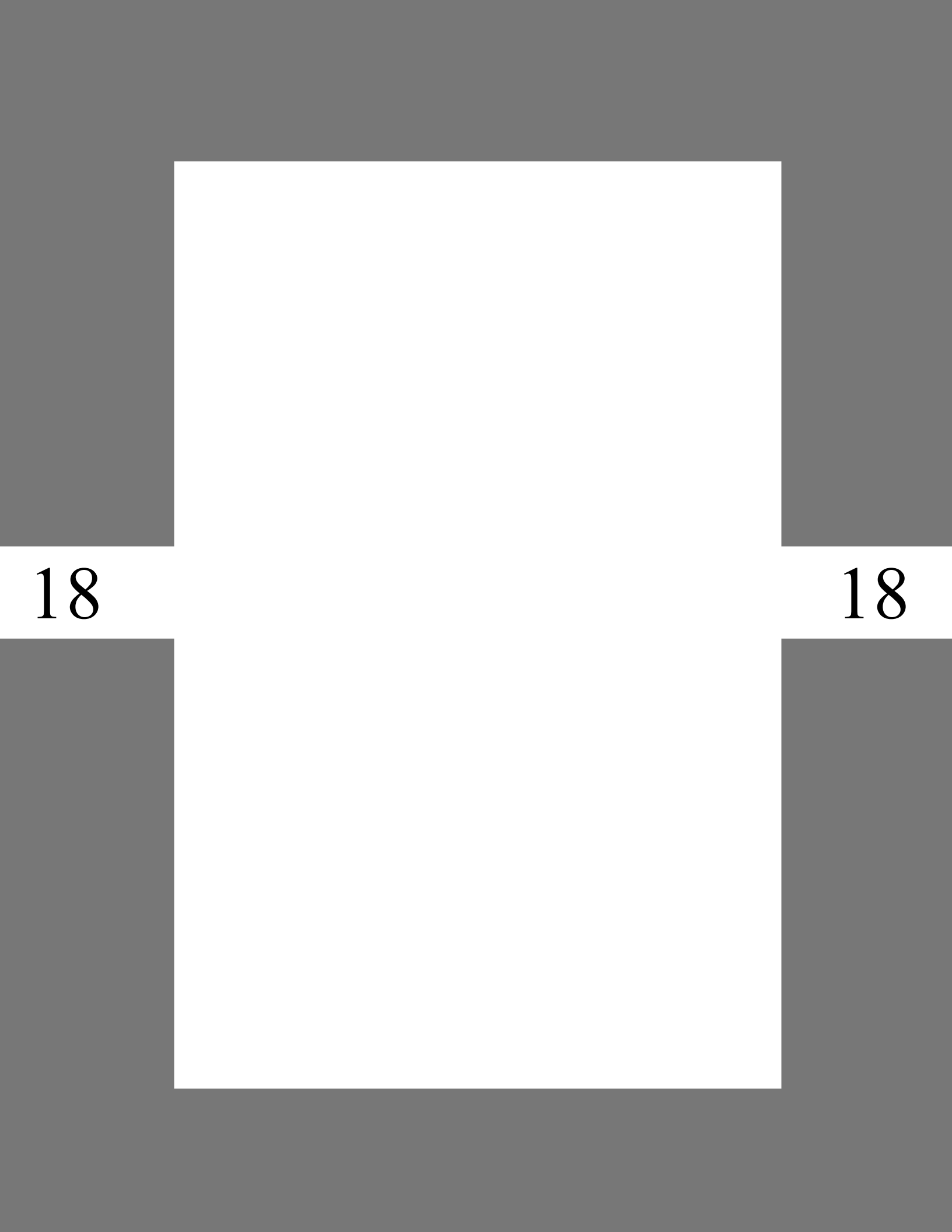
*Attorneys for Defendant/Cross-
Defendant, Jacuzzi, Inc. dba Jacuzzi
Luxury Bath*

/s/ Catherine Barnhill

An employee of RICHARD HARRIS LAW FIRM



06/10/19



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A-16-731244-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

March 04, 2019

A-16-731244-C Robert Ansara, Plaintiff(s)
vs.
First Street for Boomers & Beyond Inc, Defendant(s)

March 04, 2019 10:00 AM Minute Order

HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Garcia, Louisa

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Order RE: Pending Motions

The Court sets down an Evidentiary Hearing on the issue of sanctions for March 28, 2019, 10:30 AM (3 hours). The Court hereby lifts any Stay that existed in this case.

The parties should proceed with any further discovery until and unless the Court Orders otherwise. In the upcoming sanctions order the Court is inclined to impose some monetary sanctions, at the very least, and re-allocate the fees and costs related to discovery. A tentative new Discovery Deadline is March 21. The Court shortens Notice for any further Depositions that either side needs to take to one week. Protective orders, if really necessary, may be sought on one day notice and heard by telephone conference. Plaintiff is permitted to take a further deposition of the corporate representatives of Jacuzzi and First Street, regarding Chopper, marketing and advertising, and the First Street dealers that existed between 2008 and the date of the incident. Plaintiff is entitled to locate and depose Chopper if that has not been done already. Plaintiff is entitled to take the depositions of the First Streets Dealers. The parties are directed to again cooperate in good faith to conduct the forensic review previously ordered by the Discovery Commissioner-if it still has not been complete-and, of course, the scope shall be all incidents involving a Jacuzzi walk-in tub with inward opening doors, for the time period of January 1, 2008, through the date of filing of the complaint, where a person slipped and fell, whether or not there was an injury, whether or not there was any warranty claim, and whether or not there was a lawsuit.

This case is still set to be tried on the Court's April 22 five-week stack. The Court will entertain a Stipulation to continue if the parties collectively want a continuance.

The Court requests the parties to identify, by filed brief (no more than two (2) pages); (1) What discovery has been conducted in this case since February 4, 2019; (2) The names of any relevant customers of Jacuzzi/First Street that have died; (3) What additional discovery Plaintiff would need to conduct if the Court were not to strike Defendants Answers; and (4) any new developments that the Court should know about. Please provide this by Thursday March 8, 2019.

At this time the Court believes that an Evidentiary Hearing is necessary to determine whether, and the extent to which, sanctions might be assessed against Jacuzzi and/or First Street for failure to timely disclose the Chopper incident. The Court will elaborate on this more in the upcoming sanctions Order.

CLERK'S NOTE: This Minute Order has been electronically served to all registered parties for Odyssey File & Serve. /lg

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A-16-731244-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Product Liability

COURT MINUTES

July 01, 2019

A-16-731244-C Robert Ansara, Plaintiff(s)
vs.
First Street for Boomers & Beyond Inc, Defendant(s)

July 01, 2019 09:00 AM All Pending Motions

HEARD BY: Scotti, Richard F. COURTROOM: RJC Courtroom 03B

COURT CLERK: Jacobson, Alice

RECORDER: Easley, Dalayne

REPORTER:

PARTIES PRESENT:

Benjamin P. Cloward Attorney for Plaintiff, Special Administrator,
Trust

Brittany M. Llewellyn Attorney for Cross Defendant, Defendant

D Lee Roberts, Jr. Attorney for Cross Defendant, Defendant

Ian C. Estrada Attorney for Plaintiff, Special Administrator,
Trust

Meghan M. Goodwin Attorney for Cross Claimant, Cross
Defendant, Defendant

Vaughn A. Crawford Attorney for Cross Defendant, Defendant

JOURNAL ENTRIES

-Plaintiffs' Motion for Reconsideration Re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc.'s Answer and Motion for Clarification Regarding the Scope of the Forensic Computer Search

-Defendant' Jacuzzi Request filed 6/13/19

-Defendant Jacuzzi Request for Status Check

Mr. Cloward argued the search report previously provided by Jacuzzi only resulted two incidents, however, there were over ten incidents that were learned. Furthermore, that Defense alleged they had turned over everything, but they only do when sanctions are involved. Mr. Cloward requested a forensic examination be done from 2008 to present and a list to identify.

Opposition by Mr. Roberts. Argument there are thousands of employees and specific persons and assets needed to be determined first, therefore, requesting guidance from the Court as to the course and scope.

Argument by Mr. Cloward regarding a blood clot incident that was not disclosed. Mr. Crawford argued there was a difference between incidents and claim filings and how they were handled.

COURT FINDS on the forensic issue of assets:

That Jacuzzi is to produce an unredacted list to Plaintiff for review. That it may be reviewed in

Printed Date: 7/18/2019

Page 1 of 2

Minutes Date:

July 01, 2019

Prepared by: Alice Jacobson

Court Jury Deliberation room. Plaintiff may take notes but may not copy or take pictures of spreadsheets. The Court will later determine it's relevancy. Jacuzzi may submit a Protective Order if necessary. Each side may have attorneys, client representative and IT persons.

COURT FINDS as to the scope of Mark Allen's deposition:

Court will allow information regarding how spreadsheets are put together and how the software is used and compiles data. What system is used to protect and preserve information and this was not to be attached as an exhibit in the deposition.

COURT FINDS an Evidentiary Hearing is necessary as to the Pullen matter.

Court felt that the Pullen incident should have been produced in October 2018. Court instructed counsel to include information of who from the Pullen family called Jacuzzi and who they talked too and what was said; what documentation was provided; how many times did they call; who took the information and what did they do with it; and what was generated from the communication. Jacuzzi is to produce any and all records regarding the blood clot. Mr. Cloward requested a Subpoena be issued for Ron Templer, Bill Demerit, and Josh Cools. Objection by Mr. Crawford. Court will allow Bill Demerit to be subpoenad. Out of State witnesses may appear via Court Call. Parties to exchange witness lists consistent with the Court's ruling no later than 2 weeks before the hearing.

EVIDENTIARY HEARING 8/27/19 9:00am.

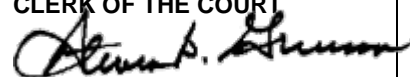
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Steven D. Grierson
CLERK OF THE COURT



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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

ROBERT ANSARA, ET AL.,)

CASE NO. A-16-731244

Plaintiffs,)

vs.)

DEPT. NO. II

FIRST STREET FOR BOOMERS &)

BEYOND, INC., ET AL.,)

Transcript of Proceedings

Defendants.)

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE

DEFENDANT JACUZZI, INC.'S REQUEST FOR STATUS CHECK;

PLAINTIFFS' MOTION FOR RECONSIDERATION REGARDING

**PLAINTIFFS' RENEWED MOTION TO STRIKE DEFENDANT JACUZZI,
INC.'S ANSWER AND MOTION FOR CLARIFICATION REGARDING THE**

SCOPE OF THE FORENSIC COMPUTER SEARCH

MONDAY, JULY 1, 2019

APPEARANCES:

For the Plaintiffs: IAN C. ESTRADA, ESQ.
BENJAMIN P. CLOWARD, ESQ.

For the Defendants: D. LEE ROBERTS, JR., ESQ.
VAUGHN A. CRAWFORD, ESQ.
BRITTANY M. LLEWELLYN, ESQ.
MEGHAN M. GOODWIN, ESQ.

RECORDED BY: DALYNE EASLEY, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 MONDAY, JULY 1, 2019 AT 9:36 A.M.

2
3 THE COURT: A731244. This is on pages 3 and 4.

4 Why don't you -- can we start on your side, Mr.
5 Cloward, and go ahead and introduce your side?

6 MR. CLOWARD: You got it, Your Honor. Ben Cloward
7 and Ian Estrada on behalf of the Cunnison family. Also
8 present in the courtroom is Ira Victor, our forensic
9 expert, in the event that the Court has any questions. I
10 thought it'd be prudent to bring him.

11 THE COURT: All right. Very good. Mr. Roberts,
12 why don't we start on -- why don't we continue with your
13 side?

14 MR. ROBERTS: Thank you, Your Honor. Lee Roberts
15 and Brittany Llewellyn from Weinberg, Wheeler, Hudgins,
16 Gunn, and Dial for defendant, Jacuzzi.

17 THE COURT: Very good.

18 MS. GOODWIN: Meghan --

19 MR. CRAWFORD: Vaughn --

20 MS. GOODWIN: Sorry. Go ahead.

21 MR. CRAWFORD: Vaughn Crawford from Snell and
22 Wilmer, Your Honor, on behalf of Jacuzzi.

23 THE COURT: All right. You can all be seated.
24 That's fine.

25 MS. GOODWIN: Good morning, Your Honor. I'm

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1 actually with First Street and AITHR. It's Meghan Goodwin
2 from Thorndal Armstrong.

3 THE COURT: Very good.

4 MS. GOODWIN: And Hale Benton as well.

5 THE COURT: Meghan Goodwin. Thank you very much.
6 Appreciate that. All right.

7 A lot more stuff for me to review. I do read
8 everything. Thank you and I appreciate that. First thing,
9 the Court sent you guys to a settlement conference. I'd
10 like to hear from the plaintiff on the status of trying to
11 work out the logistics for that because I really do think
12 that a settlement conference would help the parties in this
13 case. So, where do we stand on that?

14 MR. CLOWARD: Certainly. Your Honor, as we had
15 represented in prior status checks and hearings, we weren't
16 interested in doing that. However, when the Court ordered
17 us, we contacted, got availability, cooperated with
18 counsel. Our position is that --

19 THE COURT: Very good.

20 MR. CLOWARD: -- until we're able to assess the
21 evidence, it's hard to recommend resolution. However,
22 based on the Court's request, we did go and do that. We do
23 have a date.

24 THE COURT: Great.

25 MR. CLOWARD: It's set.

1 THE COURT: Great.

2 MR. CLOWARD: I believe it's a little bit after --

3 THE COURT: That's okay. I can give you more
4 time. That's fine. I just wanted to make sure that you
5 got the message that I wanted you to get moving on it.

6 MR. ROBERTS: And I believe Your Honor ordered us
7 to mediate by July 24th. And the first date we could come
8 up with availability for a mediator, which we agreed to use
9 a private mediator --

10 THE COURT: Perfect.

11 MR. ROBERTS: -- because we thought as long as we
12 were mediating, that would give us a better chance to have
13 more experienced, devoted mediator. And the first date we
14 could come up with that we could all agree on was August
15 14th, which is where we're currently set before, I believe
16 it's Judge Jackie Glass.

17 MR. CLOWARD: Correct, Your Honor.

18 THE COURT: Perfect. All right. Very good.
19 August 14th would work. I think the last time I had ordered
20 it it was because we had a trial date coming up and I
21 wanted you to get it done. I understand that there's been
22 some discovery issues since then and plaintiff had made a
23 request for some things so we're going to discuss that
24 today. But August 14th is a good date. So, that will be
25 the date that you proceed with mediation, absent request to

1 the Court for some further extension beyond that.

2 Okay. I know that there's been some reiteration
3 of the discovery issues that we've had in the past and the
4 Court is very well familiar with all of those issues. I
5 don't need those reiterated further today, except as a
6 summary reminder of those issues might be relevant to the
7 issues in front of me today.

8 Up until today, it's been the Court's desire to
9 make sure that the parties are proceeding with the
10 discovery that they need to get this matter set for trial
11 and not so much my desire to resolve whether, and if, and
12 what type of sanctions might be necessary, given the
13 discovery issues that the parties have presented to me. I
14 think I did find, in the past, that I didn't believe that
15 there was any bad faith or willful misconduct by Jacuzzi.
16 And that has been my position up until today where I'm
17 going to entertain further argument. But just because
18 there's not bad faith or willful misconduct doesn't mean
19 there might not be some other culpable state of mind. All
20 right?

21 So, that having been said, let's go ahead and turn
22 this over to the plaintiff --

23 MR. CLOWARD: Sure.

24 THE COURT: -- for argument.

25 MR. CLOWARD: Sure, Your Honor.

1 And, in my Motion, I kind of separated the issues
2 into two relevant issues, the evidentiary hearing and the
3 scope of the forensic examination. So, I will address that
4 in that regard. And, without going into significant
5 detail, I do think that a brief overview, like the Court
6 mentioned, would -- is relevant for the analysis.

7 We started this off asking for other incidents a
8 long time ago, over a year ago. We got discovery responses
9 back saying there are none. The only two that we're aware
10 of are the two that you represent plaintiffs for. I
11 thought that was quite coincidental, so I contacted
12 opposing counsel, Mr. Cools, who is no longer with Snell
13 Wilmer, said: Hey, this is -- this seems really weird that
14 the two cases that Jacuzzi claims exist are the two that I
15 represent plaintiffs for, can you go and look again? And
16 he says: Well, yeah, we can go look again. Give us some
17 search terms. So, we agree upon 20 search terms. They go
18 and conduct the search again, come and say: There aren't -
19 - there's nothing else, it's only the two that we are aware
20 of that are your two cases. Well, will you supplement your
21 discovery? Sure. So, they supplement the discovery,
22 saying they're only aware of the two.

23 So, we take the deposition of the 30(b)(6) and, in
24 the meantime, in disbelief that our two cases are the only
25 two, we conduct hours and hours of research and find two

1 incidents on our own. During the deposition of Bill
2 Demeritt, I ask him the questions and he says: There are
3 only two that I'm aware of, your two cases. I've worked
4 here for a long time, I share a office space -- share a
5 wall with Ron Templer, he's corporate counsel, I know of
6 everything that comes in. It's only your two cases. Okay.
7 Well, what about this lawsuit? What about this Consumer
8 Product Safety Commission complaint? Now there's some back
9 pedaling, well, you know, deer in the headlights.

10 We conclude the deposition, bring the issue to
11 Commissioner Bulla, Commissioner Bulla says: I'm very
12 concerned about this, Jacuzzi. And, so, here's the theme
13 that starts to develop. Commissioner Bulla says: Look,
14 I'm very concerned about this. And, under -- I'm going to
15 sanction the parties if I find that there's any sort of
16 funny behavior going on. So, I want you to go and
17 research, again, these issues and come back. Again, it's
18 under the threat of sanctions, they go and all of the
19 sudden now they disclose 10 incidents.

20 Well, the problem is, is I reviewed those 10
21 incidents and find out that of the 10 incidents, all except
22 for one should have triggered one of the search terms.
23 Some of the prior incidents should have triggered up to
24 four of the search terms. So, what that means is some of
25 these nine or 10 incidents that were turned over should

1 have been found four separate occasions.

2 So, we go to the Commissioner and say: Your
3 Honor, we're very concerned about this, there's a problem.
4 And she says: I agree, they're holding all of the cards,
5 Mr. Cloward. The way that you prove your case is by
6 showing that this product is dangerous and that's hard for
7 you to do when they have the entirety of the deck of cards
8 and they're slow-playing the production. So, I'm going to
9 allow a forensic evaluation.

10 Now, importantly, the forensic evaluation was
11 ordered from 2008 to the present. So, they don't like
12 that. They object to Your Honor. Your Honor says: Nope,
13 I'm affirming and adopting the recommendations, it's 2008
14 to the present. They don't like that so they go to the
15 Supreme Court and say: Look, Judge Scotti abused his
16 discretion, we file a Writ of Prohibition, the Supreme
17 Court doesn't agree. The terms were 2008 to the present.

18 Now, in the interim -- and this is important for
19 the Court to recognize, is that one of the reasons that we
20 approached the Court and said, look, they're not acting in
21 good faith, was the conduct that took place during the
22 deposition regarding the marketing and advertising. The
23 black letter manufacturing agreement between First Street
24 and Jacuzzi specifically outlines what party is to do what.
25 And it says that the advertising needs to be approved

1 through Jacuzzi.

2 So, we start questioning the witness about that
3 and he says, plainly: We don't have anything to do with
4 the marketing and advertising, that's entirely First
5 Street. I take their word for it, go back to my office. I
6 get a phone call from First Street the following week that
7 says: Hey, that was not entirely accurate. We can't wipe
8 our nose without getting permission from Jacuzzi. We have
9 thousands of e-mails that we're going to produce showing
10 that they were actively involved in the marketing and
11 advertising.

12 So, Your Honor, it is during that production of
13 documents that we receive the Jerre Chopper incident. It's
14 not during a production of prior or subsequent similar
15 incidents, it is not a supplement of their discovery on
16 these issues, it is wholly unrelated. It is a production
17 of documents that deal specifically with the marketing and
18 advertising that Jerre Chopper's name slips through.

19 THE COURT: And, then, of course, we heard last
20 time it's --

21 MR. CLOWARD: Correct.

22 THE COURT: -- their position it didn't involve an
23 injury.

24 MR. CLOWARD: So, it -- correct. That's their
25 position. We don't -- we disagree with it. But -- so, we

1 go and depose her, bring the motion before the Court, and
2 it was based on all of that history that the Court
3 initially said: I'm concerned, I want an evidentiary
4 hearing.

5 And, now, here is where kind of the --

6 THE COURT: Yeah. And I studied everything very,
7 very closely. And I -- well, you know my position --

8 MR. CLOWARD: Sure.

9 THE COURT: -- on that.

10 MR. CLOWARD: And I think this is where there's
11 kind of ships sailing in the night where there's -- there's
12 an issue that arises. So, the Court sua sponte issues the
13 second minute order and says: I don't think that there's a
14 need for an evidentiary hearing. Well, at the same time,
15 from the first minute order, the Court said: I want the
16 evidentiary hearing and, by the way, I want everything -- I
17 want a status check on the -- on death cases, all death
18 cases. The Court sua sponte says: No, no evidentiary
19 hearing is needed. Jacuzzi now produces a death case
20 involving entrapment that they've had in their possession
21 since October.

22 Now, what should be extremely concerning to the
23 Court is that, on seven occasions, they went before Your
24 Honor, they went before the Discovery Commissioner, they
25 went before this -- the Nevada Supreme Court, and they

1 stated: We have turned over the entire universe of
2 documents. Well, what is that entire universe of
3 documents? Let's use their own definition. They defined
4 it for the Nevada Supreme Court. They said the entire
5 universe of documents are death cases involving entrapment.
6 Well, that is exactly what they had in their possession
7 when they drafted that writ, when they came before the
8 Court, when they filed the motion -- or the Motions for
9 Protective Order in front of Commissioner Bulla. They had
10 this in their possession, yet they don't produce it.

11 Only when -- again, here's the theme, Your Honor,
12 only when there's a pending threat of sanctions do they act
13 in a good faith manner. And, unfortunately, during that
14 window of time when there was a threat of this evidentiary
15 hearing, I can't tell you how cooperative they were during
16 that time. Let's do this. We want to help you. We want
17 to this, we want to that, we want to make sure that we're
18 assisting. Well, the Court sua sponte decides no longer to
19 have the evidentiary hearing and is back to square one.
20 It's back to this, you know, obstructionist tactic.

21 And to give the Court the most recent example of
22 this obstructionist tactic is with regard to the forensic
23 examination. The very first thing that a party needs to do
24 to determine the scope of a forensic examination is to know
25 the scope -- or of the assets that contain information.

1 It's called the information assets. Mr. Victor is here.
2 He can answer the Court's questions. He co-presented on
3 this -- on these and other issues last year with
4 Commissioner Bulla on these topics.

5 So, first off, you look at the assets that a party
6 has. You know, how many servers, how many laptops, and so
7 forth. What types of things might we search? And, then,
8 once you look at that, then you narrow search and you say:
9 Well, you know what, this computer on the receiving doc,
10 that's not likely to raise any relevant issues, so we don't
11 need to search that. Now, this computer with Fred in the
12 cleaning department, that's not going to raise any issues,
13 so we don't want to search that.

14 Well, what happens is we ask for the list of
15 information assets. We're told by Jacuzzi: No, we're not
16 willing to give it to you because it contains personal,
17 sensitive information. It's our company. It's our
18 organization. We don't want it to fall into the hands of
19 people who will, you know, do malicious things to our
20 community -- or to our company. So, we say, okay, rather
21 than involve the Court, rather than run down and file a
22 motion and say, hey, even though the Court said to
23 accomplish this search, you know, and they're not playing
24 ball, we say: Okay, that's fine, how can we accomplish
25 this goal?

1 So, the proposal was: Well, why don't we go over
2 to Lee Roberts's office, Mr. Roberts, we'll sit down in a
3 conference room with Mr. Victor, with Mark Allen, their
4 Vice President of Information Technology, and with
5 Jacuzzi's in-house counsel, Ron Templer, with Mr. Roberts
6 and with someone from Snell Wilmer. And we will provide
7 you, in written format, a list of the information assets.
8 We'll give you a copy of it with the understanding that you
9 are not allowed to take photos of it, you are not allowed
10 to take a copy of it, and you have to leave everything that
11 you obtained in the conference room, you cannot take it
12 with you. We ask: Can we have a court reporter there?
13 The answer is: No. You cannot. You cannot record
14 anything, this is too sensitive, you just have to come and
15 take notes.

16 So, during the questioning, it becomes apparent
17 that there are issues with regard to this list. First and
18 foremost, we find out that the list that's been provided to
19 us is not the full and complete list that Jacuzzi was
20 working off of. We are asking questions on the list that
21 we have in front of us and we see that they keep
22 referencing their laptop. So, we ask a question: Did you
23 provide the whole list to us?

24 Now, this is where it starts to get very
25 problematic. And I know the Court had substantial

1 litigation experience before it took the bench. Can the
2 Court ever recall a situation where during a pending
3 question, the parties were allowed to leave the conference
4 room, have a five- or 10-minute conference, and then come
5 back in and answer the question? That's what happened five
6 or -- four or five times during this examination. We say:
7 Why didn't you give us the device ID numbers so that we
8 could determine, yeah, we want that device ID? Why didn't
9 you give us the names instead of having us guess and
10 speculate on which items might be relevant?

11 For instance, Your Honor, Bill Demeritt is a very
12 important witness in this case. He is the risk manager
13 over Jacuzzi's products. Well, his name is not on the
14 list. Instead, his, quote/unquote, laptop, is listed under
15 health and safety or something along those lines. Nothing
16 that would give the party any indication that that was risk
17 management. And, just fortunately, I was -- you know, had
18 the impression, you know, ask about this. This is weird.
19 Why -- who is this health and safety? And that's when one
20 of these breaks comes up, they leave the room, come back
21 in.

22 And, so, based on what's happening at the meeting,
23 I am concerned and I say: Well, which one of these entries
24 is Audrey Martinez? Audrey Martinez is a huge witness,
25 Judge Scotti. She's a huge witness. Okay? To give the

1 Court a little bit of background of who she is, she worked
2 for the company exclusively doing the walk-in marketing,
3 walk-in tub. That was her exclusive, her baby. All of the
4 dealers that were out there, the 13 -- 12, 13 dealers, when
5 they had an end user that reported a complaint, they would
6 contact Audrey Martinez. They would report it to her and
7 say: Hey, we had a customer that fell down or we had a
8 customer that whatever, she was the point of contact for
9 all of these dealers out there.

10 So, again, I ask: Where is Audrey Martinez's
11 computer on this list? Well, they stopped the meeting,
12 leave the conference room, go out and have a five- to 10-
13 minute conversation, which, again, during the deposition,
14 would never be allowed, come back in and say: Well, her
15 laptop was stolen. Her laptop was stolen. And were you
16 ever going to notify us that the laptop was stolen? Were
17 you ever going to identify the backup for the laptop?

18 And this is where further questioning came and
19 further them leaving the room, coming back in 10 minutes
20 later and giving us these evolving explanations. Because,
21 under Bill Demeritt's entry, Judge Scotti, he had three
22 entries, which would suggest that he had multiple laptops
23 during his time with Jacuzzi. They kept and tracked every
24 single one of the upgrades that he had. Yet, with Audrey
25 Martinez, they just take her information asset completely

1 off the list. They don't tell us, they don't tell us where
2 the backup is, they don't tell us if it's been replaced,
3 who has the replacement, what happened to the replacement,
4 they don't tell us any of that. Instead, it's: It was
5 stolen. So, there are serious concerns.

6 So, Your Honor, then what happens is we leave the
7 meeting very deflated, very upset, very frustrated, feeling
8 that this continuous obstructionist behavior is never
9 ending. So, I contact Mr. Roberts and I say: Lee, you
10 know, I have some concerns, I would like to take the
11 deposition of Mark Allen to get under oath the things that
12 were discussed at the forensic -- at the meeting at your
13 office. The response from Jacuzzi is basically: No, we're
14 not going to produce Mark Allen. However, why don't you
15 send over some questions via deposition and we'll answer
16 the written questions under deposition and we'll answer
17 those. I express my concern to Mr. Roberts that that's not
18 fair to us because we won't be allowed to ask follow-up
19 questions. It will be more of the answer by committee
20 response. And, so, the compromise that I propose and that
21 Mr. Roberts agrees to is that we take the 30(b)(6) of the
22 information technology corporate deponent. So, we agree.
23 We send out a notice.

24 Well, it wasn't until -- you know, was it last
25 Friday? Last Friday, when we did an objection where every

1 single topic that we have asserted, there's an objection
2 to. Every single topic with the exception of, I believe,
3 four topics. And all of them essentially stated: We are
4 not producing the witness without further input from the
5 Court.

6 So, we've been trying to obtain --

7 THE COURT: Did they say what information they
8 need from the Court or what directive they need from the
9 Court?

10 MR. CLOWARD: I firmly believe that the intention
11 today is to try and convince the Court to back off --

12 THE COURT: With regards to the intentions, I want
13 to know --

14 MR. CLOWARD: Sure.

15 THE COURT: -- what position they took in writing.

16 MR. CLOWARD: In writing, it essentially was:
17 We're not producing a witness without further input from
18 the Court. And that was the position.

19 THE COURT: What you are explaining to me, is this
20 all what happened after I told the parties to continue to
21 pursue the forensic review in good faith?

22 MR. CLOWARD: Correct.

23 THE COURT: Okay. Why don't you continue?

24 MR. CLOWARD: Okay. And, so, we've been trying to
25 do this. Mr. Victor is here. He's explained to Mark

1 Allen, he's explained to Mr. Roberts why he needs to do the
2 things that he needs to do. There's been a consensus
3 regarding some of these things. But, then, there's all of
4 the sudden this push back when we went and actually had the
5 sit-down meeting when we looked at the list of information
6 assets. We were not given the full list, number one. And
7 there were certain assets that were omitted from the list,
8 number two.

9 So, our entire position -- and, so, that's the
10 forensic -- the scope of the forensic evaluation, also,
11 Your Honor. We've said to them, we're at an impasse with
12 the scope, because whether it was a mistake or whether the
13 Court, you know, thought through the process and changed
14 the scope, we believe it was likely just an oversight that
15 when the Court issued its second sua sponte minute order,
16 it changed the scope from what had always been in front of
17 Commissioner Bulla, in front of Your Honor, and in front of
18 the Nevada Supreme Court, 2008 to the present, the scope
19 changed to 2008 to the date the incident -- the lawsuit was
20 filed.

21 THE COURT: To be honest with you, I'm not sure
22 how or why that change was made. I know the parties said
23 that it was a -- one said that it was a mistake, the other
24 said it must have been intentional. Sitting right here and
25 having prepared for this hearing, I couldn't remember why I

1 changed that language. I'm going to have to look into that
2 further.

3 MR. CLOWARD: Sure.

4 THE COURT: All right.

5 MR. CLOWARD: And, you know, I proposed to Mr.
6 Roberts, I said, look, I believe -- I think everyone can
7 agree that it likely was a mistake, given that Judge Bulla
8 ordered 2008 to present, the Judge already actually ruled
9 himself that it was 2008 to present when he affirmed the
10 Report and Recommendations, and the writ of prohibition
11 that was taken to the Supreme Court challenged 2008 to
12 present and they rejected that.

13 THE COURT: Does it make that much of a
14 difference?

15 MR. CLOWARD: It does. It makes a huge
16 difference.

17 THE COURT: Okay.

18 MR. CLOWARD: And here's why it makes a huge --
19 it's a huge difference.

20 THE COURT: Okay.

21 MR. CLOWARD: It's a difference in all of the
22 world.

23 THE COURT: Okay.

24 MR. CLOWARD: Because from the time, Your Honor,
25 that we filed the Motion with Commissioner Bulla, they

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1 said, on multiple occasions: We've produced everything.
2 Well, that's just not accurate. And even when this -- when
3 this Court, we fought about it, and fought about it, and
4 fought about it. They came into court and said, hey, we
5 understand the scope to be this, this, or that, trying to
6 limit the scope. Well, when it was the Court that said in
7 the minute order: You guys need to produce every single
8 death case and I want it to my -- or to my chambers by next
9 Thursday. Well, now, all the sudden, a death case is
10 turned over that they've had --

11 THE COURT: Well, they had represented that there
12 weren't any other death cases. So, I thought -- I mean, it
13 didn't seem to me to be a particularly significant issue at
14 the time whether -- you know, what was the cutoff point for
15 the forensic review. Now that I'm thinking this through on
16 -- I'm sure they gave me the impression that there was
17 nothing after the complaint.

18 MR. CLOWARD: And that's not what's accurate.
19 What's accurate is that there were. And that when the
20 Court said, I'm concerned, I want an evidentiary hearing,
21 I'm potentially considering sanctions, now again, the theme
22 is when they're considering sanctions, now all the sudden
23 they turn it over.

24 It's not fair to allow them to continue to hold
25 the deck of cards that I'm required to prove my case from.

1 They're holding the entire desk. And it's only when it's
2 under the threat of sanctions that they throw me a bone and
3 say: Well, oh, here you go.

4 And after the death case, even subsequent to the
5 death case, they have turned over, I believe, three
6 additional injury incidents that were never turned over.
7 And, so, we believe that a forensic evaluation is
8 significantly important for prior and after. Because, as
9 the Court is aware, *Ginnis v. Mapes* and *Reingold v. Wet'n'*
10 *Wild*, they're all relevant, assuming they are substantially
11 similar.

12 So, you know, and then the final --

13 THE COURT: Do we know the dates of those
14 additional injury incidents?

15 MR. CLOWARD: Your Honor, I don't have them off
16 the top of my head.

17 THE COURT: Roughly? Okay. All right.

18 MR. CLOWARD: But it was -- I believe they've been
19 within the last couple years.

20 THE COURT: Okay.

21 MR. CLOWARD: And, so, the final thing that I will
22 say and, then, I will sit down -- I appreciate the Court's
23 indulgence, is that, you know, pursuant to *Johnny Ribeiro*
24 *versus Young*, in reality, the Court can't make a
25 determination as to the willfulness of counsel, you know,

1 under that sixth factor, without an evidentiary hearing.
2 And if Your Honor, after an evidentiary hearing, says, Mr.
3 Cloward, I'm sorry, I just don't see it, I will live with
4 that. I will shut up. I will not continue to raise the
5 issue. I will leave it alone. But, without doing an
6 evidentiary hearing, the Court really can't intelligently
7 determine whether that sixth factor is met. The Court has
8 to have an evidentiary hearing. And the only thing that
9 I'm requesting is that, pursuant to *Gitnan v. Oliver*
10 [phonetic], that we procure the record. And, if after
11 review, the Court says, Mr. Cloward, you're up in the
12 night, I just don't see it, that's fine, I will live with
13 it. But at least I will have a record that if at the end
14 of this case if I lose because the jurors say, you know
15 what, you just didn't prove that this thing was dangerous,
16 I can at least go to the Supreme Court and say: Look, this
17 is what the discovery conduct was, this is what I think it
18 would have shown. But without allowing me to pervert -- to
19 at least procure that record, I think that that's -- you
20 know, that's an issue.

21 THE COURT: All right.

22 MR. CLOWARD: And the Court --

23 THE COURT: What -- so, aside from that, whether
24 were going to have an evidentiary hearing or not, what
25 discovery do you need going forward to sufficiently prepare

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1 your case for trial?

2 MR. CLOWARD: The two things that we believe that
3 we need is the evidentiary hearing to procure the record
4 for appellate review. And, then, the order on the forensic
5 examination from 2008 to the present so that it's not
6 limited to the data filing suit. And for an order that
7 they produce -- and if it's under seal, that's fine. If
8 it's under confidentiality, that's fine. But we need a
9 list of information assets that is not redacted. The
10 version that they gave to us had things that were removed
11 off of the list so that we can intelligently determine what
12 it is that we want to search and, then, narrow the scope
13 accordingly.

14 THE COURT: Okay. So, that's everything you've
15 been talking about, the forensic review. Let's turn to the
16 other issue, which is the supposed -- let's call it the
17 blood clot incident.

18 MR. CLOWARD: Okay.

19 THE COURT: What's your -- what argument did you
20 have regarding that?

21 MR. CLOWARD: Well, we think that that's a
22 significant issue that was -- that should have been turned
23 over. I mean, when they give --

24 THE COURT: Well, what discovery, if any, do you
25 need about that incident?

1 MR. CLOWARD: Well, I --

2 THE COURT: It sounds like you were requesting
3 things beyond the forensic review of your papers. I need
4 to know.

5 MR. CLOWARD: Sure. Well, we think that we want
6 to take the deposition of those folks. But, I think, right
7 now we're -- we have an open period of discovery. We're
8 allowed to do that. The only objection that I could see is
9 they may say: Hey, you've reached your 10-deposition
10 limit. And, so, I would just need an order from the Court
11 saying, you know, Mr. Cloward, you can -- there's good
12 cause, you can go outside the 10-deposition limit, which
13 went into --

14 THE COURT: When's the deadline of discovery right
15 now?

16 MR. CLOWARD: I believe it is -- I want to say
17 August -- Mr. Estrada's looking that up, Your Honor.

18 THE COURT: Okay. All right. Well, look too, I
19 guess. All right. Let's see here.

20 [Pause in proceedings]

21 MR. CLOWARD: Okay. It looks like August 2nd.

22 THE COURT: Is that a date I gave you or something
23 you stipulated to?

24 MR. CLOWARD: I believe, if I'm not mistaken, I
25 don't want to misspeak but, as I recall, that was a date

1 that was ordered. But I could be wrong on that.

2 THE COURT: Mr. Roberts, what's your recollection
3 on close of discovery?

4 MR. ROBERTS: My recollection is August 2nd,
5 currently, Your Honor.

6 THE COURT: Okay. Currently. Okay.

7 MR. ROBERTS: But I don't have it in front of me
8 but that's my --

9 THE COURT: All right.

10 MR. ROBERTS: -- impression.

11 THE COURT: That's okay. We won't hold you to
12 that.

13 MR. ROBERTS: Okay. Thank you, Your Honor.

14 THE COURT: All right. So, you want discovery of
15 the incident but you might be able to work that out with
16 opposing counsel. But you want an order from the Court to
17 assist you. I think that's what --

18 MR. CLOWARD: Yes.

19 THE COURT: -- a summary of what you said.

20 MR. CLOWARD: Essentially. Yes. Because we're up
21 against the 10 -- there's 10 depositions. That rule went
22 into effect March 1st where I believe the parties are
23 limited to 10.

24 MR. ROBERTS: And we've not objected to the taking
25 of those depositions, Your Honor.

1 THE COURT: Okay.

2 MR. ROBERTS: And do not.

3 MR. CLOWARD: Thank you.

4 THE COURT: One second.

5 MR. CLOWARD: Okay.

6 [Pause in proceedings]

7 THE COURT: So, I don't want this to come up as an
8 issue again. Have you requested any of the records within
9 Jacuzzi's company about this so-called blood clot death?

10 MR. CLOWARD: I believe they've turned over what
11 they have. But, you know, I --

12 THE COURT: At least that's what you been led to
13 believe.

14 MR. CLOWARD: That's -- yes. Correct.

15 [Pause in proceedings]

16 THE COURT: All right. Mr. Roberts, your turn.

17 MR. ROBERTS: Thank you, Your Honor. And Mr.
18 Crawford had prepared to address the Renewed Motion to
19 Strike, --

20 THE COURT: All right. Very good.

21 MR. ROBERTS: -- which is mainly about the blood
22 clot incident. I was going to address the status check,
23 the forensic review, and those disputes. Do you have any
24 preference as to which issue gets --

25 THE COURT: Why don't you go first since you have

1 the floor right now?

2 MR. ROBERTS: Thank you, Your Honor. I'll do
3 that.

4 So, the -- we're not here today to have the Court
5 rule on specific evidentiary objections. The record is not
6 developed to the point that would be fair to Your Honor.
7 But we believe that the -- counsel should be able to work
8 it out if we get some basic guidance from the Court as far
9 as what the Court's intention was in the order with regard
10 to the scope of the discovery that's still open.

11 THE COURT: Well, let me clear up right now, I
12 want it to go through the present. And that was the
13 language that was used. All right? If whether I
14 intentionally changed it to the date of the Complaint or
15 did that on mistake isn't relevant. I want to stick to
16 what the Discovery Commissioner said. At least the word
17 present with time continuing might have some ambiguity
18 there. I don't know the date she first said through the
19 present. And I don't know if when she said present meant
20 through the present date that she was addressing this
21 issue. That's something that was ambiguous in her ruling,
22 which, of course, I signed that order. And, so, to be
23 honest with you, when I signed it, I probably believed that
24 that was present through the date I signed the order and I
25 wasn't contemplating --

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1 MR. ROBERTS: Right.

2 THE COURT: -- the need for any forensic review
3 going into the future. So, why don't you address that
4 part, Mr. Roberts? And maybe the -- anything further you
5 want to say on the end date.

6 MR. ROBERTS: And, Your Honor, we didn't know if
7 it was a mistake. We thought there might be a good reason
8 for the Court limiting it. And part of the record that
9 Your Honor reviewed dealt with the fact that we'd come up
10 with 10 or subsequent incidents. And Commissioner Bulla
11 was: Well, there are 10 subsequent but none prior, that's
12 odd. So, we thought the Court wanted to focus on prior
13 where it doesn't appear that any were done.

14 THE COURT: That --

15 MR. ROBERTS: But --

16 THE COURT: That may be so, Mr. Roberts. But,
17 given that there's been some other incidents discovered
18 that weren't produced before --

19 MR. ROBERTS: Sure.

20 THE COURT: -- I think, if it was my intent to
21 curtail the end date, we should probably expand it through
22 the present or go back to the original deal that was the
23 present. Just to make sure, you know, to check everything,
24 make sure nothing's missing.

25 MR. ROBERTS: That's fine, Your Honor. And if

1 that's the order of the Court, we'll comply.

2 THE COURT: Okay. Well, that's --

3 MR. ROBERTS: And --

4 THE COURT: -- that's my order.

5 MR. ROBERTS: And what is --

6 THE COURT: But let's just --

7 MR. ROBERTS: What is the Court defining as
8 present? Today? The date of the search? The date the
9 Court signed the order?

10 THE COURT: Well, let's -- just so there's no
11 ambiguity, let's go through today.

12 MR. ROBERTS: Okay. Very good, Your Honor.

13 THE COURT: Through today. Present through today.
14 Don't need to worry about the future going forward,
15 particularly since we would be in trial today if there
16 wasn't a continuance. Right?

17 MR. ROBERTS: Yes.

18 THE COURT: So, anyway, let's go forward.

19 MR. ROBERTS: Okay. So, the next issue, Your
20 Honor, is the Court, in its minute order dated March 4th,
21 said:

22 Plaintiff is permitted to take a further
23 deposition of the corporate representative of Jacuzzi
24 and First Street regarding Chopper Marketing and
25 Advertising and First Street dealers that existed

1 between 2008 and the date of the incident.

2 And that's just an example of a sentence.

3 THE COURT: Okay. Right.

4 MR. ROBERTS: Now, plaintiff has taken the
5 position that discovery has been completely reopened, they
6 can do any discovery they want to, the scope of discovery
7 including the deposition they want to take of Mr. Allen is
8 just as it would be at the beginning of this case, and that
9 there is no limitation on the scope of discovery that is
10 currently open. It's --

11 THE COURT: Well, I'm going to go with whatever I
12 said in my minute order or in any other order.

13 MR. ROBERTS: Thank you, Your Honor.

14 THE COURT: If I did refer to some specific
15 discovery, then that statement by itself doesn't --
16 shouldn't lead someone to believe that it's wide open. But
17 let's look at what it actually said.

18 MR. ROBERTS: Right. And that's what we can do
19 and I believe that Mr. Cloward and I can meet and confer
20 now successfully. But our position would be that it would
21 render the language meaningless as far as what we were
22 allowed to do if the Court was simply reopening it.

23 The -- and that's related somewhat to the issues
24 that we have with the scope of the forensic search. And
25 the -- in our request for status check, I think we set out

1 for the Court and Mr. Cloward what our issue was. And that
2 is that this deposition of our IT manager, and his role as
3 30(b)(6), should not be wide open and an attempt to restart
4 discovery on issues that are not necessary to conduct the
5 forensic search. And Mr. Cloward outlined to you some
6 disputes that they had arising out of the meeting at my
7 office.

8 First of all, the -- for the Court to understand
9 that Jacuzzi doesn't have a manually compiled list of IT
10 assets. They've got thousands of people, most of those
11 people have a laptop. And they way that the IT department
12 tracks those assets is there is a computer program that, in
13 order to get your e-mail, in order to enter the databases,
14 the computer has to log on to the network. And, as the
15 computer logs on to the network, the software creates a
16 list of assets that have logged onto the network in the
17 last 90 days. And that's what's maintained. And,
18 eventually, those things drop off the list. And that --

19 THE COURT: Wait. What do you mean they
20 eventually drop off the list?

21 MR. ROBERTS: And I --

22 THE COURT: Because that would be important for a
23 plaintiff to know. Right? In case there's some assets
24 that they believe to exist that aren't shown on this
25 software.

1 MR. ROBERTS: Correct, Your Honor. And because
2 it's a running list and if someone doesn't log on for a
3 certain period of time, it may not be on the list that's
4 generated. And the actual printout of that software was
5 put into a sealed envelope and their IT expert signed
6 across the seal to -- so that that can be preserved. So,
7 if it's ever an issue about what the list generated versus
8 what we told them that day, we've got the document
9 preserved for the Court's review.

10 But here's the fundamental issue. That list
11 contains thousands of employees. Only 223 or so work for
12 the Jacuzzi Luxury Bath division and could possibly have
13 any relevant information about this case. They want us to
14 give them the actual names of all thousands of employees
15 across all the divisions. And, then, they want to be able
16 to depose someone to say, what's your job description, what
17 does this person do, what assets do they have, which we
18 think it's too late for them to discover all of the
19 employees of Jacuzzi, even if something that broad would
20 ever be allowed.

21 Our position was -- is, you want Bill Demeritt's
22 assets? Say you want Bill Demeritt's assets and we'll tell
23 you all of his assets. You want Audrey Martinez? We'll
24 tell you all of her assets and explain what's there and
25 what isn't. That should be the way that we go about

1 identifying the assets you get to search. You give us the
2 names, discovery is done, you should know the names of the
3 people whose assets you want to search and be able to
4 demonstrate a reasonable basis for doing so. And if you
5 give us the names, we'll give you the assets. They want
6 the list of assets to be able to explore.

7 THE COURT: Shouldn't you just turn over on your
8 own, the list of assets of all relevant people in the case?

9 MR. ROBERTS: We don't know who --

10 THE COURT: That shouldn't be hard to determine.
11 I mean, it's -- right? I mean, it's anybody who has been
12 deposed, anybody who has -- for whom we already know,
13 they've received or sent e-mails regarding these past
14 injury incidents. I mean, that -- these are pretty easy
15 things. Any people that you've disclosed in your 16.1 of
16 people at the company with knowledge. I mean, shouldn't
17 that be at least a minimum?

18 MR. ROBERTS: We'd be happy to do that, Your
19 Honor. But that's not what they've agreed to, which is why
20 we wanted clarification from the Court.

21 THE COURT: I mean, I could see how -- I
22 understand your position that it would be a burden to have
23 to, I guess, identify all of the employees. You said
24 thousands of employees --

25 MR. ROBERTS: Yes.

1 THE COURT: -- or is that nationwide or what is
2 it?

3 MR. ROBERTS: Yes. Nationwide. I think there's
4 some -- there are a few over in Italy.

5 THE COURT: Well, I'll hear Mr. Cloward on why he
6 wants that. Not right now.

7 MR. ROBERTS: There are a few over in Italy.

8 THE COURT: Okay.

9 MR. ROBERTS: And while they have said, we're not
10 going to ask to search every asset, --

11 THE COURT: Right.

12 MR. ROBERTS: -- and they've conceded that, --

13 THE COURT: I think --

14 MR. ROBERTS: -- and they said that they want to
15 be reasonable. But, yet, they want to be able to take
16 discovery on every asset. They want every asset to look at
17 and ask about the employee and the relationship or -- we
18 just think that's a fishing expedition.

19 THE COURT: Okay.

20 MR. ROBERTS: It's too late to do that.

21 THE COURT: It's not -- let me interrupt for a
22 second. And I don't know exactly how this forensic search
23 works. I'm trying -- I'm beginning to get an
24 understanding. Perhaps -- and, correct me if I'm wrong,
25 perhaps they want the list of names of all these people and

1 they want to go through it and, then, identify the
2 particular individuals for whom they want all of those
3 individuals' assets to be identified. And, then, apply
4 search terms to find out what paperwork exists relevant to
5 this case, relating to those individuals.

6 MR. ROBERTS: And if the Court would indulge me
7 and let me explain a little bit more about how the search
8 works --

9 THE COURT: Okay.

10 MR. ROBERTS: -- so the Court understands.

11 THE COURT: All right. Thank you.

12 MR. ROBERTS: What was originally contemplated was
13 a search of our databases. There's a database called
14 Salesforce. So, whenever a Jacuzzi employee gets a phone
15 call or gets a letter, they're supposed to enter it into
16 the database with the main server and everything should be
17 there. They're not supposed to save anything to their
18 local laptop because, then, the company doesn't have access
19 to it. So, everything should be in these main servers.
20 And we have agreed that they can proceed with that. We
21 agreed to that a long time ago, running their search terms
22 in the main server, which should contain all of the data.

23 But we've also acknowledged that, in addition to
24 these main servers where everything is stored, individuals
25 that have laptops, which are technically IT, and even

1 though they're not supposed to save things to their laptop,
2 Jacuzzi has confirmed that there's no procedure to prevent
3 them from doing that and there may be things there. So,
4 we've agreed to allow them to individually search each
5 hardware or mirror drive of hardware that we have to -- for
6 relevant employees.

7 Then there's the issue of e-mails, which is also
8 complicated because Jacuzzi went, I believe it's 2014, Ira
9 may have the notes, to a system that would allow search
10 terms to be searched across all e-mails of all employees.
11 But, prior to 2014, it's my understanding that the way
12 things were served, you have to search each individual's e-
13 mail separately. So, you'd need a list of the individuals
14 whose e-mails you wanted prior to 2014 cutoff.

15 So, those are the three sort of things that are
16 now being discussed in the forensic search. Based on the
17 record, it appears that the Salesforce search was the only
18 thing contemplated by the Discovery Commissioner. But
19 we've agreed to expand it. But, by agreeing to expand it,
20 that has created some of these issues with what discovery
21 should they be allowed to do into who the people are and
22 what they do beyond the people that have already been
23 identified, as Your Honor said, during the course of
24 discovery to date.

25 And we're more than willing to allow them to

1 search and to generate the assets of specific identified
2 employees, whether it be everyone who's been disclosed on a
3 16.1 and deposition has been taken. Or to some broader
4 list that the plaintiffs want to give us. We're happy to
5 do that, we just don't think that the scope of discovery
6 should be wide open as to all Jacuzzi employees, their
7 names and identities, even if they work for divisions that
8 could have nothing to do with the luxury bath.

9 THE COURT: Well, I'm sure that plaintiff doesn't
10 want that.

11 MR. ROBERTS: Well, they've asked for that.

12 THE COURT: I mean, that wouldn't make sense for
13 them to, you know, to engage in discovery of things that
14 don't matter to this case. I think what we're all trying
15 to do is find a way to narrow this down to just the
16 individuals that have relevant information. Right? And --

17 MR. ROBERTS: Right. And --

18 THE COURT: So, anyway, what else do you have on
19 the forensic?

20 MR. ROBERTS: I would agree.

21 And, then, there's another broad category of
22 dispute, which is the extent to which they should be able
23 to make a written record as to security critical
24 information about the way the IT system is structured at
25 Jacuzzi. The -- this goes to things like backup servers

1 and time to destroy. If someone were to blow up one of our
2 databases, how long would it take to get that back up and
3 recovered, what software do we use to do that. A lot of
4 these things -- and in think their discovery -- their
5 forensic expert would agree that there are legitimate
6 security concerns involved in disclosing a road map to how
7 our systems could be breached.

8 And, as Your Honor knows, this is a big issue in
9 today's society where there are people out there attempting
10 to breach company's databases and do it on occasion, and it
11 can cost the company a lot of money and it can cause a lot
12 of concerns. And Jacuzzi has legitimate concerns about
13 disclosing details of how their system works and how
14 recoveries and how backups are done and having that out in
15 the public record.

16 THE COURT: Well, how are they supposed to find
17 out what --

18 MR. ROBERTS: We've disclosed --

19 THE COURT: -- what documents -- hold on. How are
20 they supposed to find out what documents might have been
21 generated by Audrey Martinez on some backup -- and whether
22 they're stored on some backup system if her -- his computer
23 is destroyed and nobody knows -- the plaintiff doesn't know
24 the system by which backup files from that computer might
25 be maintained?

1 MR. ROBERTS: We have told their expert how it's
2 done. We've told them all the backup servers that exist,
3 where they're located, what third-party companies have
4 those servers. We have told them these things in the
5 meeting and we're prepared to allow them to search them.
6 And Audrey Martinez, again, they haven't said: Give us all
7 Audrey Martinez's assets, give us whatever backups you have
8 of her. If they did, then we would tell them what we have
9 and we would let them search it. But it's a matter of
10 whether they have to give us the names and we give them the
11 assets or whether they get every asset in the company and
12 all the confidential information about how it's structured.
13 And, then, they get to fish around for it.

14 THE COURT: Okay.

15 MR. ROBERTS: That's really why we wanted guidance
16 before the deposition of the 30(b)(6) was taken, which we
17 thought we would get. Unfortunately, Mr. Cloward was in
18 trial and that last status check couldn't go forward before
19 the date this deposition was scheduled. We have now
20 rescheduled the deposition for July 15th. And, based on
21 input from the Court and what you believe is permissible,
22 I'm sure we'll be able to make that work and agree on a
23 permissible scope.

24 THE COURT: Thank you.

25 Before we turn to the other issues, which I will

1 let Jacuzzi address, let's go back to Mr. Cloward. And
2 just stick to the --

3 MR. CLOWARD: Okay.

4 THE COURT: -- forensic --

5 MR. CLOWARD: Very briefly.

6 THE COURT: -- search issues while those issues
7 are fresh in my mind.

8 MR. CLOWARD: Certainly.

9 About five minutes ago, Your Honor stated: Well,
10 geez, why don't you just give him the list and let them go
11 through the list and tell you what they want? And, then,
12 there's this lengthy explanation of why that's not what
13 should happen. That is exactly what the Court said. You
14 know, hey, this seems like the most reasonable thing to do
15 is give them the list and let them go through. That's
16 exactly what we want, exactly what the Court thought to
17 itself. And here's why we think that this is significant.
18 They're trying to say: Well, geez, we had to produce this
19 list of all of these thousands of employees. That's
20 untrue. The list was created when it created the list that
21 it was given to us. Okay? So, Your Honor, imagine a
22 spreadsheet, an Excel spreadsheet with, say, 300 rows and
23 five columns. The spreadsheet that was given to us was 300
24 rows with only three columns. They scrubbed off and
25 removed the other two columns that had the device ID number

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1 and the name of the person who may be attached to that.

2 The reason why we need that information -- so, I
3 guess from a standpoint of is it burdensome? No. The
4 document already exists, it was printed, and it was put in
5 the same envelope. Both copies are in the envelope. And,
6 if the Court has any question, I would say -- suggest to
7 the Court, request the envelope and look at what Jacuzzi
8 had versus what was placed in the envelope that was given
9 to plaintiffs and see if there are discrepancies and see if
10 the information on those two columns that were not provided
11 to counsel have relevant information.

12 THE COURT: What are you going to do with that
13 expanded list? If you're going to get the list for those
14 extra two columns, how would you use that?

15 MR. CLOWARD: Well, the reason why it's important
16 is two-fold. Number one, the list contains this very
17 specific identifying factor of the device at issue. So,
18 the device at issue is what we want to call these things,
19 not: Hey, give me Audrey Martinez's laptop. Because what
20 they could do is they could repurpose the laptop, give it
21 to us, and say: Here you go. What I want to be able to do
22 is I want to say: Give us device number A4793221_Audrey
23 Martinez. That's the specific device that I want searched,
24 not one --

25 THE COURT: And you can't do that now because --

1 MR. CLOWARD: Because --

2 THE COURT: -- you're missing those two columns,
3 which identify the names of the individuals or something
4 else?

5 MR. CLOWARD: This -- I think it's a two-fold.
6 It's, number one, the name of the individual but, number
7 two, the more important is the specific device ID. So,
8 that's unique to each piece of information asset.

9 THE COURT: What's on the two columns that you did
10 get?

11 MR. CLOWARD: You know, I'm having to go off of
12 memory because we couldn't take a photograph. But it was
13 like a descriptive -- that's the second part of the
14 argument is that that descriptive designation was not
15 necessarily always accurate. So, part of our concern was
16 the descriptive name, moniker, given to Bill Demeritt's
17 computer was health and safety. So, if I'm just looking
18 through the list, I'm thinking to myself: Well, health and
19 safety, this case doesn't have anything to do with health
20 and safety so I don't want that lit -- I don't want that
21 one. But had I had the two additional columns where Bill
22 Demeritt's name is listed, then I can say: Ah-ha, for some
23 reason, Bill Demeritt's computer is named health and
24 safety. Now I'm going to scratch my head and wonder why
25 it's not named risk management. But that's beside the

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1 fact. I at least want this computer searched.

2 And, so, that was a big concern that we had was
3 that Bill Demeritt, he's a major player, he's the risk
4 manager, he was the 30(b)(6) that was deposed. He's not
5 listed under risk management. He's listed under something
6 else. And whether it's health and safety or safety
7 something, it was something that would not denote these
8 types of issues that we're going after.

9 So, I guess what we would ask in regard to this,
10 Your Honor, is this, number one, that the Court be provided
11 with a copy of the folder with both of the dates -- both of
12 the spreadsheets. And the Court can take a look at that
13 and determine whether those two columns are relevant. We
14 believe that they're relevant just like the Court thought
15 and posited to Mr. Roberts: Well, hey, geez, why don't you
16 just give them a list of the names and let them go through
17 the list of the names? The Court is exactly correct.

18 I am -- I have zero interest, zero interest, in
19 going through, you know, people that are not relevant.
20 This is a costly endeavor. We've bear -- we have borne the
21 entirety of the cost and I don't want to pay Mr. Victor to
22 go through a computer for, you know, the receiving doc of
23 an employee out in Valdosta, Georgia. I have zero concern,
24 zero desire to do that. I only want the relevant
25 individuals and I need the device ID, as well as the names

1 of who those folks are to make that intelligent
2 determination.

3 MR. ROBERTS: Your Honor, I don't think we have a
4 big --

5 THE COURT: I guess we need to --

6 MR. ROBERTS: -- as big a dispute as Mr. Cloward
7 thinks we do. Because what we're saying is you're not
8 entitled to the name and device ID of every device assigned
9 to the loading dock worker in Georgia. You're not entitled
10 to the list of every name of every employee in Italy and
11 their device ID numbers. Give us the names that you are
12 interested in, Bill Demeritt, and we'll give you the device
13 ID numbers assigned to him and we'll let you search them
14 and we'll let you confirm that the device ID numbers match
15 what we give you. And if the Court wants to look to make
16 sure that we've disclosed all the device ID numbers, we've
17 preserved that evidence in the envelope. Once they
18 identify the person, we will provide the device ID numbers
19 and let them do the search.

20 THE COURT: So, he gets the last word, Cloward,
21 since it's his Motion. I appreciate that. Mr. Cloward --

22 MR. ROBERTS: Actually, Your Honor, I think this
23 is our request for status check.

24 THE COURT: Okay.

25 MR. ROBERTS: This is not a part of the Renewed

1 Motion to Strike.

2 THE COURT: Right. All right. So, you both raise
3 the forensic. But you're right. I shouldn't have let him
4 go first. You should have gone first.

5 MR. ROBERTS: It doesn't matter, Your Honor.

6 THE COURT: Well, anyway, you're making a proposal
7 --

8 MR. ROBERTS: Mr. Cloward has something had
9 something else to say.

10 THE COURT: You're making a proposal. Let's hear
11 what his --

12 MR. ROBERTS: Okay.

13 THE COURT: -- response is to your proposal.

14 MR. ROBERTS: Thank you, Your Honor.

15 THE COURT: And why that would or wouldn't work.

16 MR. CLOWARD: Your Honor, again, the reason that
17 this is became an issue that we left the meeting at Mr.
18 Roberts's office was because there were issues that arose.
19 This is not Mr. Cloward being unreasonable. These are
20 issues that are -- actually arose during the evaluation.
21 And, as like Mr. Victor whispered in my ear, getting the
22 list of inventory assets is just that. It is a list of
23 assets that we can, then, go and determine. It's difficult
24 to determine what those are when we don't have the device
25 IDs. And they can go and recreate time and history, they

1 can recreate, you know, Audrey Martinez's laptop. Why
2 wasn't that on there? Why wasn't her backup on there?
3 Certainly, if she got a replacement laptop, that laptop is
4 somewhere. So, who has that laptop? Why isn't it on the
5 list? Certainly, you didn't just give her a replacement
6 laptop and, then, let her leave the company with that. You
7 know? And if the Court steps down from the bench, it's
8 unlikely that Clark County is like: Well, Your Honor, just
9 take all -- everything with you and you can just have it.
10 That's not the way that it works. They have an asset, it
11 continues.

12 And it was the exact same thing with Bill
13 Demeritt. Bill Demeritt had three of our entries under his
14 name. Because, when he got a new laptop, they would keep
15 the other one on there, get a new laptop, they would put
16 another one on there. And that's all that we're asking.

17 And, to alleviate the security concerns or the
18 privacy concerns, I will sign a 100-page confidentiality
19 agreement, whatever they propose, so long as I can use the
20 information in this particular case. I will sign whatever
21 they want --

22 THE COURT: Okay.

23 MR. CLOWARD: -- so that they can feel comfortable
24 with that decision.

25 THE COURT: Mr. Roberts, you made a proposal, he

1 gave you a counterproposal, you get the last word since
2 it's your Motion.

3 MR. ROBERTS: I -- thank you. Thank you, Your
4 Honor.

5 Not all of these issues which arose only arose
6 because they refused to identify the people whose assets
7 they want. If they would take that first step, then we can
8 give them the assets, give them the IDs. And if they doubt
9 that we do that correctly, we can -- we have the full list
10 sealed and ready to provide to the Court so that the Court
11 can verify that we've done that correctly.

12 THE COURT: So, let's move on to, I guess, the
13 next issue, which would be why we didn't hear about the
14 blood clot incident sooner. And why, as plaintiff would
15 say, this doesn't represent a continuing effort of lack of
16 transparency.

17 MR. CRAWFORD: Thank you, Your Honor.

18 Your Honor, I think it is fair to say that, from
19 the beginning, there have been a number of discovery
20 disputes between the parties. I hope that changes, going
21 forward. But I think it's also fair to say, in fact, it is
22 the fact that Jacuzzi has complied with every single order
23 of the Discovery Commissioner and of this Court. And when
24 there have been disputes, it has been made very clear what
25 we are producing and what we are not producing.

1 Early on, we took the position that only prior
2 incidents were relevant. And we made that very clear in
3 our discovery response. We objected to producing
4 subsequent incidents and we stated that over and over again
5 in each of the discovery filings we made. When Mr.
6 Demeritt was deposed, he was put up on prior incidents.
7 And we made it clear that he was there only to talk about
8 prior incidents.

9 Mr. Cloward says: Well, I got him, I zinged him
10 and he was a like a deer in the headlights. Well, the
11 complaint that he zinged him with was a subsequent
12 incident. He wasn't aware of it, he had not prepared to
13 talk about it, and we made it very clear going into the
14 deposition that he was not prepared and we were objecting
15 to producing and discussing subsequent incidences. That
16 changed after the -- that issue was taken to the Discovery
17 Commissioner and she ordered, on July 20th, 2018, that we
18 produce subsequent incidences up through August 17th of
19 2018. And we did that.

20 It is not true, as you were told, that Jacuzzi
21 only does anything when it's threatened with sanctions.
22 The reason those 11 additional incidents were disclosed was
23 not because of some threat of sanctions but because there
24 was now an order from the Discovery Commissioner saying, I
25 think subsequent incidents are relevant and I'm going to

1 order you to produce them, and we did.

2 So, every order that has ever been issued has been
3 complied with. That is true of the Leonard Baize
4 complaint, which is the complaint that Mr. Cloward raised
5 during the Demeritt deposition. That was a subsequent
6 incident.

7 THE COURT: Right.

8 MR. CRAWFORD: It was filed --

9 THE COURT: My recollection -- and, you'll have to
10 correct me if I'm wrong on this, is the plaintiffs' belief
11 and the Discovery Commissioner's belief has always been
12 that prior and subsequent had to be produced. And when she
13 -- at one point, she reiterated to make it clear it had to
14 be subsequent. I don't know that she was expanding her
15 original intent, she was perhaps clarifying it. But --

16 MR. CRAWFORD: My under --

17 THE COURT: But we can double-check that.

18 MR. CRAWFORD: That is -- I think that is the
19 order that -- that is the hearing that took the issue in
20 front of her. And that was the order that she issued. And
21 that was the first time that there was an order saying:
22 You've got to produce subsequent incidences. We had
23 objected prior to that.

24 THE COURT: Okay.

25 MR. CRAWFORD: That was the order overruling the

1 objections and ordering their production.

2 THE COURT: Thank you.

3 MR. CRAWFORD: This so-called blood clot incident,
4 Your Honor, the Pullen, P-U-L-L-E-N, matter specifically,
5 that is the focus of this Motion, the fourth one, Motion to
6 Strike the Answer and for other sanctions. The Pullen
7 incident was disclosed after the Court's March 4th order
8 because that order was more expansive than the prior
9 orders. There was no -- there was no order prior to this
10 Court's March 4th order, requiring the production of that.
11 And it's not even an incident, it is a set of
12 communications with regard to the Pullen matter. It --

13 THE COURT: What do you call it? What matter?

14 MR. CRAWFORD: The Pullen, P-U-L-L-E-N.

15 THE COURT: P --

16 MR. CRAWFORD: That's the name -- we don't know
17 the name of the actual customer who either slipped and/or
18 was stuck and formed blood clots and later passed away.
19 She was an elderly lady. The family's name, the children's
20 name is Pullen. That may be her name but it's -- the
21 report that came in to Jacuzzi in October of 2018 came in
22 under the name Pullen, --

23 THE COURT: Understood. In what way do you --

24 MR. CRAWFORD: -- so that's the matter.

25 THE COURT: In what way does Jacuzzi believe that

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1 I expanded the prior orders of this Court to produce
2 documents? What was it that originally made it -- made
3 Jacuzzi believe it didn't have to produce this information
4 of this incident? And, now, after my court order, you
5 decided maybe I should produce it. What changed?

6 MR. CRAWFORD: Two things, Your Honor. The judge
7 -- Discovery Commissioner Bulla's order had a cutoff date
8 of August 17th, 2018. That -- it is true that there is some
9 ambiguity with regards to the use of the term, as the Court
10 noted earlier, the present. There wasn't any ambiguity
11 with regards to that date. She ordered that by August 17th,
12 2018, we produce claims of any injury or death from 2008
13 through the present and that that be produced to plaintiffs
14 on August 17th, 2018.

15 THE COURT: Well, she's trying to push you to try
16 to get it produced.

17 MR. CRAWFORD: Right.

18 THE COURT: She wasn't saying if something
19 relevant comes up after that, then you don't have to
20 produce it. I don't think -- that wouldn't make any sense.
21 But --

22 MR. CRAWFORD: Well, --

23 THE COURT: Go ahead.

24 MR. CRAWFORD: That was our interpretation, Your
25 Honor --

1 THE COURT: Okay.

2 MR. CRAWFORD: -- that the date, August 17th, was
3 the date.

4 The second, and maybe more important aspect of it,
5 was that it -- that we produce claims. There -- this was -
6 - this was not a claim. And it didn't even arise until
7 October of 2018. So, one --

8 THE COURT: Well, apparently, we don't know when
9 the incident happened. But we apparently have Jacuzzi's
10 representation when they learned of it.

11 MR. CRAWFORD: Yes, Your Honor. And that was
12 after August of 2018.

13 So, the things that were different when the Court
14 --

15 THE COURT: What -- hold on. Hold on. How do you
16 interpret the word claim? Does the individual calling have
17 to actually use the word claim? Or do they have to say: I
18 want money. What is it that the Pullen family would have
19 had to say for Jacuzzi, or Jacuzzi's insured, to believe
20 that was a claim?

21 MR. CRAWFORD: Your Honor, I think a claim is a
22 demand for remediation or some sort, whether it's money,
23 whether it's reimbursement, whether it's take my product
24 back. It's a demand that something be done, not merely:
25 I'm unhappy with my -- I'm unhappy with my tub because it

1 takes too long to fill up. I don't think that's a claim.
2 That's -- that was Jerre Chopper's matter. She didn't --

3 THE COURT: What was the substance of the
4 communication here?

5 MR. CRAWFORD: Well --

6 THE COURT: I mean, I'm sure the person wasn't --

7 MR. CRAWFORD: On the blood clot incident?

8 THE COURT: -- called up just to say: Hey, my dad
9 died, just wanted you to know, not a big deal but just
10 thought you might need to know that, have a nice day. That
11 wasn't what was going on here. Right?

12 MR. CRAWFORD: The substance of the claim -- and,
13 again, I think 15, or 18, or 20 pages of those
14 communications have been turned over to the plaintiffs.
15 The substance of the claim was that --

16 THE COURT: See, you just word -- used the word
17 claim. I'm sure that was a slip.

18 MR. CRAWFORD: You got me going.

19 THE COURT: All right.

20 MR. CRAWFORD: You've got me going, Your Honor.

21 THE COURT: All right. Go ahead. Substance of
22 the communication.

23 MR. CRAWFORD: The substance of the communication
24 was that our mother -- at one point, they described her
25 having slipped. At another point, they described her

1 having been stuck. Then, at some later point, not
2 described, forming blood clots and passing away. They
3 didn't ask for anything. They didn't tell us to do
4 anything. They didn't say: I want this done. It was
5 those communications.

6 But when the Court issued its order on March 4th
7 saying all incidences involving death of relevant
8 customers, that's when we looked at this and said: Well,
9 you know, without quibbling about what a relevant customer
10 is, we will disclose this incident. That was the
11 difference between -- those were the differences between
12 the prior Discovery Commissioner order after the cutoff
13 date and not a claim and this Court's language that didn't
14 limit it to claims and moved it past the August 17th date.

15 With regards, Your Honor, to the issue of a
16 hearing, it is not the holding of the *Young* case that the
17 Court -- that a court cannot determine that non-
18 sanctionable and non-hearing worthy conduct has occurred
19 without a hearing. The ruling of the Court was you can't
20 terminate a case and issue sanctions without a hearing.
21 The *Jerre* -- the *Pullen* matter was disclosed before the
22 Court issued its subsequent order on March 12th, saying:
23 I've looked at the matter, there is no reason, there is no
24 basis to hold an evidentiary hearing. The Court already
25 had that disclosure. There's nothing new, no newly

1 discovered evidence, that would merit --

2 THE COURT: It hadn't been brought to my attention
3 that plaintiffs' position was that there was any --
4 anything produced late that might have been within the
5 knowledge of Jacuzzi that might have prejudiced them. None
6 of that had been brought to my attention or was presented
7 to me for consideration --

8 MR. CRAWFORD: Understood.

9 THE COURT: -- at the time of that March order, of
10 course. But --

11 MR. CRAWFORD: Okay.

12 THE COURT: But please continue.

13 MR. CRAWFORD: Well, Your Honor, I think that's
14 the sum and substance of it. Those are -- those are the
15 substances and the details of the Pullen matter. That's
16 why it wasn't produced in July or afterwards. That's why
17 it was produced in response to the Court's minute entry,
18 asking for all matters where a death occurred and why it
19 wasn't produced any sooner than that. And we -- and it was
20 produced within days of the Court's issuance of that March
21 4th order.

22 THE COURT: All right. Then, thank you. Let's go
23 ahead and hear back from the plaintiff.

24 MR. CLOWARD: Your Honor, --

25 THE COURT: Let me just check my notes here. Give

1 me one moment.

2 [Pause in proceedings]

3 THE COURT: So, Mr. Crawford, --

4 MR. CRAWFORD: Yes, Your Honor.

5 THE COURT: -- that position that it wasn't a
6 claim, I'm just having a little bit of trouble with that.
7 Because if, say, I'm going home tonight and I get into a
8 car accident and I call up my insurance company and I
9 report it. I said: Hey, I've been rear-ended, it wasn't
10 my fault, you know, here's where it happened, here are the
11 circumstances under which it was happened. No one's
12 injured. Here's the time and the place and the witnesses.
13 That's not a claim unless I say: I want you to -- pay for
14 my damage? Or what -- is that the step?

15 And, then, my other question would be: Is -- was
16 there actually an intentional decision by somebody within
17 Jacuzzi that says: Hey, this isn't a claim, we're not
18 going to produce it? Or is this a pretext after the fact,
19 which may or may not have legitimate basis?

20 MR. CRAWFORD: Your Honor, I think the parties
21 have -- and, again, the -- I'm not speaking for plaintiffs
22 and they have a different view of it. In their discovery
23 requests, they used the term incidents.

24 THE COURT: Okay.

25 MR. CRAWFORD: The Court ordered claims. Now, are

1 we quibbling over semantics? I don't think so. I think it
2 is a fair position for a company to take as long as it's
3 communicated and, you know, here's what we're doing, to
4 make that distinction. Because something that doesn't --
5 that isn't a claim, if you're asked to produce claims, it's
6 different than being asked to produce all incidents. The -
7 - and I think the Jerre Chopper matter is a fair indication
8 of that. She communicated some real unhappiness with her
9 tub because it didn't fill up fast enough. And she was
10 concerned that elderly people might be sitting in the tub
11 waiting for that 15 minutes of fill-up and black out.

12 THE COURT: No. I remember all of that. I
13 remember.

14 MR. CRAWFORD: So, yeah. I mean, was it -- is
15 that a claim? I think it is a fair position to distinguish
16 between claims, something bad has happened to me and I want
17 something done about it, versus here's something I feel and
18 think about your product and I'm telling you about it. I -
19 -

20 THE COURT: Was this an incident? I mean, because
21 didn't Jacuzzi know and didn't they even admit that they
22 had an obligation throughout all this case -- well, at
23 least once the parameter of subsequent was made clear.
24 Didn't Jacuzzi know that they had to produce evidence, any
25 documentation relating to any incident involving personal

1 injury or death?

2 MR. CRAWFORD: Your Honor, --

3 THE COURT: From a subsequent -- I thought there
4 was some point where Jacuzzi knew that.

5 MR. CRAWFORD: I think your March 4th minute entry
6 was the first one that required something more than claims
7 to be produced. That's one of the reasons why it was
8 produced in response to the Court's order, aside from the
9 fact that the prior order from Commissioner Bulla was cut
10 off as of August 17th. But I think the more important of
11 those two is the distinction between claims, which was not
12 a limitation in the March 4th order.

13 So, yeah, I believe it is a fair position for the
14 company to have taken to distinguish between incidences or
15 communications on the one hand and matters that you could
16 fairly call a claim on the other.

17 The other thing about the Pullen matter that I
18 think is not insignificant is that even the family, in its
19 communication to the company, said: We don't know whether
20 or not there is a relationship. You know, the tubs are
21 used predominately by elderly people. They -- whenever an
22 elderly person passes away, you can say: Well, they
23 recently used your tub. That doesn't make a connection
24 between prior uses of the tub and somebody passing away.
25 We didn't quibble about any of that when the -- when Your

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1 Honor issued the March 4th order saying, anybody who's died,
2 disclose it, and we did, immediately. But it was not a
3 claim and it was not within the parameters of Judge -- or
4 of Discovery Commissioner Bulla's order. That's why it was
5 not produced before Your Honor's.

6 THE COURT: I understand your position very well.
7 Thank you. And thank you for answering my questions.

8 MR. CRAWFORD: Thank you, Your Honor.

9 THE COURT: All right. Let's hear from the
10 plaintiff now on this.

11 MR. CLOWARD: Sure. And, Your Honor, one --

12 THE COURT: Do we -- let me ask my staff
13 something. Do we need to take a break? You're good right
14 now? Okay. Let's continue.

15 MR. CLOWARD: You got it. And I'll be very brief
16 with the Court's staff in mind.

17 The first thing that I wanted to -- and I hate to
18 digress but I forgot to address this when Mr. Roberts and I
19 had our exchange. The discovery order that Your Honor
20 signed on April 2nd, 2019 was unrestricted and it was
21 unlimited. There were no -- there was no language in there
22 saying: Hey, Mr. Cloward, you can only do these four
23 depositions or you can only do these certain things. It
24 was opened, unambiguously. So, you know, to the extent
25 that the Court rules on that issue, I would direct the

1 Court to the April 2nd, 2019 stipulation and order regarding
2 discovery. And if you look at the motions that preceded
3 that, there were a lot of additional issues that we needed
4 to go into. And we set those out in great, great detail.

5 THE COURT: Okay. I'll double-check on my own.

6 MR. CLOWARD: Thank you. Now, moving forward,
7 this is the only thing I would have the Court look at.
8 Simply pull up the Writ of Prohibition that was filed by
9 Jacuzzi. Take a look on page 6 and 7 and, then, further,
10 on page 17. We've included this -- excuse me. Sixteen and
11 17 of the Writ of Prohibition. We've included this as an
12 exhibit to our Motion.

13 THE COURT: I have it.

14 MR. CLOWARD: So, specifically, on page 6, this is
15 Jacuzzi complaining about the discovery that we served,
16 saying, you know, they want a lawsuit, that's number 24.
17 In number 25, they want claims. In number 41, they want
18 incidents. In number 42, they want complaints received
19 from this U.S. Consumer Product Safety Commission. Number
20 43, they want complaints. So, we created several requests
21 for production using the various verbiage due to this
22 gamesmanship, due to this, you know, nitpicking of, well,
23 you didn't say it this way. You know, you said incident
24 but you didn't say incident. And if you would have said
25 incident, then maybe we would have turned it over. But the

1 way you said it made it believe that we didn't have to turn
2 it over.

3 THE COURT: So, what's your response to their
4 argument, which may or may not be a fair argument, that
5 this Pullen matter is not an incident because the family
6 did not know for sure that any defect in the tub caused the
7 death?

8 MR. CLOWARD: I think it is highly disingenuous,
9 highly disingenuous. And it would be a sad day if the
10 Court ratifies this type of conduct. Because a plaintiff -
11 - if they come into court and if they don't just simply
12 supplement their 16.1, their damages are struck. The
13 defendant doesn't even have to ask for it. We have to do
14 it. Yet through discovery, depositions, Motions to Compel,
15 all of these things, they come and they say to the Court:
16 Well, it's a claim or it's an incident, it's not this, it's
17 not that.

18 Look no further than page 16, Your Honor of their
19 Writ of Prohibition to the Supreme Court where they state -
20 - and I will cite for the record, and this is their
21 complaining of the scope of Your Honor's ruling where
22 they're saying Judge Scotti abused his discretion because,
23 quote:

24 But the District Court's order goes much further
25 and requires Jacuzzi to find and disclose any incident

1 involving any bodily injury at all, however slight, and
2 involving any of Jacuzzi's walk-in tubs, whether
3 containing the same alleged defect or not, and
4 regardless of any similarity to plaintiffs' claims of
5 defect.

6 So, they are going to the Supreme Court saying,
7 this is too broad, yet they withhold that information and
8 now come to court and say: Well, our understanding was a
9 little bit different. No. Your understanding was not
10 different. And this is what you told the Supreme Court and
11 this is what you complained to the Supreme Court about.
12 Yet, despite complaining to the Nevada Supreme Court about
13 this, you continued to withhold the evidence. What else
14 does the Court need?

15 We sincerely request, Your Honor -- and whether
16 the Court rules that there is an abuse, that's to be
17 determined at a later date. But we at least beckon the
18 Court, sincerely beckon the Court to allow the evidentiary
19 hearing so that we can at least procure the evidence for
20 appellate review, pursuant to *Gitnan v. Oliver* [phonetic]
21 and other cases.

22 Thank you, Your Honor.

23 THE COURT: Has everybody had an opportunity to
24 present any argument to me that they wish to make? Or is
25 there anything further?

1 MR. CRAWFORD: Nothing further, Your Honor.

2 THE COURT: Okay. All right. Let's deal first
3 with the forensic issues. So, the Court is going to order
4 Jacuzzi to produce its entire list of assets in unredacted
5 form for review by the plaintiff at the court. It's --
6 that will be conducted in the jury deliberation room.
7 Plaintiff may take notes but cannot copy or take pictures
8 of the spreadsheets. The Court is not going to initially
9 determine what is relevant. Plaintiff and plaintiffs' IT
10 person are allowed to be there and inspect and determine
11 what is relevant and what would be the next step in
12 discovery with respect to the information that might be
13 located from the assets.

14 Counsel for Jacuzzi may prepare a protective order
15 if they believe that that is in their best interest to help
16 ensure and protect the confidentiality of this information.
17 The Court will review that protective order after the
18 parties have had an opportunity to meet and confer to try
19 to jointly agree on the terms. If they can't agree, they
20 can each submit their own proposed protective order.

21 This can be done -- I'd like to have this done,
22 you know, within the -- within the -- there's no reason why
23 it can't be done soon. I'd like to have it done within the
24 next three weeks. All right? So, you guys meet and confer
25 on that and, then, we'll go forward.

1 Just so there's no confusion, each side may have
2 their attorneys there, however many attorneys they think is
3 appropriate. They may have a client representative there
4 if they so choose. And they may have their IT person
5 there, also. All right?

6 If anyone has any serious concerns about anything
7 being copied with a cell phone, then we can deal with that.
8 And perhaps the Court can take all cell phones before
9 anyone goes into the room. I don't know that I need to
10 babysit to that extent. All right. So, that's the review
11 of the assets.

12 In terms of the scope of the deposition of the, I
13 guess, 30(b)(6) witness, what was that person's name? The
14 IT person from Jacuzzi?

15 MR. ROBERTS: Mark. What's Mark's last name?

16 MS. LLEWELLYN: Allen.

17 MR. CLOWARD: Mark Allen.

18 MR. ROBERTS: Allen.

19 THE COURT: So -- give me a moment.

20 [Pause in proceedings]

21 THE COURT: Well, I'm going to allow, at a
22 minimum, information regarding how this spreadsheet was put
23 together, the use of the software -- let's see. The date
24 that the -- what was it called, Salesforce software, began
25 to be used, how that software is used in order to compile

1 all of the data and asset information on the server, and
2 what was the system used to preserve and protect
3 information of the type that we've determined is relevant
4 in this case, prior to the use of Salesforce, which was
5 apparently in 2014.

6 I will allow discovery regarding what knowledge
7 Jacuzzi might have about documents prepared by or on the
8 individual assets that either exist or would have existed
9 for -- I'm trying to get the individuals' names. Well, for
10 the two individuals that plaintiff said are critical here.
11 And I'm finding --

12 MR. CLOWARD: Bill Demeritt and Audrey Martinez.

13 THE COURT: Right. Those two. Martinez and
14 Demeritt.

15 Also, the scope can include the existence and the
16 maintenance and operation of any backup system for
17 documents at Jacuzzi.

18 Now, to the extent any of that involves
19 confidential, privileged, or sensitive information for
20 Jacuzzi, Jacuzzi can include that in its protective order.
21 The extent to which I allow any of that deposition
22 testimony to come out in trial will have to be the subject
23 of a Motion in Limine later. I'm not saying now that any
24 of that is coming out. All right? And I'm not actually
25 saying, necessarily, any of that is relevant. Relevant

1 objections are preserved by Jacuzzi. But, at least, I'm
2 ordering that that discovery be permitted. All right?

3 Whether any other scope can be worked out amongst
4 the parties, I'm going to leave that up to you in good
5 faith that if for some reason, you know, you think
6 something else should be allowed that I left out, either
7 because it's not in my notes or I didn't adequately
8 understand the scope of what's being requested by
9 plaintiff, or if I don't adequately understand the process
10 by which the forensic review should be conducted, the
11 parties can bring that back to my attention by way of a
12 telephone conference call before that 30(b)(6) deposition,
13 or during, whatever's appropriate. Okay?

14 MR. ROBERTS: Your Honor?

15 THE COURT: Yes. You may.

16 MR. ROBERTS: A clarification?

17 THE COURT: You may.

18 MR. ROBERTS: I'm assuming, based on your Court's
19 order, that the unredacted list cannot be marked as a depo
20 -- as an exhibit used in the deposition because that would
21 sort of defeat the purpose the Court's proposing. But that
22 if they had -- if the review is done before the deposition
23 and they identify additional names, that they can then
24 explore the assets associated with those names they
25 identify. Would that be a fair way to deal with that?

1 THE COURT: Yeah. That is a fair way of doing it.

2 MR. ROBERTS: Okay.

3 THE COURT: I think that was implied in my ruling
4 that it can't be attached as an exhibit to the deposition.

5 MR. ROBERTS: Okay.

6 THE COURT: But I did say, also, that once they
7 get it, they can proceed with whatever discovery is
8 appropriate under the circumstances there. And whatever
9 discovery they obtain, they can use that in the deposition.
10 All right?

11 MR. ROBERTS: That's fair, Your Honor.

12 THE COURT: All right.

13 MR. CLOWARD: And, Your Honor?

14 THE COURT: Yes.

15 MR. CLOWARD: I'm sorry to interrupt. But may we
16 also, for the inspection at the jury deliberation room,
17 have a copy of the envelope that was signed with the signed
18 documents be also presented so that we can examine that?

19 THE COURT: The envelope -- I thought the envelope
20 was the complete list?

21 MR. CLOWARD: Well, there are two copies. I
22 didn't know if they were going to generate another copy or
23 if they're bringing the envelope.

24 THE COURT: Bring the envelope. I'm going to
25 personally compare it to the list that you're providing in

1 the room.

2 MR. ROBERTS: Okay.

3 THE COURT: All right? And it doesn't need to be
4 made available to the plaintiff, be made available to me so
5 we can make sure that the -- I guess, that they're both the
6 same. Right?

7 MR. ROBERTS: Absolutely, Your Honor. In fact, I
8 was thinking we would just bring the envelope and that's
9 the -- what he would get to examine. And, then, there's no
10 question.

11 THE COURT: Perfect. Thank you.

12 MR. CLOWARD: Okay.

13 MR. ROBERTS: Okay.

14 THE COURT: All right. And if anybody requests
15 that I have a paralegal or, rather, a law clerk in there,
16 we could do that. I hope we don't have to go that far but
17 let me know if we do.

18 MR. CLOWARD: Sure.

19 THE COURT: And I'm not placing any time limit on
20 the inspection of this list. I want the parties to -- you
21 know, again, proceed in good faith there. All right? All
22 right.

23 [Pause in proceedings]

24 THE COURT: So, I do find that the documents and
25 information regarding the Pullen incident should have been

1 produced in October of last year. Whether that was a
2 mistake, an oversight, the result of an excessively narrow
3 interpretation of the orders in this case, I'm not making a
4 decision on any of that now. I do find, however, it should
5 have been disclosed. I am going to grant an evidentiary
6 hearing to explore the circumstances under which that
7 information was not disclosed and to make sure that the
8 plaintiff has obtained all relevant information regarding
9 that Pullen matter. I'm not calling it an incident at this
10 point in time but we're going to see. And I'm not -- I'm
11 not finding that there was any bad faith. We need to have
12 this evidentiary hearing to get more information.

13 The scope will be limited strictly to that Pullen
14 incident and not the Chopper matter or any prior matters
15 that have come before me. All right?

16 The -- this evidentiary hearing should include the
17 following information to help me decide how to proceed
18 further: Who from the Pullen family contacted Jacuzzi
19 about the matter; what did they say about the matter; what
20 documentation did they provide about the matter; how many
21 communications they had with Jacuzzi about the matter; what
22 form of communications were taken; who at Jacuzzi did the
23 Pullen family communicate with; what documentation at
24 Jacuzzi was generated as a result of those communications;
25 what was done with the information of the Pullen matter

1 once the person who received that information received it,
2 basically the person who received the information, what did
3 they do with that information? All right. I'm not waiving
4 any attorney-client privilege there. Jacuzzi has the right
5 to assert any attorney-client privilege that may exist with
6 respect to these matters. However, if documents were
7 turned over relating to the Pullen matter to the attorneys,
8 then the fact of those documents being turned over and the
9 date by which they turned over must be disclosed. But not
10 any communications with counsel about any of these matters.

11 I want Jacuzzi to produce, at the evidentiary
12 hearing, number one, the person at Jacuzzi who received
13 these communications from the Pullen family. And, then,
14 number two, the person most knowledgeable about all the
15 matters I identified. And, of course, Jacuzzi can present
16 any other individuals that it so chooses to provide me with
17 information that I need.

18 Since this is essentially plaintiffs' request for
19 the Court to sanction Jacuzzi, it's the plaintiffs' burden
20 to convince me that they are entitled to such relief and
21 the scope of any relief. So, plaintiff will go first in
22 examining the two Jacuzzi witnesses. So, essentially,
23 plaintiff will examine, Jacuzzi will cross-examine.

24 I'm not putting any limit at this point in time on
25 how many witnesses or how long Jacuzzi wants to take with

1 those witnesses. I'm willing to listen to their entire
2 story on whatever they want to present to me. Hopefully,
3 this won't take a lot of time. I think there's very
4 limited issues here. But I'm giving the plaintiff the
5 opportunity to get this information.

6 To the extent there are any records of this
7 Pullman [sic] matter that Jacuzzi has that it has not yet
8 produced, I'm ordering them to produce those a minimum of
9 three days before this evidentiary hearing. All right?
10 We're going to set the date for that.

11 So, except, of course, to privilege -- attorney-
12 client privileged information, which don't have to be
13 produced. All right? But internal records,
14 communications, documentation of the telephone calls,
15 records provided by the Pullen family, responses by Jacuzzi
16 to the communications from the Pullen family, anything that
17 can shed some light on whether the Pullen family connected
18 the blood clots to the being stuck matter. Anything, any
19 of those records that Jacuzzi might have bearing on this
20 topic have to be produced. That would include e-mails,
21 internal memos, communications that are internal.

22 MR. ROBERTS: And, Your Honor, I believe all of it
23 has been produced --

24 THE COURT: But I'm --

25 MR. ROBERTS: -- with the exception of --

1 THE COURT: Go ahead.

2 MR. ROBERTS: -- of e-mails between Jacuzzi and
3 counsel. Is -- would the Court like a privilege log of
4 those or the Court's just saying that Jacuzzi doesn't need
5 to produce them? Those might --

6 THE COURT: I'm not asking --

7 MR. ROBERTS: Okay.

8 THE COURT: -- for a privilege log now.

9 MR. ROBERTS: Okay.

10 THE COURT: But, again, plaintiff is entitled to
11 ask at the deposition what was produced to counsel.

12 MR. ROBERTS: Sure.

13 THE COURT: All right? What was prepared and sent
14 to counsel without getting into the sub -- like, if counsel
15 said: Give me a memo on what happened. All right? They
16 can ask, did you prepare any memos for counsel, but you
17 can't get into the substance of those memos. All right?
18 Once we have a handle on what attorney-client privilege
19 communications might exist, then plaintiff -- if plaintiff
20 feels it necessary, can submit a request to me that I order
21 you to prepare a privilege log, then I'll decide. At this
22 point in time, you don't have to do one.

23 MR. ROBERTS: Okay. Thank you, Your Honor.

24 THE COURT: Let -- let me just have one moment
25 and, then, I'll let you speak.

1 MR. CRAWFORD: Sure.

2 THE COURT: I want to make sure I've considered
3 everything.

4 [Pause in proceedings]

5 THE COURT: As we continue in our discussion here,
6 let me ask. Mr. Cloward, are there any witnesses, other
7 than the two I identified, that you might want permission
8 from the Court to subpoena from Jacuzzi for purposes of
9 this evidentiary hearing?

10 MR. CLOWARD: Ron Templer.

11 THE CLERK: Can you say that again?

12 MR. CLOWARD: Ron Templer.

13 THE COURT: Who's that?

14 MR. CLOWARD: He is the corporate counsel that's
15 been heavily involved with all of the discovery in the
16 case. He's been present at all of the depositions. He's
17 been present at the -- I shouldn't say all of the
18 depositions but the majority of the important depositions.
19 And he has even personally appeared before Commissioner
20 Bulla. And, so, Ron Templer understands the importance of
21 the arguments. And the other witness that we would ask
22 would be Bill Demeritt. And, finally, Josh Cools, formerly
23 of Snell Wilmer.

24 THE COURT: Josh --

25 MR. CLOWARD: Cools.

1 THE COURT: Right. Well, what would be the
2 purpose of having Bill Demeritt here? To what extent would
3 his testimony relate to the scope of the evidentiary
4 hearing?

5 MR. CLOWARD: Certainly. Mr. Demeritt is the risk
6 manager. And, during his deposition, there was some
7 communication about how claims would be brought within
8 Jacuzzi. I think that Ron Templer may be sufficient for
9 purposes of the evidentiary hearing. However, there was
10 some discussion during the deposition of Mr. Demeritt, some
11 duties were outlined a little bit differently that if it
12 meets these certain criteria, then it goes to Ron Templer.
13 If it meets these certain criteria, then it comes to me,
14 Bill Demeritt.

15 So, I just feel like for completeness, it -- the
16 evidence as I understand it, the testimony as I understand
17 is that either it goes to Bill Demeritt or it goes to Ron
18 Templer. And those are the only two people within Jacuzzi
19 that have potential claim may end up going to.

20 THE COURT: Great. It's my supposition that
21 Jacuzzi would probably produce one of those two gentlemen
22 as its 30(b)(6) witness anyway. But, Mr. Roberts, did you
23 want to address that as to whether you can bring those two
24 individuals, or whether you believe it would be unduly
25 burdensome for some reason, or what's the -- what's your

1 position on that?

2 MR. CRAWFORD: Your Honor, I don't know --

3 THE COURT: And, then, Josh Cools, also. What's
4 your position on all of that?

5 MR. CRAWFORD: Let me start with Mr. Demeritt.
6 The simple answer with Mr. Demeritt is I don't know what he
7 knows or doesn't know. I think it would be ill-advised to
8 simply order him here because Mr. Cloward wants him here.
9 If he is the guy most knowledgeable, if he had any
10 knowledge, then I would likely bring him anyway. But I
11 think Jacuzzi ought to be able to identify the person most
12 knowledgeable and bring that person. And if, at the
13 conclusion of the hearing, it turns out that our person
14 most knowledgeable was not knowledgeable enough, then we
15 can deal with that there. I don't think just ordering Bill
16 Demeritt, the risk manager and vice president of the
17 company, to be here because Mr. Cloward thinks he might
18 know something, would be a fair thing to do.

19 With regards to Mr. Templer and Mr. Cools, they
20 are both lawyers. They -- whatever information they have,
21 whatever communications they have is going to be covered by
22 the attorney-client privilege. I don't think they ought to
23 be ordered to be here either.

24 THE COURT: Maybe. Maybe not. But -- maybe.
25 Maybe not. I'm not addressing that now. Oftentimes, as

1 Mr. Roberts would know, in-house counsel communications
2 sometimes are not covered by the attorney-client privilege.
3 But -- so, I'm not resolving that right now.

4 MR. CRAWFORD: But I think my point is that Your
5 Honor has ordered us to bring the person most knowledgeable
6 with regards to all of the topics. And if that's one
7 person, or two persons, or three, we will have them here.
8 And, given the Court's order to be here with that person,
9 if it turns out to be Mr. Templer, it'll be Mr. Templer.
10 But I don't think Mr. Cloward ought to be able to dictate
11 who we bring to respond to the Court's order that we bring
12 the person most knowledgeable. We will bring that person.

13 THE COURT: Well, so, let's deal with these, kind
14 of in reverse order. Josh Cools, I suppose that the reason
15 plaintiff is asking that is because one of the *Ribeiro*
16 factors is whether -- is the extent to which the
17 nonproduction of documents or whether some discovery
18 conduct is the responsibility of the party or the party's
19 counsel. I'm not, however, going to order that he be
20 produced because I think I already have sufficient
21 information from Jacuzzi as to who is making relevant
22 decisions here. And I'll wait and see what other
23 information I get from the evidentiary hearing.

24 But, now, of course, Jacuzzi should understand
25 that it may want to provide information to rebut anything

1 that I might already have in the file as to who was
2 responsible for making decisions to produce or not produce
3 things. So, I'm going to leave that up to Jacuzzi's
4 current counsel's decision whether to produce Mr. Cools or
5 whether to produce some other attorney to speak to the fact
6 about how these -- some of these decisions were made.

7 I am going to produce -- I am going to order that
8 the risk manager be produced because the risk manager is
9 the person who is going to be most directly involved in
10 determining whether the communications constituted a claim
11 or not and whether Jacuzzi believed they were serious
12 enough to investigate. All right? We're going to be very
13 cautiously limiting in the scope of that examination. All
14 right? It's going to be related to those topics I just
15 identified and what he knew about those communications on
16 the Pullen incident, --

17 MR. CLOWARD: Certainly, Your Honor.

18 THE COURT: -- what he did with that information,
19 and how significant did they value -- did he value those
20 communications.

21 MR. CLOWARD: Certainly.

22 THE COURT: All right. Ron Templer, no, I'm not
23 going to order that Mr. Templer be produced. All right.
24 It's corporate counsel. I'm not going to order it. If it
25 turns out, through the risk manager's testimony or the

1 30(b)(6) witness' testimony, or something else that Mr.
2 Templer was the one determining whether the communication
3 was a claim, he was the one determining whether Jacuzzi
4 should respond, determining how Jacuzzi should respond,
5 then we may -- then I may decide to continue the
6 evidentiary hearing and bring him in. But, right now, I'm
7 not ordering that he come in. All right? But I will allow
8 plaintiff to explore what communications the risk manager
9 and the 30(b)(6) witness had with Mr. Templer, without
10 waiver to Jacuzzi's rights to assert attorney-client
11 privilege during the evidentiary hearing. All right. Is
12 that clear there?

13 MR. CLOWARD: Yes, Your Honor.

14 THE COURT: All right. Counsel, you wanted to get
15 a point of clarification or --

16 MR. CRAWFORD: Yes, Your Honor. One of the
17 witnesses that you wanted us to bring -- produce is the
18 person at Jacuzzi who received the complaints. As I'm
19 looking through the documents that have been provided to
20 plaintiffs, there's -- they -- I'm not sure I'm getting
21 them all. There's seven or eight different intake people
22 at Jacuzzi because the --

23 THE COURT: I didn't know there were that many.

24 MR. CRAWFORD: Because the information came in,
25 apparently, as I'm reading these, through different phone

1 calls, concluding with one on October 30th. The person
2 taking that communication was different than the one that
3 took the initial one. And, then, there was a set in the
4 middle and each of these has three or four different people
5 -- I'm not quite sure -- I don't want to not bring who the
6 Court is telling me to bring but there's a lot of people
7 whose names are on here. One solution would be to meet and
8 confer with Mr. Cloward and to figure out which of these we
9 need. Another is for me to do some investigation after
10 today to figure out who exactly took in what information
11 and bring that one, or to communicate with Mr. Cloward at
12 that point, say, you know, here's what I've learned, and
13 see if we can work it out and, then, come to the Court if
14 we can't. But there's a lot of people at Jacuzzi who
15 manned, apparently, the intake -- or, at Salesforce, and
16 manned the intake information. I'm not quite sure how to
17 deal with the multitude of them.

18 THE COURT: Yeah. That's a very fair comment and
19 I'm not sure either. Obviously, what my goal here is to
20 make sure the plaintiff has a fair opportunity to get all
21 the relevant information.

22 MR. CLOWARD: Your Honor, may I --

23 THE COURT: And so -- yes.

24 MR. CLOWARD: -- make a proposal? We think it's a
25 fair proposal. We think it's a fair proposal for Mr.

1 Crawford to look into it and, then, for us to meet and
2 confer later this week.

3 THE COURT: Why don't you do that? It does seem
4 to be a little bit excessive --

5 MR. CLOWARD: Sure.

6 THE COURT: -- to require all seven or eight to
7 show up. Why don't you guys work on it, see what you can
8 come up with?

9 MR. CLOWARD: I'm happy to do that.

10 MR. CRAWFORD: And some of them may not even be
11 with Jacuzzi anymore. I -- so, we'll figure it out and
12 we'll get a proposal together.

13 THE COURT: And I'm certainly not requiring
14 Jacuzzi to go and track people down either. All right?

15 MR. CLOWARD: Certainly.

16 THE COURT: And if people are out of the state,
17 then you guys can make arrangements to have the person
18 appear by telephone call, however you guys work those
19 details out.

20 MR. CRAWFORD: Thank you, Your Honor.

21 THE COURT: When are we going to do this? Here's
22 -- I have the week of July -- if we do it this fast, I have
23 the whole week of July 22nd open. I'd like to get it done
24 sooner than later. But if we don't do it then, then the
25 week right after Labor Day. But that's pushing it pretty

1 close to trial. So, let me ask Mr. Cloward first. Given -
2 - well, go ahead.

3 MR. CLOWARD: You have the week of the 22nd?

4 THE COURT: July 22nd. July.

5 THE CLERK: You do have an evidentiary hearing
6 scheduled on the 22nd, though, at 10:30.

7 THE COURT: All right. How long is that one? Now
8 I'm trying to remember.

9 THE CLERK: But the -- you don't have any other --

10 THE COURT: All right. We can start the 23rd if it
11 works out. I'm not going to require anybody to cancel a
12 prearranged vacation. Look, I'm mindful of our personal
13 lives here. But --

14 MR. CLOWARD: Sure.

15 THE COURT: -- this is something I want to get
16 done in enough time so that plaintiff's not prejudiced
17 before trial.

18 MR. CLOWARD: Your Honor --

19 THE COURT: Because, obviously, one of the factors
20 I need to consider here is the extent to which plaintiff
21 has been prejudiced and whether any prejudice can be cured.
22 As we get closer to trial, plaintiffs' claim of prejudice
23 might increase. So, it might be in the best interest of
24 Jacuzzi to have this resolved sooner than later, also.

25 MR. CLOWARD: Sure. I can do the 24th, the 25th, or

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1 the 26th, make myself available.

2 MR. CRAWFORD: Your Honor, that whole week, I've
3 got big problems with that week. I've got to be in a court
4 ordered mediation in Seattle on the 26th. I've got to
5 travel up there on the 25th to meet with clients. I've got
6 a hearing on July 24th in federal court in Dallas. You
7 know, trial is not until the end of October. If we did
8 this the first of September, we've still got two months.

9 THE COURT: Well, but they're probably going to
10 need to take the deposition of the Pullen family. Right?
11 I mean, depending on what happens here. So --

12 MR. CRAWFORD: Your Honor, they could have done
13 that in the last three months. They can do --

14 THE COURT: All right.

15 MR. CRAWFORD: They can do that now. In fact, it
16 might help to have that before this evidentiary hearing.
17 I'm sitting here asking myself whether I want to go take
18 that deposition and find out more about that before this
19 evidentiary hearing.

20 THE COURT: Well, I'm going to order that that
21 deposition can proceed regarding of -- regardless of what
22 limitations currently exist, if any, on discovery.

23 MR. CRAWFORD: I think it -- yeah.

24 THE COURT: So, that one can go forward. And, Mr.
25 Cloward, you can get that set. I'll let you set that

1 within -- I'm trying to think here. Within seven calendar
2 days' notice. Okay?

3 MR. CLOWARD: Okay.

4 THE COURT: Because Jacuzzi has all the -- had all
5 the information of those communications. So, Mr. Cloward,
6 you can set that within seven calendar days' notice.

7 MR. CLOWARD: Okay.

8 THE COURT: All right.

9 MR. CLOWARD: You got it, Your Honor.

10 THE COURT: I don't know how many family members
11 had critical information about this. But --

12 MR. CLOWARD: I don't either.

13 THE COURT: -- you guys work that out. If there's
14 more than one member of the Pullen family that is going to
15 have substantial, relevant information as to this event,
16 then you guys meet and confer in good faith to work that
17 out on whether more than one should be produced for depo.

18 MR. CRAWFORD: Okay.

19 MR. CLOWARD: You got it, Your Honor. So, as far
20 as the date to get this on calendar, is there -- what was
21 the --

22 THE COURT: Well, then I have September -- what's
23 the date right after Labor Day?

24 THE CLERK: You have -- the week of September 2nd
25 is good. Because, the week after that, you have 13 on a

1 trial stack. So --

2 THE COURT: Thank you. So, the week of September
3 2nd, isn't that going to be too close to trial?

4 MR. CRAWFORD: It's going to be -- it's two months
5 from trial.

6 THE COURT: Trial is when?

7 MR. CRAWFORD: End of October.

8 THE COURT: All right. Mr. Cloward, that might
9 work. I don't know what additional discovery, if any, you
10 might need after we do that evidentiary hearing. If
11 there's anything going forward that you think you might
12 need, you can bring it to my attention, you know, over the
13 next several weeks.

14 MR. CRAWFORD: Okay.

15 THE COURT: Why don't we set it, then? Check your
16 calendar, Mr. Cloward.

17 MR. CLOWARD: I have a whole bunch of expert
18 depositions in another case.

19 THE COURT: Well, I'll tell you what, this is your
20 request --

21 MR. CLOWARD: I know.

22 THE COURT: -- so --

23 MR. CLOWARD: I know. I know.

24 THE COURT: -- if I don't set something today,
25 then I'm just going to have to leave you guys to contact my

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1 JEA and try to work out something with her.

2 [Colloquy at the bench]

3 THE COURT: Will you check August 26th?

4 THE CLERK: Yeah.

5 MR. CLOWARD: That's a great day for me.

6 THE COURT: We're just checking.

7 MR. CLOWARD: Wide open.

8 THE COURT: Any trials? When does my trial -- my
9 five-week trial stack begin in August?

10 THE CLERK: August 5th.

11 THE COURT: August 5th? All right. There's -- the
12 reason, probably, there's nothing showing on August 26th yet
13 is my trial stack doesn't begin until August 5th and I have
14 calendar call a few days before that. I suppose if the
15 parties want, I could just block out some of those days and
16 not do any trials.

17 THE CLERK: Judge?

18 THE COURT: Hold on.

19 [Colloquy at the bench]

20 THE COURT: I think I can still do it that week
21 but it'll probably have to be near the end of that week.
22 But I do have this *Campbell v. Davis* [phonetic] case, which
23 I can give you the case number so you can follow it as we
24 go forward. But that's supposed to be one whole week but I
25 think it might roll over in the next week, a couple weeks.

1 MR. CRAWFORD: Your Honor, August 26th is a -- is
2 fine with me. That's only a week before the September 3rd,
3 anyway. So, we're not gaining much by trying to pound it
4 in there. But if that's available and everybody wants to
5 do it, I can do it on the 26th.

6 MR. CLOWARD: The 26th works great.

7 THE COURT: What -- because, again, that's the
8 rollover day.

9 MR. CLOWARD: The 27th works as well.

10 THE COURT: So, how about -- why don't I set aside
11 the 27th? Do you think I need to set aside two days?

12 MR. CLOWARD: No.

13 THE COURT: Mr. Roberts, you're good at estimating
14 these things.

15 MR. ROBERTS: Your Honor, I would think --

16 THE COURT: I put you on the spot.

17 MR. ROBERTS: I would think if we had a full day,
18 we would only be one day. That's my guess. The issues, as
19 defined by the Court, I think, are going to be pretty
20 quickly dealt with by each witness.

21 MR. CLOWARD: Sure. Yeah. I agree. I think --

22 MR. ROBERTS: There's not a whole lot that
23 happened that I'm aware of.

24 [Colloquy in the courtroom]

25 THE COURT: All right. So, we're going to set it

1 for the 27th. Let's start at 8:30 in the morning. That's a
2 Tuesday. I won't be able to go into Wednesday.

3 MR. CLOWARD: That's fine.

4 THE COURT: So, if we can't finish in one day,
5 we'll have to move it, probably, to that September, first
6 week of September.

7 MR. CLOWARD: We'll be --

8 THE COURT: Maybe we'll get as much done and,
9 then, we'll continue it. All right?

10 MR. CLOWARD: You got it.

11 MR. ROBERTS: And -- I thought -- and, I
12 apologize, Your Honor. I thought we were talking about the
13 26th and I understand I missed something there with the --

14 THE COURT: No. The 26th is the Monday. That's
15 the day that I --

16 MR. ROBERTS: Right.

17 THE COURT: -- I'm holding open for my other
18 trial, which I'm pretty sure that, despite the parties'
19 best estimates, that is going to roll into Monday.

20 MR. ROBERTS: Okay. I do have --

21 THE COURT: Do we have the case number -- yes,
22 sir?

23 MR. ROBERTS: I do have a calendar call in *Kronor*
24 *v. Beazer* [phonetic] before Judge Israel at 9:30 a.m. on
25 the 27th, which I'm going to need to attend. But that

1 should be pretty quick based on my experience with him.

2 So, maybe we can set it --

3 THE COURT: We'll work around it.

4 MR. ROBERTS: -- at 10:30 or take a break for
5 that?

6 THE COURT: Well, let's start at 8:30 and, then,
7 we'll take a break. You know, at 9:30 you can let --

8 MR. ROBERTS: Perfect.

9 THE COURT: You can let Judge Israel know that
10 you're in another matter and you'll get to his department
11 as soon as you can. You may -- judging how -- knowing how
12 calendar call goes, he's probably going to want you right
13 when they start.

14 MR. ROBERTS: Yes.

15 MR. CLOWARD: Yeah.

16 THE COURT: We'll accommodate you.

17 MR. CLOWARD: Certainly.

18 MR. ROBERTS: Thank you, Your Honor. Thank you.
19 I appreciate that.

20 MR. CLOWARD: Your Honor, thank you very much.

21 THE COURT: Is there anything else?

22 MR. CLOWARD: Just the -- I guess we would just
23 ask the Court to look at that April 2nd --

24 THE COURT: I have a note on that. I'm going to
25 look at -- that's regarding the Discovery Commissioner?

1 MR. CLOWARD: It was the stipulation and order
2 regarding discovery. We don't believe the discovery was
3 limited in any way. Their position was that the minute
4 order that, Your Honor, --

5 THE COURT: Tell you what, I'll take a look at
6 that. Why don't I issue a minute order --

7 MR. CLOWARD: Thank you, Your Honor.

8 THE COURT: -- on the scope of discovery after
9 looking at that --

10 MR. ROBERTS: Okay.

11 THE COURT: -- and after considering what we've
12 done here today.

13 MR. CLOWARD: Thank you.

14 MR. ROBERTS: And, with regard to that, it was our
15 position that discovery was being extended to accomplish
16 the discovery being allowed by the Court in the prior
17 order. That's --

18 THE COURT: Just, before we all leave, what
19 additional discovery, if any, does the defendant need in
20 this case if I were to allow any additional discovery by
21 the defendant? Is there anything at this time?

22 MR. ROBERTS: Not that I know of. But we may want
23 to take the Pullen incident if the plaintiffs opt not to.

24 THE COURT: Okay.

25 MR. ROBERTS: Those witnesses. But, other than

1 that, I can't think of anything.

2 THE COURT: So, let me ask the plaintiff, what
3 additional discovery do you think you need beyond that
4 which I've already ordered today?

5 MR. CLOWARD: Yeah. The things that were
6 addressed at the hearing in, you know, many -- a while ago,
7 were the other similar incidents. The other similar
8 incidents were produced in unredacted -- or, redacted form.
9 So, we didn't have the full redactions. And, then, the
10 dealers as well. And, so, those are really the only, I
11 guess, hot button issues are just those issues.

12 THE COURT: And, so, my response to that is,
13 haven't you had that for a -- probably at least three
14 months now? And why didn't you proceed with those depositions
15 before today?

16 MR. CLOWARD: Yeah. We've been attempting to do
17 that. We felt like this issue with the forensic search was
18 probably the very most important thing. We didn't want to
19 go out and take depositions without really knowing the full
20 extent of the other similar incidents. So, we've been
21 trying to iron out this issue because it's a predicate to -
22 -

23 THE COURT: So, tell -- so, let me just stop you
24 because I need to let my staff take a break now. We're
25 going a long time.

1 MR. CLOWARD: Sure.

2 THE COURT: Send a letter --

3 MR. CLOWARD: Okay.

4 THE COURT: -- to Mr. Roberts or to the defendants
5 identifying the additional depositions that you want to
6 take.

7 MR. CLOWARD: Certainly.

8 THE COURT: And, then, you can respond with an
9 objection or whatever you agree to, if anything. Both of
10 you copy me on those letters and, then, I'll decide what's
11 appropriate.

12 Understand here, I've taken over the discovery
13 responsibilities in this case --

14 MR. CLOWARD: Sure.

15 THE COURT: -- for basically three reasons -- four
16 reasons. It's a complex case, number one. Number two, I'm
17 up to speed on all the issues. Number three, our Discovery
18 Commissioner position was in a state of transition.

19 MR. CLOWARD: Sure.

20 THE COURT: And, then, number four, even the
21 discovery rules have been changing. So, I thought it was
22 critical for me to step in and handle all these discovery
23 issues.

24 MR. CLOWARD: Certainly.

25 THE COURT: All right.

1 MR. CLOWARD: Thank you.

2 MR. ROBERTS: Thank you, Your Honor, for your time
3 this morning.

4

5 PROCEEDING CONCLUDED AT 11:39 A.M.

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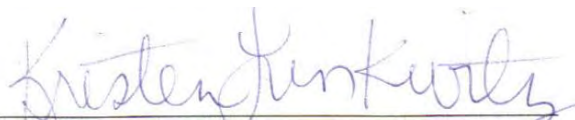
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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

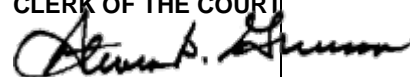
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KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERT ANSARA, ET AL,
Plaintiffs,

vs.

FIRST STREET FOR BOOMERS
AND BEYOND, ET AL,
Defendants.

CASE#: A-16-731244-C
DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE
MONDAY, JULY 1, 2019

RECORDER'S TRANSCRIPT OF HEARING
PURSUANT TO DEFENDANT JACUZZI'S REQUEST FILED 6-13-19,
DEFENDANT JACUZZI, INC. D/B/A JACUZZI LUXURY BATH'S
REQUEST FOR STATUS CHECK;
PLAINTIFFS' MOTION FOR RECONSIDERATION RE: PLAINTIFFS'
RENEWED MOTION TO STRIKE DEFENDANT JACUZZI, INC.'S
ANSWER AND MOTION FOR CLARIFICATION REGARDING THE
SCOPE OF THE FORENSIC COMPUTER SEARCH

APPEARANCES ON PAGE 2:

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APPEARANCES:

For the Plaintiffs:

BENJAMIN P. CLOWARD, ESQ.
IAN C. ESTRADA, ESQ.

For the Defendant:
[Jacuzzi, Inc.]

D. LEE ROBERTS, JR., ESQ.
VAUGHN CRAWFORD, ESQ.
BRITTTANY LLEWELLYN, ESQ.

For the Defendants:
[First Street for Boomers
and Beyond, Aithr Dealer, Inc.,
and Hale Benton]

MEGHAN GOODWIN, ESQ.

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RECORDED BY: DALYNE EASLEY, COURT RECORDER

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1 Las Vegas, Nevada, Monday, July 1, 2019

2
3 [Case called at 9:36 a.m.]

4 THE COURT: A-731244. This is on pages 3 and 4. All
5 right. Why don't you please start on your side, Mr. Cloward, and go
6 ahead and introduce your side?

7 MR. CLOWARD: You got it, Your Honor. Mr. Ben Cloward
8 and Ian Estrada on behalf of the Cunnison family. Also present in the
9 courtroom is Ira Victor [phonetic], our forensic expert. In the event
10 that the Court has any questions, we thought it would be prudent to
11 bring him.

12 THE COURT: All right, very good.

13 Mr. Roberts, why don't we start on -- why don't continue
14 with your side?

15 MR. ROBERTS: Thank you, Your Honor. Lee Roberts and
16 Brittany Llewellyn from Weinberg, Wheeler, Hudgins, Gunn & Dial for
17 Defendant Jacuzzi.

18 THE COURT: Very good.

19 MS. GOODWIN: Meghan -- sorry, go ahead.

20 MR. CRAWFORD: Vaughn Crawford from Snell and Wilmer,
21 Your Honor, on behalf of Jacuzzi.

22 THE COURT: All right, you can all be seated. That's fine.

23 MS. GOODWIN: Good morning, Your Honor --

24 THE COURT: Oh.

25 MS. GOODWIN: -- I'm actually with First Street and Aithr.

1 It's Meghan Goodwin from the Thorndahl, Armstrong --

2 THE COURT: Oh, very good.

3 MS. GOODWIN: And Hale Benton [indiscernible].

4 THE COURT: Meghan Goodwin. Thank you very much.
5 Appreciate that.

6 All right, a lot more stuff for me to review. I do read
7 everything. Thank you, I appreciate that. First thing, the Court sent
8 you guys to the settlement conference.

9 I'd like to hear from the Plaintiff on the status of trying to
10 work out the logistics for that, because I really do think that a
11 settlement conference would help the parties in this case.

12 So where do we stand on that?

13 MR. CLOWARD: Certainly, Your Honor, as we had
14 represented in prior status checks and hearings, we weren't interested
15 in doing that. However, when the Court ordered us, we contacted,
16 got availability, cooperated with counsel.

17 THE COURT: Very good.

18 MR. CLOWARD: Our position is that until we're able to
19 assess the evidence, it's hard to recommend resolution. However,
20 based on the Court's request, we did go and do that. We do have a
21 date.

22 THE COURT: Great.

23 MR. CLOWARD: It's set.

24 THE COURT: Great.

25 MR. CLOWARD: I believe it's a little bit after --

1 THE COURT: That's okay, I can give you more time. That's
2 fine. I just wanted to make sure that you got the message that I
3 wanted you to get moving on it.

4 MR. ROBERTS: And I believe Your Honor ordered us to
5 mediate by July 24th. And the first date we could come up with
6 availability for a mediator, which we agreed to use a private mediator.

7 THE COURT: Perfect.

8 MR. ROBERTS: Because we thought as long as we're
9 mediating, that would give us a better chance to have a more
10 experienced, devoted mediator.

11 And the first date we could come up with that we could all
12 agree on was August 14th, which is where we're currently set before
13 I believe it's Judge Jackie Glass.

14 MR. CLOWARD: Correct, Your Honor.

15 THE COURT: Well, perfect. All right, very good. And
16 August 14th would work. I think the last time I had ordered it, it was
17 because we had a trial date coming up and I wanted you to get it
18 done.

19 I understand that there's been some discovery issues since
20 then and Plaintiff has made a request for some things, so we're going
21 to discuss that today, but August 14th is a good date. So that will be
22 the date that you proceed with mediation, absent request to the Court
23 for some further extension beyond that.

24 Okay, I know that there's been some reiteration of the
25 discovery issues that we've had in the past. And the Court is very

1 well familiar with all of those issues. I don't need those reiterated
2 further today, except as a summary reminder of those issues might be
3 relevant to the issues in front of me today.

4 Up until today, it's been the Court's desire to make sure that
5 the parties are proceeding with the discovery that they need to get
6 this matter set for trial and not so much my desire to resolve whether
7 and if and what type of sanctions might be necessary, given the
8 discovery issues that the parties have presented to me.

9 I think I did find in the past that I didn't believe that there
10 was any bad faith or willful misconduct by Jacuzzi and that has been
11 my position up until today, where I -- I'm going to entertain further
12 argument.

13 But just because there's not bad faith or willful misconduct
14 doesn't mean there might not be some other culpable state of mind.
15 All right?

16 So that having been said, let's go ahead and turn this over
17 to the Plaintiff for argument.

18 MR. CLOWARD: Sure, Your Honor, and I -- in my motion, I
19 kind of separated the issues into two relevant issues, the evidentiary
20 hearing and the scope of the forensic examination. So I will address
21 that in that regard.

22 And without going into significant detail, I do think that a
23 brief overview, like the Court mentioned, would -- is relevant for the
24 analysis. We started this off asking for other incidents a long time
25 ago, over a year ago.

1 We got discovery responses back saying there are none.
2 The only two that we're aware of are the two that you represent
3 Plaintiffs for.

4 I thought that was quite coincidental, so I contacted
5 opposing counsel Mr. Cools, who's no longer with Snell Wilmer, said
6 hey, this is -- this seems really weird that the two cases that Jacuzzi
7 claims exists are the two that I represent Plaintiffs for. Can you go
8 and look again?

9 And he says, well, yeah, we can go look again. Give us
10 some search terms. So we agree upon 20 search terms. They go and
11 conduct the search again, come back and say there aren't -- there's
12 nothing else. It's only the two that we are aware of, that are your
13 two cases.

14 Well, will you supplement your discovery? Sure. So they
15 supplement the discovery saying they're only aware of the two.

16 So we take the deposition of the 30(b)(6). And in the
17 meantime, in disbelief that our two cases are the only two, we
18 conduct hours and hours of research and find two incidents on our
19 own.

20 During the deposition of Bill Demeritt, I ask him the
21 questions and he says there are only two that I'm aware of, your two
22 cases. I've worked here for a long time. I share a office space. I
23 share a wall with Ron Templer. He's corporate counsel. I know of
24 everything that comes in. It's only your two cases.

25 Okay, well, what about this lawsuit? What about this

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1 Consumer Product Safety Commission complaint? Now there's some
2 backpedaling, well, you know, deer in the headlights.

3 We conclude the deposition. Bring the issue to
4 Commissioner Bulla. Commissioner Bulla says I'm very concerned
5 about this, Jacuzzi. And so, here's the theme that starts to develop.
6 Commissioner Bulla says, look, I'm very concerned about this.

7 And under -- I'm going to sanction the parties if I find that
8 there's any sort of funny behavior going on. So I want you to go and
9 research, again, these issues and come back.

10 Again, it's under the threat of sanctions. They go. And all
11 of a sudden, now they disclose 10 incidents. Well, the problem is, as
12 I review those 10 incidents and find out that of the 10 incidents, all
13 except for one should have triggered one of the search terms. Some
14 of the prior incidents should have triggered up to four of the search
15 terms.

16 So what that means is some of these 9 or 10 incidents that
17 were turned over should have been found four separate occasions.

18 So we go to the Commissioner and say, Your Honor, we're
19 very concerned about this. There's a problem. And she says I agree.
20 They're holding all of the cards, Mr. Cloward.

21 The way that you prove your case is by showing that this
22 product is dangerous and that's hard for you to do when they have
23 the entirety of the deck of cards and they're slow playing the
24 production. So I'm going to allow a forensic evaluation.

25 Now, importantly, the forensic evaluation was ordered from

1 2008 to the present. So they don't like that. They object to Your
2 Honor. Your Honor says, nope, I'm affirming and adopting the
3 recommendations. It's 2008 to the present.

4 They don't like that, so they go to the supreme court and
5 say, look, Judge Scotti abused his discretion. We file a writ of
6 prohibition. The supreme court doesn't agree. The terms were 2008
7 to the present.

8 Now in the interim, and this is important for the Court to
9 recognize, is that one of the reasons that we approached the Court
10 and said, look, they're not acting in good faith was the conduct that
11 took place during the deposition regarding the marketing and
12 advertising.

13 The black letter manufacturing agreement between First
14 Street and Jacuzzi --

15 THE COURT: Uh-huh.

16 MR. CLOWARD: -- specifically outlines what party is to do
17 what. And it says that the advertising needs to be approved through
18 Jacuzzi.

19 So we start questioning the witness about that. And he
20 says plainly, we don't have anything to do with the marketing and
21 advertising. That's entirely First Street.

22 THE COURT: Uh-huh.

23 MR. CLOWARD: I take their word for it, go back to my
24 office. I get a phone call from First Street the following week that
25 says, hey, that was not entirely accurate.

1 We can't wipe our nose without getting permission from
2 Jacuzzi. We have thousands of emails that we're going to produce
3 showing that they were actively involved in the marketing and
4 advertising.

5 So, Your Honor, it is during that production of documents
6 that we received the Jerre Chopper incident. It's not during a
7 production of prior or subsequent similar incidents.

8 It is not a supplement of their discovery on these issues. It
9 is wholly unrelated. It is a production of documents that deal
10 specifically with the marketing and advertising that Jerre Chopper's
11 name slips through.

12 THE COURT: Okay, and then, of course, we heard last
13 time --

14 MR. CLOWARD: Correct.

15 THE COURT: -- it's their position it didn't involve an injury.

16 MR. CLOWARD: So it -- correct. That's their position. We
17 don't -- we disagree with it, but so we go and depose her, bring the
18 motion before the Court, and it was based on all of that history that
19 the Court initially said I'm concerned. I want an evidentiary hearing.

20 And now here is where kind of the --

21 THE COURT: Yeah, and I studied everything very, very
22 closely and I -- well, you know my position.

23 MR. CLOWARD: Sure.

24 THE COURT: I -- yeah.

25 MR. CLOWARD: And I think this is where there's kind of

1 ships sailing in the night where there's an issue that arises. So the
2 Court *sua sponte* issues the second minute order and says I don't
3 think that there's a need for an evidentiary hearing.

4 Well, at the same time, from the first minute order, the
5 Court said I want the evidentiary hearing. And by the way, I want
6 everything. I want a status check on the -- on death cases, all death
7 cases.

8 The Court *sua sponte* says now no evidentiary hearing is
9 needed. Jacuzzi now produces a death case involving entrapment
10 that they've had in their possession since October.

11 Now what should be extremely concerning to the Court is
12 that on seven occasions, they went before Your Honor, they went
13 before the Discovery Commissioner, they went before this -- the
14 Nevada Supreme Court and they stated we have turned over the
15 entire universe of documents.

16 Well, what is that, the entire universe of documents? Let's
17 use their own definition. They defined it for the Nevada Supreme
18 Court. They said the entire universe of documents are death cases
19 involving entrapment.

20 Well, that is exactly what they had in their possession when
21 they drafted that writ, when they came before the Court, when they
22 filed the motion or the motions for protective order in front of
23 Commissioner Bulla. They had this in their possession. Yet they
24 don't produce it.

25 Only when, again, here's the theme, Your Honor, only when

1 there's a pending threat of sanctions do they act in a good faith
2 manner.

3 And unfortunately, during that window of time, when there
4 was a threat of this evidentiary hearing, I can't tell you how
5 cooperative they were during that time. Let's do this. We want to
6 help you. We wanted this, we wanted that, we wanted to make sure
7 that we're assisting.

8 Well, the Court *sua sponte* decides no longer the evidentiary
9 hearing and it's back to square one. It's back to this, you know,
10 obstructionist tactic.

11 And to give the Court the most recent example of this
12 obstructionist tactic is with regard to the forensic examination. The
13 very first thing that a party needs to do to determine the scope of a
14 forensic examination is to know the scope or of the assets that
15 contain information. It's called the information assets.

16 Mr. Victor is here. He can answer the Court's questions.
17 He co-presented on this -- on these and other issues last year with
18 Commissioner Bulla on these topics.

19 So, first off, you look at the assets that a party has. You
20 know, how many servers. How many laptops and so forth? What
21 types of things might we search?

22 And then, once you look at that, then you narrow the search
23 and you say, well you know what? This computer on the receiving
24 dock, that's not likely to raise any relevant issues. So we don't need
25 to search that.

1 This computer with Fred in the cleaning department, that's
2 not going to raise any issues, so we don't want to search that. Well,
3 what happens is we asked for the list of information assets.

4 We're told by Jacuzzi, no, we're not willing to give it to you
5 because it contains personal, sensitive information. It's our company.
6 It's our organization. We don't want it to fall into the hands of people
7 who will, you know, do malicious things to our community or to our
8 company.

9 So we say, okay, rather than involve the Court, rather than
10 run down and file a motion, and say, hey, even though the Court said
11 to accomplish this search, you know, and they're not playing ball, we
12 say, okay, that's fine. How can we accomplish this goal?

13 So the proposal was, well, why don't we go over to Lee
14 Roberts' office. Mr. Roberts will sit down in a conference room with
15 Mr. Victor, with Mark Allen [phonetic], their vice president of
16 Information Technology, and with Jacuzzi's in-house counsel Ron
17 Templer, with Mr. Roberts, and with someone from Snell Wilmer.

18 And we will provide you in written format a list of the
19 information assets. We'll give you a copy of it with the understanding
20 that you are not allowed to take photos of it, you are not allowed to
21 take a copy of it, and you have to leave everything that you obtained
22 in the conference room. You cannot take it with you.

23 We ask can we have a court reporter there? The answer is,
24 no, you cannot. You cannot record anything. This is too sensitive.
25 You just have to come and take notes.

1 So during the questioning, it becomes apparent that there
2 are issues with regard to this list. First and foremost, we find out that
3 the list that's been provided to us is not the full and complete list that
4 Jacuzzi was working off of.

5 We are asking questions on the list that we have in front of
6 us. And we see that they keep referencing their laptop. So we ask a
7 question, did you provide the whole list to us?

8 Now this is where it starts to get very problematic. And I
9 know the Court had substantial litigation experience before it took the
10 bench. Could the Court ever recall a situation where during a pending
11 question, the parties were allowed to leave the conference room, have
12 a 5 or 10-minute conference, and then come back in and answer the
13 question? That's what happened five or -- four or five times during
14 this examination.

15 We say why didn't you give us the device ID numbers, so
16 that we could determine, yeah, we want that device ID? Why didn't
17 you give us the names, instead of having us guess and speculate on
18 which items might be relevant?

19 For instance, Your Honor, Bill Demeritt is a very important
20 witness in this case. He is the risk manager over Jacuzzi's products.

21 Well, his name is not on the list. Instead, his "laptop" is
22 listed under Health and Safety or something along those lines, nothing
23 that would give the party any indication that that was Risk
24 Management.

25 And just fortunately, I was -- you know, had the impression

1 you don't ask about this. This is weird. Why -- who is this Health
2 and Safety? And that's when one of these breaks comes up. They
3 leave the room, come back in.

4 And so, based on what's happening at the meeting, I am
5 concerned and I say, well, which one of these entries is Audrey
6 Martinez [phonetic]? Audrey Martinez is a huge witness, Judge
7 Scotti. She's a huge witness, okay?

8 To give the Court a little bit of background of who she is,
9 she worked for the company exclusively doing the walk-in marketing,
10 walk-in tub. That was her exclusive, her baby.

11 All of the dealers that were out there, the 13 -- 12, 13
12 dealers, when they had an end user that reported a complaint, they
13 would contact Audrey Martinez.

14 They would report it to her and say, hey, we had a customer
15 that fell down or we had a customer that whatever. She was the
16 point of the contact for all of these dealers out there.

17 So, again, I ask, where is Audrey Martinez's computer on
18 this list? Well, they stopped the meeting, leave the conference room,
19 go out and have a 5 to 10-minute conversation, which again, during a
20 deposition would never be allowed, come back in, and say, well, her
21 laptop was stolen.

22 Her laptop was stolen and were you ever going to notify us
23 that the laptop was stolen? Were you ever going to identify the
24 backup for the laptop?

25 And this is where further questioning came and further them

1 leaving the room, coming back in 10 minutes later, and giving us
2 these evolving explanations.

3 Because under Bill Demeritt's entry, Judge Scotti, he had
4 three entries, which would suggest that he had multiple laptops during
5 his time with Jacuzzi. They kept and tracked every single one of the
6 upgrades that he had.

7 Yet with Audrey Martinez, they just take her information
8 asset completely off the list. They don't tell us. They don't tell us
9 where the backup is.

10 They don't tell us if it's been replaced, who has the
11 replacement, what happened to the replacement. They don't tell us
12 any of that. Instead, it's -- it was stolen. So there are serious
13 concerns.

14 So, Your Honor, then what happens is we leave the meeting
15 very deflated, very upset, very frustrated, feeling that this continuous
16 obstructionist behavior is never ending.

17 So I contact Mr. Roberts and I say, Lee, you know, I have
18 some concerns. I would like to take the deposition of Mark Allen to
19 get under oath the things that were discussed at the forensic -- at the
20 meeting at your office.

21 The response from Jacuzzi is basically, no, we're not going
22 to produce Mark Allen. However, why don't you send over some
23 questions via deposition and we'll answer the written questions under
24 deposition. We'll answer those.

25 I expressed my concern to Mr. Roberts that that's not fair to

1 us, because we won't be allowed to ask follow up questions. It will
2 be more of the answer by committee response.

3 And so, the compromise that I propose and that Mr. Roberts
4 agrees to is that we take the 30(b)(6) of the Information Technology
5 corporate deponent. So we agree. We send out a notice.

6 Well, it wasn't until -- you know, was it last Friday? Last
7 Friday, when we get an objection where every single topic that we
8 have asserted, there's an objection to.

9 Every single topic with the exception of I believe four topics.
10 And all of them essentially stated we are not producing a witness
11 without further input from the Court. So we've been trying to --

12 THE COURT: Did they say what information they need from
13 the Court or directive they need from the Court?

14 MR. CLOWARD: I firmly believe that the intention today is
15 to try and convince the Court to back --

16 THE COURT: With regard to the intentions --

17 MR. CLOWARD: Sure.

18 THE COURT: -- I want to know what position they took in
19 writing?

20 MR. CLOWARD: In writing, it essentially was we're not
21 producing a witness without further input from the Court and that
22 was the position.

23 THE COURT: What you are explaining to me, is this all what
24 happened after I told the parties to continue to pursue the forensic
25 review in good faith?

1 MR. CLOWARD: Correct.

2 THE COURT: Okay, why don't you continue?

3 MR. CLOWARD: Okay, and so, we've been trying to do
4 this. Mr. Victor is here. He's explained to Mark Allen. He's explained
5 to Mr. Roberts why he needs to do the things that he needs to do.

6 There's been a consensus regarding some of these things,
7 but then there's all of a sudden this pushback when we went and
8 actually had the sit-down meeting when we looked at the list of
9 information assets.

10 We were not given the full list, number one. And there were
11 certain assets that were omitted from the list, number two. So our
12 entire position -- and so that's the forensic -- the scope of the forensic
13 evaluation.

14 Also, Your Honor, we've said to them we're at an impasse
15 with the scope, because whether it was a mistake or whether the
16 Court, you know, thought through the process and changed the
17 scope, we believe it was likely just an oversight that when the Court
18 issued its second *sua sponte* minute order, it changed the scope from
19 what had always been in front of Commissioner Bulla, in front of Your
20 Honor, and in front of the Nevada Supreme Court, 2008 to the
21 present, the scope changed to 2008 to the date the incident -- the
22 lawsuit was filed.

23 THE COURT: To be honest with you, I'm not sure how or
24 why that change was made. I know the parties said that it was -- one
25 side was a mistake. The other side, it must have been intentional.

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1 Sitting right here and having prepared for this hearing, I
2 couldn't remember why I changed that language. I'm going to have to
3 look into that further.

4 MR. CLOWARD: Sure.

5 THE COURT: All right?

6 MR. CLOWARD: And you know, I proposed to Mr. Roberts,
7 I said, look, I believe -- I think everyone can agree that it likely was a
8 mistake given that Judge Bulla ordered 2008 to present.

9 The judge already actually ruled himself that it was 2008 to
10 present when he affirmed the report and recommendations. And the
11 writ of prohibition that was taken to the supreme court challenged
12 2008 to present. And they rejected that.

13 THE COURT: Does it make that much of a difference?

14 MR. CLOWARD: It does. It makes a huge difference.

15 THE COURT: Okay.

16 MR. CLOWARD: And here's why it makes a huge -- it's a
17 huge difference.

18 THE COURT: Okay.

19 MR. CLOWARD: It's a difference in all of the world.

20 THE COURT: Okay.

21 MR. CLOWARD: Because from the time, Your Honor, that
22 we filed the motion with Commissioner Bulla, they said on multiple
23 occasions we've produced everything. Well, that's just not accurate.

24 And even when this Court, we fought about it and fought
25 about it, and fought about it, they came into Court and said, hey, we

1 understand the scope to be this, this, or that, trying to limit the scope.

2 Well, when it was the Court that said in the minute order
3 you guys need to produce every single death case, and I want it to
4 my -- or to my chambers my next Thursday, well, now all of a
5 sudden, a death case is turned over that they've had --

6 THE COURT: Well, they had represented that there weren't
7 any other death cases. So I thought -- I mean, it didn't seem to me to
8 be a particularly significant issue at the time whether, you know, what
9 was the cutoff point for the forensic review.

10 Now that I'm thinking this through, I'm sure they gave me
11 the impression that there was nothing after the complaint.

12 MR. CLOWARD: And that's not what's accurate. What's
13 accurate is that there were and that when the Court said I'm
14 concerned, I want an evidentiary hearing, I'm potentially considering
15 sanctions, now again, the theme is when they're considering
16 sanctions, now all of a sudden, they turn it over.

17 It's not fair to allow them to continue to hold the deck of
18 cards that I'm required to prove my case from. They're holding the
19 entire deck. And it's only when it's under the threat of sanctions that
20 they throw me a bone and say, oh, here you go.

21 And after the death case, even subsequent to the death
22 case, they have turned over, I believe, three additional injury incidents
23 that were never turned over.

24 And so, we believe that a forensic evaluation is significantly
25 important for prior and after because as the Court is aware, Ginnis v.

1 Mapes and Reingold v. Wet-n-Wild, they're all relevant, assuming they
2 are substantially similar.

3 So, you know, and then --

4 THE COURT: Do we need the dates of those additional
5 injury incidents, roughly?

6 MR. CLOWARD: Your Honor, I don't have them off the top
7 of my head.

8 THE COURT: Okay, all right.

9 MR. CLOWARD: But it was -- I believe they've been within
10 the last couple years.

11 THE COURT: Okay.

12 MR. CLOWARD: And so, the final thing that I will say, and
13 then I will sit down, I appreciate the Court's indulgence is that, you
14 know, pursuant to Johnny Ribeiro v. Young, [sic] in reality, the Court
15 can't make a determination as to the willfulness of counsel, you
16 know, under that sixth factor without an evidentiary hearing.

17 And if Your Honor after an evidentiary hearing says, Mr.
18 Cloward, I'm sorry, I just don't see it, I will live with that. I will shut
19 up. I will not continue to raise the issue. I will leave it alone.

20 But without doing the evidentiary hearing, the Court really
21 can't intelligently determine whether that sixth factor is met. The
22 Court has to have an evidentiary hearing.

23 And the only thing that I'm requesting is that pursuant to
24 Jitman v. Oliver, that we procure the record.

25 And if after review, the Court says, Mr. Cloward, you're up

1 in the nine, I just don't see it, that's fine. I will live with it, but at
2 least I will have a record that if at the end of this case if I lose
3 because the jurors say, you know what?

4 You just didn't prove that this thing was dangerous, I can at
5 least go the supreme court and say, look this is what the discovery
6 conduct was. This is what I think it would have shown. But without
7 allowing me to at least procure that record, I think that that's, you
8 know, that's an issue.

9 THE COURT: Right.

10 MR. CLOWARD: And --

11 THE COURT: What -- so aside from that, whether we're
12 going to have an evidentiary hearing or not, what discovery do you
13 need going forward to sufficiently prepare your case for trial?

14 MR. CLOWARD: The two things that we believe that we
15 need is the evidentiary hearing to procure the record for appellate
16 review and then the order on the forensic examination from 2008 to
17 the present, so that it's not limited to the date of filing suit and for an
18 order that they produce.

19 And if it's under seal, that's fine. If it's under
20 confidentiality, that's fine, but we need a list of information assets
21 that is not redacted. The version that they gave to us had things that
22 were removed off of the list, so that we can intelligently determine
23 what it is that we want to search and then narrow the scope
24 accordingly.

25 THE COURT: Okay, so that's everything you've been talking

1 about, the forensic review.

2 Let's turn to the other issue, which is the supposed -- let's
3 call it the blood clot incident.

4 MR. CLOWARD: Okay.

5 THE COURT: What's your -- what argument did you have
6 regarding that?

7 MR. CLOWARD: Well, we think that that's a significant
8 issue that was -- that should have been turned over. I mean, when
9 they --

10 THE COURT: Well, what discovery, if any, do you need
11 about that incident?

12 MR. CLOWARD: Oh, well, I --

13 THE COURT: It sounds like you were requesting things
14 beyond the forensic review in your papers. I need to know.

15 MR. CLOWARD: Sure, well, we think that we want to take
16 the deposition of those folks, but I think right now, we have an open
17 period of discovery. We're allowed to do that. The only objection
18 that I could see is they may say, hey, you've reached your 10
19 deposition limit.

20 And so, I would just need an order from the Court saying,
21 you know, Mr. Cloward, you can -- there's good cause. You could go
22 outside the 10 deposition limit, which went into --

23 THE COURT: What's the deadline of discovery right now?

24 MR. CLOWARD: I believe it is I want to say August -- Mr.
25 Estrada's looking that up, Your Honor.

1 THE COURT: All right. We'll look, too, I guess. All right,
2 let's see here.

3 [Counsel confer]

4 THE COURT: I'll find it.

5 MR. CLOWARD: Okay, looks like August 2nd.

6 THE COURT: Is that a date I gave you or something you
7 stipulated to?

8 MR. CLOWARD: I believe, if I'm not mistaken, I don't want
9 to misspeak, but as I recall, that was a date that was ordered, but I
10 could be wrong.

11 THE COURT: Mr. Roberts, what's your recollection on close
12 of discovery?

13 MR. ROBERTS: My recollection is August 2nd currently,
14 Your Honor.

15 THE COURT: Currently, okay.

16 MR. ROBERTS: But I don't have it in front of me, but that's
17 my impression.

18 THE COURT: All right, that's okay. We won't hold you to
19 that.

20 MR. ROBERTS: Thank you, Your Honor.

21 THE COURT: All right, so you want discovery of the
22 incident, but you might be able to work that out with opposing
23 counsel, but you want an order from the Court to assist you. I think
24 that's --

25 MR. CLOWARD: Yeah.

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1 THE COURT: -- a summary of what you said?

2 MR. CLOWARD: Essentially, yes, which is we're up against
3 the 10 depositions. That rule went into effect March 1st. I believe
4 the parties are limited to 10.

5 MR. ROBERTS: And we have not objected to the taking of
6 those depositions, Your Honor.

7 THE COURT: Okay, very good.

8 MR. ROBERTS: And do not.

9 MR. CLOWARD: Thank you.

10 MR. ROBERTS: One second.

11 MR. CLOWARD: Okay.

12 THE COURT: So I don't want this to come up as an issue
13 again. Have you requested any of the records within Jacuzzi's
14 company about this so-called blood clot death?

15 MR. CLOWARD: I believe they've turned over what they
16 have, but you know, I --

17 THE COURT: At least that's what you've been led to
18 believe?

19 MR. CLOWARD: That's yes, correct.

20 THE COURT: All right, Mr. Roberts, your turn.

21 MR. ROBERTS: Thank you, Your Honor. And Mr. Crawford
22 had prepared to address the renewed motion to strike --

23 THE COURT: All right, very good.

24 MR. ROBERTS: -- which is mainly about the blood clot
25 incident.

1 THE COURT: Uh-huh.

2 MR. ROBERTS: I was going to address the status check,
3 the forensic review, and those disputes. If you have any preference
4 as to which issue gets --

5 THE COURT: Why don't you go first since you have the
6 floor right now?

7 MR. ROBERTS: Thank you, Your Honor, I'll do that. So
8 the -- we're not here today to have the Court rule on specific
9 evidentiary objections. The record is not developed to the point that
10 would be fair to Your Honor.

11 But we believe that the -- counsel should be able to work it
12 out if we get some basic guidance from the Court as far as what the
13 Court's intention was in the order with regard to the scope of the
14 discovery that's still open.

15 THE COURT: Well, let me clear it up right now.

16 MR. ROBERTS: The --

17 THE COURT: I want it to go through the present. That was
18 the language that was used, all right. If whether I intentionally
19 changed it to the date of the complaint or did that on mistake isn't
20 relevant. I want to stick to what the Discovery Commissioner said.

21 At least the word present with time continuing might have
22 some ambiguity there. I don't know the date she first said through
23 the present. And I don't know if when she said present meant
24 through the present date that she was addressing this issue. That's
25 something that was ambiguous in her ruling, which of course, I signed

1 that order.

2 And so, to be honest with you, when I signed it, I probably
3 believed that that was present through the date I signed the order.
4 And I wasn't contemplating the need for any forensic review going
5 into the future.

6 So why don't you address that part, Mr. Roberts, and maybe
7 the -- anything further you want to say on the end date?

8 MR. ROBERTS: And, Your Honor, we didn't know if it was
9 a mistake. We thought there might be a good reason for the Court
10 limiting it.

11 And part of the record that Your Honor reviewed dealt with
12 the fact that we come up 10 subsequent incidents. And
13 Commissioner Bulla was, well, there 10 subsequents, but none prior.
14 That's odd. So we thought the Court wanted to focus on prior where
15 it doesn't appear that any were done, but --

16 THE COURT: That may be so, Mr. Roberts, but given that
17 there's been some other incidents discovered that weren't produced
18 before --

19 MR. ROBERTS: Sure.

20 THE COURT: -- I think if it was my intent to curtail the end
21 date, we should probably expand it through the present or go back to
22 the original view that was the present just to make sure, you know, to
23 check everything, make sure nothing's missing.

24 MR. ROBERTS: That's fine, Your Honor. And if that's the
25 order of the Court, we'll comply.

1 THE COURT: Okay. Well, that's my order, but let's just --

2 MR. ROBERTS: And what is the Court defining as present?
3 Today, the date of the search, the date the Court signed the order?

4 THE COURT: Well, let's just -- so there's no ambiguity, let's
5 go through today.

6 MR. ROBERTS: Okay, very good, Your Honor.

7 THE COURT: Through today. Present through today, don't
8 need to worry about the future going forward, particularly since we
9 would be in trial today if there wasn't a continuance, right?

10 MR. ROBERTS: Yes.

11 THE COURT: Anyway, let's go forward.

12 MR. ROBERTS: Okay, so the next issue, Your Honor, is the
13 Court in its minute order dated March 4th, said Plaintiff is permitted to
14 take a further deposition of the corporate representative of Jacuzzi
15 and First Street regarding Chopper marketing and advertising and First
16 Street dealers that existed between 2008 and the date of the incident.
17 And that's just an example of a sentence.

18 THE COURT: Okay, right.

19 MR. ROBERTS: Now Plaintiff has taken the position that
20 discovery has been completely re-opened. They can do any discovery
21 they want to.

22 The scope of discovery including the deposition they want
23 to take of Mr. Allen is just as it would be at the beginning of this
24 case. And that there is no limitation on the scope of discovery that is
25 currently open. It's --

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1 THE COURT: Well, I'm going to go with wherever I said in
2 my minute order or in any other order.

3 MR. ROBERTS: Thank you, Your Honor.

4 THE COURT: If I did refer to some specific discovery, then
5 that statement by itself doesn't -- shouldn't lead someone to believe
6 that it's wide open, but let's look at what I actually said.

7 MR. ROBERTS: Right, and that's what we can do. And I
8 believe that Mr. Cloward and I can meet and confer now successfully,
9 but our position would be that it would render the language
10 meaningless as far as what we were allowed to do if the Court was
11 simply re-opening it.

12 The -- and that's related somewhat to the issues that we
13 have with the scope of the forensic search. And the -- in our request
14 for status check --

15 THE COURT: Uh-huh.

16 MR. ROBERTS: -- I think we set out for the Court and Mr.
17 Cloward what our issue was.

18 THE COURT: Uh-huh.

19 MR. ROBERTS: And that is that this deposition of our IT
20 manager and his role as 30(b)(6) should not be wide open in an
21 attempt to re-start discovery on issues that are not necessary to
22 conduct the forensic search. And Mr. Cloward outlined to you some
23 disputes that they had arising out of the meeting at my office.

24 First of all, the -- for the Court to understand that Jacuzzi
25 doesn't have a manually compiled list of IT assets. They've got

1 thousands of people. Most of those people have a laptop.

2 And the way that the IT department tracks those assets is
3 there is a computer program, that in order to get your email, in order
4 to enter the databases, the computer has to log onto the network.

5 And as the computer logs onto the network, the software
6 creates a list of assets that have logged to the network in the last 90
7 days.

8 THE COURT: Uh-huh.

9 MR. ROBERTS: And that's what's maintained. And
10 eventually, those things drop off the list. And --

11 THE COURT: Wait. Wait, what do you mean they
12 eventually drop off the list?

13 MR. ROBERTS: And --

14 THE COURT: -- because that would be important for
15 Plaintiff to know, right? In case, there's some assets that they
16 believe to exist that aren't shown on this software.

17 MR. ROBERTS: Correct, Your Honor. And because it's a
18 running list and if someone doesn't log on for a certain period of time,
19 it may not be on the list that's generated.

20 And the actual printout of that software was put into a
21 sealed envelope and their IT experts signed across the seal to -- so
22 that that can be preserved.

23 So if it's ever an issue about what the list generated versus
24 what we told them that day, we've got the document preserved for
25 the Court's review.

1 But here, here's the fundamental issue. That list contains
2 thousands of employees. Only 223 or so work for the Jacuzzi Luxury
3 Bath Division and can possibly have any relevant information about
4 this case.

5 They want us to give them the actual names of all
6 thousands of employees across all the divisions. And then they want
7 to be able to depose someone --

8 THE COURT: Yeah.

9 MR. ROBERTS: -- to say what's your job description? What
10 does this person do? What assets do they have, which we think it's
11 too late for them to discover all of the employees of Jacuzzi, even if
12 something that broad would ever be allowed.

13 Our position was is you want Bill Demeritt's assets? Say
14 you want Bill Demeritt's assets and we'll tell you all of his assets.
15 You want Audrey Martinez? We'll tell you all of her assets and
16 explain what's there and what isn't.

17 That should be the way that we go about identifying the
18 assets you get to search. You give us the names. Discovery's done.
19 You should know the names of the people whose assets you want to
20 search and be able to demonstrate a reasonable basis for doing so.

21 And if you give us the names, we'll give you the assets.
22 They want the list of assets to be able to explore.

23 THE COURT: Well, shouldn't you just turn over on your
24 own, the list of assets of all relevant people in the case?

25 MR. ROBERTS: We don't know who --

1 THE COURT: I mean, that shouldn't be hard to determine. I
2 mean, it's -- right? I mean, it's anybody who's been deposed.
3 Anybody who is -- for whom we already know they've received or
4 sent emails regarding these past injury incidents?

5 I mean, that -- these are pretty easy things. I mean, any
6 people that you've disclosed in your 16.1 of people at the company
7 with knowledge. I mean, shouldn't that be at least a minimum?

8 MR. ROBERTS: We'd be happy to do that, Your Honor. But
9 that's not what they've agreed to, which is why we wanted
10 clarification from the Court.

11 THE COURT: I mean, I could see how -- I understand your
12 position that it would be a burden to have to, I guess, identify all of
13 the employees -- you said thousands of employees or --

14 MR. ROBERTS: Yes.

15 THE COURT: Is that nationwide or what?

16 MR. ROBERTS: Yes, nationwide.

17 THE COURT: Well, I'll hear from Mr. Cloward on why he
18 needs --.

19 MR. ROBERTS: I think there's some -- there are a few over
20 in Italy. There are a few over in Italy.

21 THE COURT: Okay.

22 MR. ROBERTS: And while they have said we're not going to
23 ask to search every asset --

24 THE COURT: Right.

25 MR. ROBERTS: -- and they've conceded that.

1 THE COURT: I think --

2 MR. ROBERTS: And they've said that they want to be
3 reasonable, but yet, they want to be able to take discovery on every
4 asset. They want every asset to look at and ask about the employee
5 and the relationship or -- we just think that's a fishing expedition --

6 THE COURT: Okay.

7 MR. ROBERTS: -- and it's too late to do that.

8 THE COURT: It's not -- let me interrupt for a second. And I
9 don't know exactly how this forensic search works. I'm trying
10 to -- I'm beginning to get an understanding.

11 Perhaps, and correct me if I'm wrong, perhaps they want
12 the list of names of all these people. And they want to go through it
13 and then identify the particular individuals for whom they want all of
14 those individual's assets to be identified, and then apply search terms
15 to find out what paperwork exists relevant to this case, relating to
16 those individuals.

17 MR. ROBERTS: And if the Court would indulge me and let
18 me explain a little bit more about how the search works --

19 THE COURT: Okay.

20 MR. ROBERTS: -- so the Court understands.

21 THE COURT: All right, thank you.

22 MR. ROBERTS: What was originally contemplated was a
23 search of our databases. There's a database called Salesforce.

24 So whenever a Jacuzzi employee gets a phone call or gets a
25 letter, they're supposed to enter it into the database with the main

1 server and everything should be there. They're not supposed to save
2 anything to their local laptop, because then the company doesn't have
3 access to it.

4 So everything should be in these main servers. And we
5 have agreed that they can proceed with that. We agreed to that a
6 long time ago, running their search terms in the main server, which
7 should contain all of the data.

8 But we've also acknowledged that in addition to these main
9 servers, where everything is stored, individuals did have laptops which
10 are technically IT and even though they're not supposed to save
11 things to their laptop, Jacuzzi has confirmed that there's no procedure
12 to prevent them from doing that and there may be things there.

13 So we've agreed to allow them to individually search each
14 hardware or mirror drive of hardware that we have to -- for relevant
15 employees.

16 Then there's the issue of emails, which is also complicated
17 because Jacuzzi went I believe it's 2014, Ira may have the notes, to a
18 system that would allow search terms to be searched across all emails
19 of all employees.

20 THE COURT: Right.

21 MR. ROBERTS: But prior to 2014, it's my understanding
22 that the way things were served, you have to search each individual's
23 email separately, so you'd need a list of the individuals whose emails
24 you wanted prior to 2014 cutoff.

25 So those are the three sort of things that are now being

1 discussed in the forensic search. Based on the record, it appears that
2 the Salesforce search was the only thing contemplated by the
3 Discovery Commissioner, but we've agreed to expand it.

4 But by agreeing to expand it, that has created some of these
5 issues with what discovery should they be allowed to do into who the
6 people are and what they do, beyond the people that have already
7 been identified as Your Honor said during the course of discovery to
8 date.

9 And we're more than willing to allow them to search and to
10 generate the assets of specific identified employees, whether it be
11 everyone who's been disclosed on a 16.1 and a deposition has been
12 taken, or to some broader list that the Plaintiffs want to give us,
13 we're happy to do that.

14 We just don't think that the scope of discovery should be
15 wide open as to all Jacuzzi employees, their names, and identities.
16 Even if they work for divisions, they could have nothing to do with the
17 Luxury Bath.

18 THE COURT: Well, I'm sure that Plaintiff doesn't want that.
19 In fact, I mean --

20 MR. ROBERTS: Well, they've asked for that.

21 THE COURT: -- it wouldn't make sense for them to, you
22 know, to engage in discovery of things that don't matter to this case.
23 I think what we're all trying to do is find a way to narrow this down
24 to just the individuals that have relevant information, right?

25 MR. ROBERTS: Right.

1 THE COURT: So anyway, what else do you have on the
2 forensic?

3 MR. ROBERTS: I would agree.

4 And then there's an another broad category of dispute,
5 which is the extent to which they should be able to make a written
6 record as to security critical information about the way the IT system
7 is structured at Jacuzzi.

8 The -- this goes to things like backup servers and time to
9 destroy. If someone were to blow up one of our databases, how long
10 would it take to get that back up and recovered? What software do
11 we use to do that?

12 A lot of these things, and I think their discovery -- their
13 forensic expert would agree that there are legitimate security concerns
14 involved in disclosing a road map to how our systems could be
15 breached.

16 And as Your Honor knows, this is a big issue in today's
17 society where there are people out there attempting to breach
18 companies' databases and do it on occasion. And it can cost the
19 company a lot of money and can cause a lot of concerns.

20 And Jacuzzi has legitimate concerns about disclosing details
21 of how their system works and how recoveries, and how backups are
22 done, and having that out in the public record.

23 THE COURT: How are they supposed to find out what --

24 MR. ROBERTS: We've disclosed --

25 THE COURT: -- what documents -- hold on. How are they

1 supposed to find out what documents might have been generated by
2 Audrey Martinez on some backup and whether they're stored on some
3 backup system if her -- his computer's destroyed and nobody
4 knows -- the Plaintiff doesn't know the system by which backup files
5 for that computer might be maintained?

6 MR. ROBERTS: We have told their expert how it's done.
7 We've told him all the backup servers that exist, where they're
8 located, what the third-party companies have those servers. We have
9 told them these things in a meeting. And we're prepared to allow
10 them to search them.

11 And Audrey Martinez, the -- again, they haven't said give us
12 all Audrey Martinez assets, give us whatever backups you have of
13 her. If they did, then we would tell them what we have and we'd let
14 them search it.

15 But it's a matter of whether they have to give us the names
16 and we give them the assets or whether they get every asset in the
17 company and all the confidential information about how it's structured
18 and then they get to fish around for it.

19 THE COURT: Okay.

20 MR. ROBERTS: That's really why we want wanted
21 guidance before the deposition, the 30(b)(6) was taken, which we
22 thought we would get. Unfortunately, Mr. Cloward was in trial and
23 that last status check couldn't go forward before the date this
24 deposition was scheduled.

25 We have now rescheduled the deposition for July 15th. And

1 based on input from the Court and what you believe is permissible,
2 I'm sure we'll be able to make that work and agree on a permissible
3 scope.

4 THE COURT: Thank you.

5 Before we turn to the other issues, which I will let Jacuzzi
6 address, let's go back to Mr. Cloward and just stick to the forensic --

7 MR. CLOWARD: Very briefly.

8 THE COURT: -- search issues while those issues are fresh in
9 my mind.

10 MR. CLOWARD: Certainly. About five minutes ago, Your
11 Honor stated, well, geez, why don't you just give them the list and let
12 them go through the list and tell you what they want.

13 And then there's this lengthy explanation of why that's not
14 what should happen. That is exactly what the Court said, you know,
15 hey, this seems like the most reasonable thing to do is give them the
16 list and let them go through. That's exactly what we want, exactly
17 what the Court thought to itself.

18 And here's why we think that this is significant. They're
19 trying to say well, geez, we have to produce this list of all of these
20 thousands of employees. That's untrue. The list was created when it
21 created the list that was given to us.

22 Okay, so Your Honor, imagine a spreadsheet, an Excel
23 spreadsheet with say 300 rows and 5 columns. The spreadsheet that
24 was given to us was 300 rows with only 3 columns.

25 They scrubbed off and removed the other two columns that

1 had the device ID number and the name of the person who may be
2 attached to that.

3 The reason why we need that information -- so I guess from
4 a standpoint of is it burdensome? No. The document already exists.
5 It was printed and it was put in the same envelope. Both copies are
6 in the envelope.

7 And if the Court has any question, I would say -- suggest to
8 the Court request the envelope and look at what Jacuzzi had versus
9 what was placed in the envelope that was given to Plaintiffs and see
10 if there are discrepancies and see if the information on those two
11 columns that were not provided to counsel have relevant information.

12 THE COURT: What are you going to do with that expanded
13 list if you're going to get the list with those extra two columns? How
14 would you use that?

15 MR. CLOWARD: Well, the reason why it's important is
16 two-fold. Number one, the list contains this very specific identifying
17 factor of the device at issue.

18 So the device at issue is what we want to call these things,
19 not hey, give me Audrey Martinez's laptop --

20 THE COURT: Uh-huh.

21 MR. CLOWARD: -- because what they could do is they
22 could re-purpose a laptop, give it to us, and say, here you go.

23 What I want to be able to do is I want to say give us device
24 number A4793221_Audrey Martinez. That's the specific device that I
25 want searched, not one --

1 THE COURT: And you can't do that now because?

2 MR. CLOWARD: Because --

3 THE COURT: You're missing those two columns which
4 identify the names of the individuals or something else?

5 MR. CLOWARD: The -- I think it's a two-fold. It's number
6 one, the name of the individual, but number two, the more important
7 is the specific device ID. So that's unique to each piece of
8 information asset.

9 THE COURT: What's on the two columns that you did get?

10 MR. CLOWARD: You know, I'm happy to go off of memory,
11 because we couldn't take a photograph, but it was like a
12 descriptive -- that's the second part of the argument is that that
13 descriptive designation was not necessarily always accurate.

14 So part of our concern was the descriptive name, moniker
15 given to Bill Demeritt's computer was Health and Safety. So if I'm
16 just looking through the list, I'm thinking to myself, well, Health and
17 Safety, this case doesn't have anything to do with Health and Safety,
18 so I don't want that one.

19 But had -- I had the two additional columns where Bill
20 Demeritt's name is listed, then I can say aha, for some reason, Bill
21 Demeritt's computer is named Health and Safety.

22 Now I'm going to scratch my head and wonder why it's not
23 named Risk Management, but that's beside the fact I at least want
24 this computer searched.

25 And so that was a big concern that we had was that Bill

1 Demeritt, he's a major player. He's the risk manager. He was the
2 30(b)(6) that was deposed. He's not listed under Risk Management.

3 He's listed under something else. And whether it's Health
4 and Safety or Safety something, it was something that would not
5 denote these types of issues that we're going after.

6 So I guess what we would ask in regard to this, Your Honor,
7 is number one, that the Court be provided with a copy of the folder
8 with both of the -- both of the spreadsheets. And the Court can take
9 a look at that and determine whether those two columns are relevant.

10 We believe that they're relevant just like the Court thought
11 and posited to Mr. Roberts, well, hey, geez, why don't you just give
12 them a list of the names and let them go through the list of the
13 names?

14 The Court is exactly correct. I am -- I have zero interest,
15 zero interest in going through, you know, people that are not relevant.
16 This is a costly endeavor.

17 We bear -- we have borne the entirety of the cost and I
18 don't want to pay Mr. Victor to go through a computer for, you know,
19 the receiving dock of an employee out in Valdosta, Georgia. I have
20 zero concern, zero desire to do that.

21 I only want the relevant individuals and I need the device ID,
22 as well as the names of who those folks are to make that intelligent
23 determination.

24 MR. ROBERTS: Your Honor --

25 THE COURT: I guess we need to --

1 MR. ROBERTS: -- I don't think we have a big -- as big a
2 dispute as Mr. Cloward thinks we do. Because what we're saying is
3 you're not entitled to the name and device ID of every device assigned
4 to the loading dock worker in Georgia. You're not entitled to the list
5 of every name of every employee in Italy and their device ID numbers.

6 Give us the names that you are interested in, Bill Demeritt,
7 and we'll give you the device ID numbers assigned to him. And we'll
8 let you search them and let you confirm that the device ID numbers
9 match what we give you.

10 And if the Court wants to look to make sure that we've
11 disclosed all of the device ID numbers, we've preserved that evidence
12 in the envelope. Once they identify the person, we will provide the
13 device numbers and let them do the search.

14 THE COURT: So he gets the last word, Cloward, since it's
15 his motion, I appreciate that.

16 Mr. Cloward?

17 MR. ROBERTS: Actually, Your Honor, I think this is our
18 request for status check.

19 THE COURT: Oh, okay.

20 MR. ROBERTS: This is not a part of the renewed motion to
21 strike.

22 THE COURT: Oh, right, all right. So you both raised the
23 forensic, but you're right. I shouldn't have let him go first. You
24 should have --

25 MR. ROBERTS: But it doesn't matter, Your Honor. If Mr.

1 Clow ard has something else to say.

2 THE COURT: Well, anyway, you're making a proposal.
3 You're making a proposal. Let's hear what his response is to your
4 proposal.

5 MR. ROBERTS: Thank you, Your Honor.

6 THE COURT: And why that would or wouldn't work?

7 MR. CLOWARD: Your Honor, again, the reason that this
8 is -- that this became an issue that we left the meeting at Mr. Roberts'
9 office was because there were issues that arose.

10 This is not Mr. Clow ard being unreasonable. These are
11 issues that actually arose during the evaluation. And it's like Mr.
12 Victor whispered in my ear, getting the list of inventory assets is just
13 that. It is a list of assets that we can then go and determine.

14 THE COURT: Right.

15 MR. CLOWARD: It's difficult to determine what those are
16 when we don't have the device IDs and they can go and re-create
17 time and history. They can recreate, you know, Audrey Martinez's
18 laptop. Why wasn't that on there? Why wasn't her backup on there?

19 Certainly, if she got a replacement laptop, that laptop is
20 somewhere. So who has that laptop? Why isn't it on the list?
21 Certainly, you didn't just give her a replacement laptop and then let
22 her leave the company with that.

23 You know, if the Court steps down from the bench, it's
24 unlikely that Clark County's like, well, Your Honor, just take
25 all -- everything with you and you can just have it. That's not the

1 way that it works.

2 If they have an asset, it continues. And it was the exact
3 same thing with Bill Demeritt. Bill Demeritt had three or four entries
4 under his name, because when he got a new laptop, they would keep
5 the other one on there. He'd get a new laptop, they would put
6 another one on there. And that's all that we're asking.

7 And to alleviate the security concerns or the privacy
8 concerns, I will sign a 100-page confidentiality agreement, whatever
9 they propose. So long as I can use the information in this particular
10 case, I will sign whatever they want.

11 THE COURT: Okay.

12 MR. CLOWARD: So that they can feel comfortable with
13 that decision.

14 THE COURT: Mr. Roberts, you made a proposal. He gave
15 you a counterproposal. You get the last word since it's your motion.

16 MR. ROBERTS: I thank you, Your Honor. All of these
17 issues which arose only arose because they refused to identify the
18 people whose assets they want.

19 If they would take that first step, then we can give them the
20 assets, give them the IDs. And if they doubt that we do that
21 correctly, we have the full list sealed and ready to provide to the
22 Court, so that the Court can verify that we've done that correctly.

23 THE COURT: So let's move on to, I guess the next issue,
24 which would be why we didn't hear about the blood clot incident
25 sooner and why, as Plaintiff would say, this doesn't represent a

1 continuing effort of lack of transparency?

2 MR. CRAWFORD: Thank you, Your Honor. Your Honor, I
3 think it is fair to say that from the beginning, there have been a
4 number of discovery disputes between the parties.

5 THE COURT: Uh-huh.

6 MR. CRAWFORD: I hope that changes going forward. But I
7 think it's also fair to say, in fact, it is the fact that Jacuzzi has
8 complied with every single order of the Discovery Commissioner and
9 of this Court. And when there have been disputes, it has been made
10 very clear what we are producing and what we are not producing.

11 Early on, we took the position that only prior incidents were
12 relevant. And we made that very clear in our discovery response. We
13 objected to producing subsequent incidents and we stated that over
14 and over again in each of the discovery filings we made.

15 When Mr. Demeritt was deposed, he was put up on prior
16 incidents. And we made it clear that he was there only to talk about
17 prior incidences.

18 Mr. Cloward says, well, I got him. I zinged him and he was
19 like a deer in the headlights. Well, the complaint that he zinged him
20 with was a subsequent incident. He wasn't aware of it. He had not
21 prepared to talk about it.

22 And we made it very clear going into the deposition that he
23 was not prepared and we were objecting to producing and discussing
24 subsequent incidences.

25 That changed after the -- that issue was taken to the

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1 Discovery Commissioner and she ordered on July 20th, 2018 that we
2 produce subsequent incidences up through August 17th of 2018 and
3 we did that.

4 It is not true, as you were told, that Jacuzzi only does
5 anything when it's threatened with sanctions. The reason those 11
6 additional incidents were disclosed was not because of some threat of
7 sanctions, but because there was now an order from the Discovery
8 Commissioner saying I think subsequent incidents are relevant and I'm
9 going to order you to produce them and we did.

10 So every order that has ever been issued has been complied
11 with. That is true of the Leonard Baize complaint, which is the
12 complaint that Mr. Cloward raised during the Demeritt deposition.

13 That was a subsequent incident. It was filed --

14 THE COURT: My recollection, and you'll have to correct me
15 if I'm wrong on this, is that Plaintiffs' belief and the Discovery
16 Commissioner's belief has always been that prior and subsequent had
17 to be produced.

18 And when she -- at one point, she reiterated and made it
19 clear it had to be subsequent. I don't know that she was expanding
20 her original intent. She was perhaps clarifying it, but --

21 MR. CRAWFORD: I --

22 THE COURT: -- we can double check that.

23 MR. CRAWFORD: That is -- I think that is the order
24 that -- that is the hearing that took the issue in front of her and that
25 was the order that she issued. And that was the first time that there

1 was an order saying you've got to produce subsequent incidences.
2 We had objected prior to that.

3 THE COURT: Okay.

4 MR. CRAWFORD: That was the order overruling the
5 objections and ordering their production.

6 THE COURT: Thank you.

7 MR. CRAWFORD: This -- the so-called blood clot incident,
8 Your Honor, the Pullen, P-U-L-L-E-N matter specifically, that is the
9 focus of this motion, the fourth one, motion to strike the answer and
10 for other sanctions.

11 The Pullen incident was disclosed after the Court's March
12 4th order, because that order was more expansive than the prior
13 orders. There was no order prior to this Court's March 4th order
14 requiring the production of that.

15 And it's not even an incident. It is a set of communications
16 with regard to the Pullen matter. I -- it --

17 THE COURT: What do you call it? What matter?

18 MR. CRAWFORD: The Pullen, P-U-L-L-E-N.

19 THE COURT: P --

20 MR. CRAWFORD: That's the name -- we don't know the
21 name of the actual customer, who either slipped, and/or was stuck
22 and formed blood clots, and later passed away. She was an elderly
23 lady.

24 The family's name, the childrens' name is Pullen. That may
25 be her name, but it's -- the report that came into Jacuzzi in October of

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1 2018 came in under the name Pullen.

2 THE COURT: Understood. In what way do you --

3 MR. CRAWFORD: So that's the matter.

4 THE COURT: -- in what way does Jacuzzi believe that I
5 expanded the prior orders of this Court to produce documents? What
6 was it that originally made it -- made Jacuzzi believe it didn't have to
7 produce this -- information of this incident and now after my court
8 order, you decided maybe I should produce it? What changed?

9 MR. CRAWFORD: Two things, Your Honor. The Judge or
10 Discovery Commissioner Bulla's order had a cutoff date of August
11 17th, 2018. That -- it is true that there is some ambiguity with regard
12 to the use of the term as the Court notes earlier, the present.

13 There wasn't any ambiguity with regards to that date. She
14 ordered that by August 17th, 2018, we produce claims of any injury
15 or death from 2008 through the present and that that be produced to
16 Plaintiffs on August 17th, 2018.

17 THE COURT: Well, she's trying to push it to get it
18 produced.

19 MR. CRAWFORD: Right.

20 THE COURT: But she wasn't saying if something relevant
21 comes up after that, then you don't have to produce it. I don't
22 think -- that wouldn't make any sense, but --

23 MR. CRAWFORD: Well --

24 THE COURT: Go ahead.

25 MR. CRAWFORD: That was our interpretation, Your Honor,

1 that --

2 THE COURT: Okay.

3 MR. CRAWFORD: -- the date, August 17th, was the date.

4 The second and maybe more important aspect of it was that
5 it -- that we produce claims. There -- this was not a claim. And it
6 didn't even arise until October of 2018. So --

7 THE COURT: Well, apparently, we don't know when the
8 incident happened, but we apparently have Jacuzzi's representation
9 when they learned of it?

10 MR. CRAWFORD: Yes, Your Honor. And that was after
11 August of 2018. So the things that were different when the Court --

12 THE COURT: Wait, hold on, hold on. How do you interpret
13 the word claim? Does the individual calling have to actually use the
14 word claim or do they have to say I want money?

15 What is it that the Pullen family would have had to say for
16 Jacuzzi or Jacuzzi's insured to believe that was a claim?

17 MR. CRAWFORD: Your Honor, I think a claim is a demand
18 for remediation of some sort, whether it's money, whether it's
19 reimbursement, whether it's take my product back.

20 It's a demand that something be done, not merely I'm
21 unhappy with my tub because it takes too long to fill up. I don't think
22 that's a claim. That's -- that was Jerre Chopper's matter. She --

23 THE COURT: What was the substance of the
24 communication here?

25 MR. CRAWFORD: With -- on the blood clot incident?

1 THE COURT: I mean, I'm sure the person wasn't calling up
2 just to say, hey, my dad died, just wanted you to know. Not a big
3 deal, but just thought you might need to know that. Have a nice day.
4 That wasn't what was going on here, right?

5 MR. CRAWFORD: The substance of the claim, and again, I
6 think 15 or 18 or 20 pages of those communications have been
7 turned over the Plaintiffs. The substance of the claim was that --

8 THE COURT: See, you just used the word claim. I'm sure
9 that was a slip, but --

10 MR. CRAWFORD: You got me going. You got me going,
11 Your Honor.

12 THE COURT: All right. All right, go ahead. Substance of
13 the communication?

14 MR. CRAWFORD: The substance of the communication
15 was that our mother -- at one point, they described her having slipped.
16 At another point, they described her having been stuck.

17 Then at some later point, not described, forming blood clots
18 and passing away. They didn't ask for anything. They didn't tell us
19 to do anything. They didn't say I want this done.

20 It was those communications. But when the Court issued
21 its order on March 4th saying all incidences involving death of relevant
22 customers, that's when we looked at this and said, well, you know,
23 without quibbling about what a relevant customer is, we will disclose
24 this incident.

25 That was the difference between -- those were the

1 differences between the prior Discovery Commissioner order after the
2 cutoff date and not a claim and this Court's language that didn't limit
3 it to claims and moved it past the August 17th date.

4 With regards to, Your Honor, to the issue of a hearing, it is
5 not the holding of the Young case that the Court -- that a court
6 cannot determine that nonsanctionable and nonhearing-worthy
7 conduct has occurred without a hearing.

8 The ruling of the court was you can't terminate a case and
9 issue sanctions without a hearing. The Jerre -- the Pullen matter was
10 disclosed before the Court issued its subsequent order on March 12th,
11 saying I've looked at the matter.

12 There is no reason, there's no basis to hold an evidentiary
13 hearing. The Court already had that disclosure. There's nothing new,
14 no newly discovered evidence that would merit --

15 THE COURT: It hadn't been brought to my attention that
16 Plaintiffs' position was that there was anything produced late that
17 might have been within the knowledge of Jacuzzi that might have
18 prejudiced that. None of that had been brought to my attention or
19 was presented to me for consideration --

20 MR. CRAWFORD: Understood.

21 THE COURT: -- at the time of that March order, of course.

22 MR. CRAWFORD: Yeah.

23 THE COURT: But please continue.

24 MR. CRAWFORD: Well, Your Honor, I think that's the sum
25 and substance of it. Those are the substances and the details of the

1 Pullen matter. That's why it wasn't produced in July or afterwards.

2 That's why it was produced in response to the Court's
3 minute entry asking for all matters where a death occurred and why it
4 wasn't produced any sooner than that. And we -- and it was
5 produced within days of the Court's issuance of that March 4th order.

6 THE COURT: All right, then thank you. Let's go ahead and
7 hear back from the Plaintiff.

8 MR. CLOWARD: Your Honor --

9 THE COURT: Let me just check my notes here. Give me
10 one moment.

11 So Mr. Crawford?

12 MR. CRAWFORD: Yes, Your Honor.

13 THE COURT: That position that it wasn't a claim, I'm just
14 having a little bit of trouble with that because say I'm going home
15 tonight and I get in a car accident and I call up my insurance company
16 and I report it.

17 I say, hey, I've been rear-ended. It wasn't my fault. You
18 know, here's where it happened. Here are the circumstances under
19 which it was happened. No one's injured.

20 Here's the time and the place and the witnesses. That's not
21 a claim unless I say I want you to pay for my damage or what -- is
22 that the step?

23 And then, my other question would be is -- was there
24 actually an intentional decision by somebody within Jacuzzi that says,
25 hey, this isn't a claim, we're not going to produce it? Or is this a

1 pretext after the fact which may or may not have legitimate basis?

2 MR. CRAWFORD: Your Honor, I think the parties
3 have -- and again, the -- I'm not speaking for Plaintiffs and they have a
4 different view of it. In their discovery requests, they use the term
5 incidents.

6 THE COURT: Okay.

7 MR. CRAWFORD: The Court ordered claims. Now, are we
8 quibbling over semantics? I don't think so. I think it is a fair position
9 for a company to take, as long as it's communicated, and you know,
10 here's what we're doing to make that distinction, because something
11 that doesn't -- that isn't a claim if you're asked to produce claims is
12 different than being asked to produce all the incidents.

13 The -- and I think the Jerre Chopper matter is a fair
14 indication of that. She communicated some real unhappiness with her
15 tub because it didn't fill up fast enough. And she was concerned that
16 elderly people might be sitting in the tub waiting for that 15 minutes
17 of fill up and black out.

18 THE COURT: No, I remember all that. I remember.

19 MR. CRAWFORD: So I mean, was -- is that a claim? I think
20 it is a fair position to distinguish between claims, something bad has
21 happened to me and I want something done about it versus here's
22 something I feel and think about your product and I'm telling you
23 about it.

24 THE COURT: Was this an incident? I mean, because didn't
25 Jacuzzi know and didn't think even admit that they had an obligation

1 throughout all this case, well, at least once the parameter of
2 subsequent was made clear, didn't Jacuzzi know that they had to
3 produce evidence, any documentation relating to any incident
4 involving personal injury or death --

5 MR. CRAWFORD: Your Honor --

6 THE COURT: -- from a subsequent? I thought there was
7 some point where Jacuzzi knew that?

8 MR. CRAWFORD: I think your March 4th minute entry was
9 the first one that required something more than claims to be
10 produced. That's one of the reasons why it was produced in response
11 to the Court's order, aside from the fact that the prior order from
12 Commissioner Bulla was cut off as of August 17th.

13 But I think the more important of those two is the distinction
14 between claims, which was not a limitation in the March 4th order.
15 So, yeah, I believe it is a fair position for the company to have taken
16 to distinguish between incidences or communications on the one hand
17 and matters that you could fairly call a claim on the other.

18 The other thing about the Pullen matter that I think is not
19 insignificant is that even the family in its communication to the
20 company said we don't know whether or not there is a relationship.

21 You know, the tubs are used predominantly by elderly
22 people. They -- whenever an elderly person passes away, you can
23 say, well, they recently used your tub. That doesn't make a
24 connection between prior uses of the tub and somebody passing
25 away.

1 We didn't quibble about any of that when Your Honor issued
2 the March 4th order saying anybody who's died, disclose it and we
3 did immediately.

4 But it was not a claim and it was not within the parameters
5 of Judge -- or of Discovery Commissioner Bulla's order. That's why it
6 was not produced before Your Honor's.

7 THE COURT: I understand your position very well. Thank
8 you. Thank you for answering my questions.

9 MR. CRAWFORD: Thank you, Your Honor.

10 THE COURT: All right, let's hear from the Plaintiff now on
11 this.

12 MR. CLOWARD: Sure. And Your Honor, one --

13 THE COURT: Wait, let me ask my staff. Do we need to
14 take a break? Are we good right now?

15 UNIDENTIFIED SPEAKER: No.

16 THE COURT: Okay, let's continue.

17 MR. CLOWARD: You got it and I'll be very brief with the
18 Court's staff in mind. The first thing that I wanted to -- I hate to
19 digress, but I forgot to address this when Mr. Roberts and I had our
20 exchange. The discovery order that Your Honor signed on April 2nd,
21 2019 was unrestricted and it was unlimited.

22 There were no -- there was no language in there saying, hey,
23 Mr. Cloward, you can only do these four depositions or you can only
24 do these certain things. It was opened unambiguously.

25 So, you know, to the extent that the Court rules on that

1 issue, I would direct the Court to the April 2nd, 2019 stipulation and
2 order regarding discovery.

3 And if you look at the motions that preceded that, there
4 were a lot of additional issues that we needed to go into and we set
5 those out in great detail.

6 THE COURT: Okay, I'll double check on my own.

7 MR. CLOWARD: Thank you.

8 Now moving forward, this is the only thing I would have the
9 Court look at. Simply pull up the writ of prohibition that was filed by
10 Jacuzzi. Take a look on page 6, and 7, and then further on page 17.

11 We've included this -- excuse me 16 and 17 of the writ of
12 prohibition. We've included this as an exhibit to our motion.

13 THE COURT: I have it.

14 MR. CLOWARD: So specifically on page 6, this is Jacuzzi
15 complaining about this -- the discovery that we served saying, you
16 know, they want lawsuit. That's number 24.

17 In number 25, they want claims. In number 41, they want
18 incidents. In number 42, they want complaints received from the U.S.
19 Consumer Product Safety Commission. Number 43, they want
20 complaints.

21 So we created several requests for production using the
22 various verbiage due to this gamesmanship, due to this, you know,
23 nitpicking of well, you didn't say it this way.

24 You know, you said incident, but you didn't incident. And if
25 you'd said incident, then maybe we would have turned it over, but the

1 way you said it made it believe that we didn't have to turn it over.

2 THE COURT: So what's your response to their argument,
3 which may or may not be a fair argument, that this Pullen matter is
4 not an incident, because the family did not know for sure that any
5 defect in the tub caused the death?

6 MR. CLOWARD: I think it is highly disingenuous, highly
7 disingenuous. And it would be a sad day if the Court ratifies this type
8 of conduct. Because a plaintiff, if they come into Court, and if they
9 don't just simply supplement their 16.1, their damages are struck.

10 The Defendant doesn't even have to ask for it. We have to
11 do it. Yet through discovery, depositions, motions to compel, all of
12 these things, they come and they say to the Court, well, it's a claim
13 or it's an incident, it's not this, it's not that.

14 Look no further than page 16, Your Honor, of their writ of
15 prohibition to the supreme court where they state, and I will cite for
16 the record, and this is their complaining of the scope of Your Honor's
17 ruling, where they're saying Judge Scotti abused his discretion
18 because "but the District Court's order goes much further and requires
19 Jacuzzi to find and disclose any incident involving any bodily injury at
20 all, however, slight and involving any of Jacuzzi's walk-in tubs,
21 whether containing the same alleged defect or not and regardless of
22 any similarity to Plaintiffs' claims of defect."

23 So they are going to the supreme court saying this is too
24 broad. Yet they withhold that information and now come to the Court
25 and say, well, our understanding was a little bit different.

1 No, your understanding was not different and this what you
2 told the supreme court and this is what you complained to the
3 supreme court about. Yet despite complaining to the Nevada
4 Supreme Court about this, you continued to withhold the evidence.

5 What else does the Court need? We sincerely request, Your
6 Honor, and whether the Court rules that there is a -- an abuse, that's
7 to be determined at a later date.

8 But we at least beckon the Court, sincerely beckon the
9 Court to allow the evidentiary hearing, so that we can least procure
10 the evidence for appellate review pursuant to Jitman v. Oliver and
11 other cases. Thank you, Your Honor.

12 THE COURT: Has everybody had an opportunity to present
13 any argument to me that they wish to make or is there anything
14 further?

15 MR. CRAWFORD: Nothing further, Your Honor.

16 THE COURT: Okay. All right. Now let's deal first with the
17 forensic issues. So the Court is going to order Jacuzzi to produce its
18 entire list of assets in unredacted form for review by the Plaintiff at
19 the Court.

20 That will be conducted in the jury deliberation room.
21 Plaintiff may take notes, but cannot copy or take pictures of the
22 spreadsheets.

23 So the Court is not going to initially determine what is
24 relevant. Plaintiff and Plaintiffs' IT person are allowed to be there and
25 inspect and determine what is relevant and what will be the next step

1 in discovery with respect to the information that might be located
2 from the assets.

3 Counsel for Jacuzzi may prepare a protective order if they
4 believe that that is in their best interest to help ensure and protect the
5 confidentiality of this information.

6 The Court will review that protective order after the parties
7 have had an opportunity to meet and confer to try to jointly agree on
8 the terms. If they can't agree, they can each submit their own
9 proposed protective order.

10 This can be done -- I'd like to have this done, you know,
11 within the -- there's no reason why it can't be done soon. I'd like to
12 have it done within the next three weeks, all right? So you guys meet
13 and confer on that and then we'll go forward.

14 Just so there's no confusion, each side may have their
15 attorneys there, however many attorneys they think is appropriate.
16 They may have a client representative there if they so choose and
17 they may have their IT person there also, all right?

18 If anyone has any serious concerns about anything being
19 copied with a cell phone, we can deal with that. And perhaps the
20 Court can take all cell phones before anyone goes into the room. I
21 don't know that I need to babysit to that extent. All right, so that's
22 the review of the assets.

23 In terms of the scope of the deposition of the I guess
24 30(b)(6) witness, what was that person's name, the IT person from
25 Jacuzzi?

1 MR. ROBERTS: Mark. What's Mark's last name

2 MR. CLOWARD: Mark Allen.

3 MR. ROBERTS: Allen.

4 THE COURT: So, well, give me a moment. Well, I'm going
5 to allow at a minimum information regarding how this spreadsheet
6 was put together, the use of the software.

7 Let's see, the date that the -- is it called Salesforce software
8 began to be used, how that software is used in order to comply with
9 all the data and asset information on the server.

10 And what was the system used to preserve and protect
11 information of the type that we've determined is relevant in this case
12 prior to the use of Salesforce, which is apparently in 2014.

13 I will allow discovery regarding what knowledge Jacuzzi
14 might have about documents prepared by or on the individual assets
15 that either exist or would have existed for -- I'm trying to get the
16 individuals' names. Well, for the two individuals that Plaintiff said are
17 critical here and I'm finding --

18 MR. CLOWARD: Bill Demeritt and Audrey Martinez?

19 THE COURT: Right, those two, Martinez and Demeritt.

20 Also, the scope can include the existence and the
21 maintenance and operation of any backup system for documents at
22 Jacuzzi.

23 Now, to the extent any of that involves confidential,
24 privileged, or sensitive information for Jacuzzi, Jacuzzi can include
25 that in its protective order.

1 The extent to which I allow any of that deposition testimony
2 to come out in trial will have to be the subject of a motion in limine
3 later. I'm not saying now that any of that is coming out, all right?

4 And I'm not actually saying necessarily that any of that is
5 relevant. Relevant objections are preserved by Jacuzzi, but at least
6 I'm ordering that that discovery be permitted, all right?

7 Whether any other scope can be worked out among the
8 parties, I'm going to leave that up to you in good faith. If for some
9 reason, you know, you think something else should be allowed that I
10 left out, either because it's not in my notes or I didn't adequately
11 understand the scope of what's being request by Plaintiff, or if I don't
12 adequately understand the process by which the forensic review
13 should be conducted, the parties can bring that back to my attention
14 by way of a telephone conference call before that 30(b)(6) deposition
15 or during, whatever's appropriate, okay?

16 MR. ROBERTS: Your Honor?

17 THE COURT: Yes, you may.

18 MR. ROBERTS: A clarification?

19 THE COURT: You may.

20 MR. ROBERTS: I'm assuming, based on your Court's order,
21 that the unredacted list cannot be marked as an exhibit and used in
22 the deposition because that would sort of defeat the purpose the
23 Court's proposing.

24 But that if they had -- if that review is done before the
25 deposition and they identify additional names, that they can then

1 explore the assets associated with those names they identify. Would
2 that be a fair way to deal with that?

3 THE COURT: Yeah, that is a fair way of doing it.

4 MR. ROBERTS: Okay.

5 THE COURT: And I think that was implied in my ruling that
6 it can't be attached as an exhibit to the deposition.

7 MR. ROBERTS: Okay.

8 THE COURT: But I did say also that once they get it, they
9 can proceed with whatever discovery's appropriate under the
10 circumstances there. And whatever discovery they obtain, they can
11 use that in deposition, all right?

12 MR. ROBERTS: That's fair, Your Honor.

13 THE COURT: All right.

14 MR. CLOWARD: And Your Honor --

15 THE COURT: Yes.

16 MR. CLOWARD: I'm sorry to interrupt, but may we also for
17 the inspection at the jury deliberation room have a copy of the
18 envelope that was signed -- would the signed documents be also
19 presented so that we can examine that?

20 THE COURT: The envelope? I thought the envelope was
21 the complete list?

22 MR. CLOWARD: Well, there are two copies. I didn't know
23 if they were going to generate another copy or if they're bringing the
24 envelope.

25 THE COURT: No, bring the envelope. I'm going to

1 personally compare it to the list that you're providing in the room.

2 MR. ROBERTS: Okay.

3 THE COURT: All right, and it does need to be made
4 available to the Plaintiff, be made available to me, so we can make
5 sure that the -- I guess that they're both the same.

6 MR. ROBERTS: Absolutely, Your Honor. In fact, I was
7 thinking we would just bring the envelope and that's the -- what he
8 would get to examine, and then, there's no question.

9 THE COURT: Perfect. Thank you.

10 MR. ROBERTS: Okay.

11 THE COURT: All right, and if anybody requests that I have a
12 paralegal or rather a law clerk in there, we could do that. I hope we
13 don't have to go that far, but let me know if we do.

14 MR. CLOWARD: Sure.

15 THE COURT: And I'm not placing any time limit on the
16 inspection of this list. I want the parties to, you know, again, you
17 know, proceed in good faith there, all right?

18 All right, so I do find that the documents and information
19 regarding the Pullen incident should have been produced in October of
20 last year.

21 Whether that was a mistake, an oversight, or the result of
22 an excessively narrow interpretation of the orders in this case, I'm not
23 making a decision on any of that now. I do find, however, it should
24 have been disclosed.

25 I am going to grant an evidentiary hearing to explore the

1 circumstances under which that information was not disclosed and to
2 make sure that the Plaintiff has obtained all relevant information
3 regarding that Pullman [sic] matter.

4 I'm not calling it an incident at this point in time, but we're
5 going to see. And I'm not finding that there is any bad faith, but we
6 need to have this evidentiary hearing to get more information.

7 The scope will be limited strictly to that Pullen incident and
8 not the Chopper matter or any prior matters that have come before
9 me. All right.

10 The -- this evidentiary hearing should include the following
11 information to help me decide how to proceed further. Who from the
12 Pullen family contacted Jacuzzi about the matter? What did they say
13 about the matter? What documentation did they provide about the
14 matter?

15 How many communications they had with Jacuzzi about the
16 matter? What form of communications were taken? Who at Jacuzzi
17 did the Pullen family communicate with? What documentation at
18 Jacuzzi was generated as a result of those communications?

19 What was done with the information of the Pullen matter
20 once the person who received that information received it? Basically,
21 the person who received the information, what did they do with that
22 information, all right?

23 I'm not waiving any attorney-client privilege there. Jacuzzi
24 has the right to assert any attorney-client privilege that may exist with
25 respect to these matters.

1 However, if documents were turned over relating to the
2 Pullen matter to the attorneys, then the fact of those documents
3 being turned over and the date by which they were turned over must
4 be disclosed, but not any communications with counsel about any of
5 these matters.

6 I want Jacuzzi to produce at the evidentiary hearing, number
7 one, the person at Jacuzzi who received these communications from
8 the Pullen family.

9 And then, number two, the person most knowledgeable
10 about all the matters I identified. And of course, Jacuzzi can present
11 any other individuals that it so chooses to provide me with information
12 that I need.

13 Since this is essentially Plaintiffs' request for the Court to
14 sanction Jacuzzi, it's the Plaintiffs' burden to convince me that they
15 are entitled to such relief and the scope of any relief.

16 So Plaintiff will go first in examining the two Jacuzzi
17 witnesses. So essentially, Plaintiff will examine, Jacuzzi will cross-
18 examine.

19 I'm not putting any limit at this point in time on how many
20 witnesses or how long Jacuzzi wants to take with those witnesses.
21 I'm willing to listen to their entire story and whatever they want to
22 present to me.

23 Hopefully, this won't take a lot of time, but there's very
24 limited issues here, but I'm giving the Plaintiff the opportunity to get
25 this information.

1 To the extent there are any records of this Pullen matter that
2 Jacuzzi has, that it has not yet produced, I'm ordering them to
3 produce those a minimum of three days before this evidentiary
4 hearing. All right, we're going to set the date for that.

5 So except of course to privileged -- attorney-client privilege
6 information, which don't have to be produced, all right? But internal
7 records, communications, documentation of the telephone calls,
8 records provided by the Pullen family, responses by Jacuzzi to the
9 communications from the Pullen family, anything that can shed some
10 light on whether the Pullen family connected the blood clots to the
11 being stuck matter, anything, any of those records that Jacuzzi might
12 have bearing on this topic have to be produced. That would include
13 emails, internal memos, communications that are internal.

14 MR. ROBERTS: And, Your Honor, I believe all of it has been
15 produced --

16 THE COURT: Okay, but -- go ahead.

17 MR. ROBERTS: -- with the exception of the emails between
18 Jacuzzi and counsel. Is -- would the Court like a privilege log of those
19 or the Court's just saying that Jacuzzi doesn't need to produce them?
20 Those might --

21 THE COURT: I'm not asking for a privilege log now.

22 MR. ROBERTS: Okay. Okay.

23 THE COURT: But, again, Plaintiff is entitled to ask at the
24 deposition what was produced to counsel.

25 MR. ROBERTS: Sure.

1 THE COURT: All right? What was prepared and sent to
2 counsel without getting into the -- like if counsel said give me a memo
3 on what happened, all right, they can ask, did you prepare any memos
4 for counsel, but they can't get into the substance of those memos, all
5 right?

6 Once we have a handle on what attorney-client privilege
7 communications might exist, then Plaintiff, if Plaintiff feels it
8 necessary, can submit a request to me that I order you to prepare a
9 privilege log, then I'll decide. At this point in time, you don't have to
10 do one.

11 MR. ROBERTS: Okay, thank you, Your Honor.

12 THE COURT: Let me just have one moment and then I'll let
13 you speak.

14 MR. CLOWARD: Sure.

15 THE COURT: I want to make sure I've considered
16 everything.

17 As we continue in our discussion here, let me ask Mr.
18 Cloward, are there any witnesses, other than the two I identified, that
19 you might want permission from the Court to subpoena from Jacuzzi
20 for purposes of this evidentiary hearing?

21 MR. CLOWARD: Ron Templer.

22 THE COURT RECORDER: Can you say that again?

23 MR. CLOWARD: Ron Templer.

24 THE COURT: Who's that?

25 MR. CLOWARD: He is the corporate counsel that's been

1 heavily involved with all of the discovery in the case. He's been
2 present at all of the depositions. He's been present at a -- I shouldn't
3 say all of the depositions, but the majority of the important
4 depositions and he has even personally appeared before Commissioner
5 Bulla. And so, Ron Templer understands the importance of the
6 arguments.

7 And the other witness that we would ask would be Bill
8 Demeritt, and finally, Josh Cools, formerly of Snell Wilmer.

9 THE COURT: Josh -- oh, right. Well, what would be the
10 purpose of having Bill Demeritt here? To what extent would his
11 testimony relate to the scope of the evidentiary hearing?

12 MR. CLOWARD: Certainly. Mr. Demeritt is the risk
13 manager. And during his deposition, there was some communication
14 about how claims would be brought within Jacuzzi.

15 I think that Ron Templer may be sufficient for purposes of
16 the evidentiary hearing. However, there was some discussion during
17 the deposition of Mr. Demeritt.

18 Some duties were outlined a little bit differently that if it
19 meets these certain criteria, then it goes to Ron Templer. If it meets
20 these certain criteria, then it comes to me, Bill Demeritt.

21 So I just feel like for completeness, the evidence, as I
22 understand the testimony as I understand, is that either it goes to Bill
23 Demeritt or it goes to Ron Templer. And those are the only two
24 people within Jacuzzi that a potential claim may end up going to.

25 THE COURT: Right, it's -- my supposition that Jacuzzi

1 would probably produce one of those two gentlemen as a 30(b)(6)
2 witness anyway.

3 But, Mr. Roberts, did you want to address that as to
4 whether you can bring those two individuals or whether you believe it
5 would be unduly burdensome for some reason or what's the -- what's
6 your position on that?

7 MR. CRAWFORD: Your Honor, I don't know --

8 THE COURT: Oh, and then Josh Cools also, what's your
9 position on all that?

10 MR. CRAWFORD: Let me start with Mr. Demeritt. The
11 simple answer with Mr. Demeritt is I don't know what he knows or
12 doesn't know. I think it would be ill-advised to simply order him here
13 because Mr. Cloward wants him here.

14 If he is the guy most knowledgeable, if he has any
15 knowledge, then I would likely bring him anyway, but I think Jacuzzi
16 ought to be able to identify the person most knowledgeable and bring
17 that person.

18 And if at the conclusion of the hearing, it turns out that our
19 person most knowledgeable was not knowledgeable enough, then we
20 can deal with that there.

21 I don't think just ordering Bill Demeritt, the risk manager and
22 vice president of the company to be here because Mr. Cloward thinks
23 he might know something would be a fair thing to do.

24 With regards to Mr. Templer and Mr. Cools, they are both
25 lawyers. They -- whatever information they have, whatever

1 communications they have is going to be covered by the attorney-
2 client privilege. I don't think they --

3 THE COURT: Maybe, maybe not.

4 MR. ROBERTS: -- ought to be here either.

5 THE COURT: Maybe, maybe not. I'm not addressing it
6 now. Oftentimes, as Mr. Roberts would know, in-house counsel
7 communications, sometimes they're not covered by the attorney-client
8 privilege. But -- so I'm not resolving that right now.

9 MR. CRAWFORD: Well, I think my point is Your Honor has
10 ordered us to bring the person most knowledgeable with regards to all
11 of the topics. And if that's one person, or two persons, or three, we
12 will have them here.

13 And given the Court's order to be here with that person, if it
14 turns out to be Mr. Templer, it'll be Mr. Templer, but I don't think Mr.
15 Cloward ought to be able to dictate who we bring to respond to the
16 Court's order that we bring the person most knowledgeable. We will
17 bring that person.

18 THE COURT: Well, so, let's deal with these kind of in
19 reverse order. Josh Cools, I suppose the reason Plaintiff is asking that
20 is because one of the Ribeiro factors is whether -- is the extent to
21 which the nonproduction of documents or whether some discovery
22 conduct is the responsibility of the party or the party's counsel.

23 I'm not, however, going to order that he be produced,
24 because I think I already have sufficient information from Jacuzzi as to
25 who was making relevant decisions here and I'll wait and see what

1 other information I get from the evidentiary hearing.

2 But now, of course, Jacuzzi should understand that it may
3 want to provide information to rebut anything that it might already
4 have in the file as to who was responsible for making decisions to
5 produce or not produce things.

6 So I'm going to leave that up to Jacuzzi's current counsel's
7 decision whether to produce Mr. Cools or whether to produce some
8 other attorney to speak to the fact about how these -- some of these
9 decisions were made.

10 I am going to produce -- I am going to order that the risk
11 manager be produced, because the risk manager is the person who's
12 going to be most directly involved in determining whether the
13 communications constituted a claim or not and whether Jacuzzi
14 believed they were serious enough to investigate, all right?

15 We're going to be very cautiously limiting in the scope of
16 that examination. All right, it's going to be related to those topics I
17 just identified. You know, what he knew about those
18 communications on the Pullen incident.

19 MR. CLOWARD: Certainly, Your Honor.

20 THE COURT: What he did with that information and how
21 significant did they -- did he value those communications?

22 MR. CLOWARD: Certainly.

23 THE COURT: All right? Ron Templer, no, I'm not going to
24 order that Mr. Templer be produced. All right, so corporate counsel,
25 I'm not going to order it.

1 If it turns out through the risk manager's testimony or the
2 30(b)(6) witness' testimony or something else that Mr. Templer was
3 the one determining whether the communication was a claim, or he
4 was the one determining whether Jacuzzi should respond, determining
5 how Jacuzzi should respond, then we may -- then I may decide to
6 continue the evidentiary hearing and bring him in, but right now, I'm
7 not ordering that he come in.

8 All right, but I will allow Plaintiff to explore what
9 communications the risk manager and the 30(b)(6) witness had with
10 Mr. Templer without waiver to Jacuzzi's rights to assert attorney-
11 client privilege during the evidentiary hearing, all right? Is that clear
12 there?

13 MR. CLOWARD: Yes, Your Honor.

14 THE COURT: All right, counsel, you wanted to get a point
15 of clarification or?

16 MR. CRAWFORD: Yes, Your Honor. One of the witnesses
17 that you wanted to us to produce is the person at Jacuzzi who
18 received the complaints.

19 As I'm looking through the documents that have been
20 provided to Plaintiffs, there's -- I'm not sure I'm getting them all.
21 There's seven or eight different intake people at Jacuzzi because --

22 THE COURT: I didn't know there were that many.

23 MR. CRAWFORD: -- because the information came in
24 apparently as I'm reading these, through different phone calls,
25 concluding with one on October 30th. The person taking that

1 communication was different than the one that took the initial one.

2 And then there was a set in the middle.

3 And each of these has three or four different people. I'm
4 not quite sure -- I don't want to not bring who the Court is telling me
5 to bring, but there's a lot of people whose names are on here.

6 One solution would be to meet and confer with Mr. Cloward
7 and to figure out which of these we need. Another is for me to do
8 some investigation after today to figure out who exactly took in what
9 information and bring that one, or to communicate with Mr. Cloward
10 at that point, say you know, here's what I've learned and see if we
11 can work it out.

12 And then come to the Court if we can't. But there's a lot of
13 people at Jacuzzi who manned apparently the intake or at Salesforce
14 who manned the intake information. I -- I'm not quite sure how to
15 deal with the multitude of them.

16 THE COURT: Yeah, that's a very fair comment. And I'm
17 not sure either. Obviously, what my goal here to make sure the
18 Plaintiff has fair opportunity to get all the relevant information.

19 MR. CLOWARD: Your Honor, may I --

20 THE COURT: And so -- yes?

21 MR. CLOWARD: -- make a proposal? We think it's a fair
22 proposal for Mr. Crawford to look into it and then for us to meet and
23 confer later this week.

24 THE COURT: Why don't you do that? It does seem to be a
25 little bit excessive --

1 MR. CLOWARD: Sure.

2 THE COURT: -- to require all seven and eight to show up.
3 Why don't you guys work on it, see what you can come up with?

4 MR. CLOWARD: Happy to do that.

5 MR. CRAWFORD: And some of them may not even be with
6 Jacuzzi anymore. I -- so, we'll figure it out and we'll get a proposal
7 together.

8 THE COURT: And I'm certainly not requiring Jacuzzi to go
9 and track people down either, all right.

10 MR. CLOWARD: Certainly.

11 THE COURT: And if people are out of the state, then you
12 guys can make arrangements to have the person appear by telephone
13 call, however, you guys work those details out.

14 MR. CLOWARD: Thank you, Your Honor.

15 THE COURT: When are we going to do this? Here's -- I
16 have the week of July -- if we can do it this fast, I have the whole
17 week of July 22nd open.

18 I'd like to get it done sooner than later, but if we don't do it
19 then, then the week right after Labor Day, but that's pushing it pretty
20 close to trial.

21 So let me ask Mr. Cloward first. Given -- oh, go ahead.

22 MR. CLOWARD: You have the week of the 22nd?

23 THE COURT: July 22nd, July.

24 THE CLERK: You have an evidentiary scheduled on the
25 22nd, though, at 10:30.

1 THE COURT: All right, how long is that one? I'm trying to
2 remember.

3 THE CLERK: You don't have any other --

4 THE COURT: All right, we could start the 23rd. If it works
5 out. I'm not going to require anybody to cancel a pre-arranged
6 vacation. Look, I'm mindful of our personal lives here, but --

7 MR. CLOWARD: Sure.

8 THE COURT: -- this is something I want to get done in
9 enough time so that Plaintiff's not prejudiced before trial. Because
10 obviously, one of the factors I need to consider here is the extent to
11 which Plaintiff has been prejudiced and whether any prejudice can be
12 cured.

13 As we get closer to trial, Plaintiffs' claim of prejudice might
14 increase. So it might be in the best interest of Jacuzzi to have this
15 resolved sooner than later also.

16 MR. CLOWARD: Sure. I could do the 24th, the 25th, or the
17 26th. Make myself available.

18 MR. CRAWFORD: Your Honor, that whole week, I've got
19 big problems with that week. I've got to be in a court-ordered
20 mediation in Seattle on the 26th. I've got to travel up there on the
21 25th to meet with clients.

22 I've got a hearing on July 24th in federal court in Dallas.
23 You know, trial's not until the end of October. If we did this the first
24 of September, we've still got two months.

25 THE COURT: Well, but they're probably going to need to

1 take the deposition of the Pullen family, right? I mean, depending on
2 what happens here, so.

3 MR. CRAWFORD: Your Honor, they could have done that in
4 the last three months. They can do that now.

5 THE COURT: All right.

6 MR. CRAWFORD: In fact, it might help to have that before
7 this evidentiary hearing. I'm sitting here asking myself whether I want
8 to go take that deposition and find out more about that before this
9 evidentiary hearing.

10 THE COURT: Well, I'm going to order that that deposition
11 can proceed regarding of -- regardless of what limitations currently
12 exist, if any, on discovery.

13 MR. CRAWFORD: I think -- yeah.

14 THE COURT: So that one can go forward.

15 And, Mr. Cloward, you can get that set. I'll let you set that
16 within -- I'm trying to think here -- within seven calendar days' notice,
17 okay?

18 MR. CLOWARD: Okay.

19 THE COURT: Because Jacuzzi has all the -- had all the
20 information of those communications. So Mr. Cloward, you can set
21 that within seven calendar days' notice.

22 MR. CLOWARD: Okay, you got it, Your Honor.

23 THE COURT: All right, I don't know how many family
24 members had critical information about this --

25 MR. CLOWARD: Right.

1 THE COURT: -- but you guys work that out. If there's more
2 than one member of the Pullen family that is going to have substantial
3 relevant information as to this event, then you guys meet and confer
4 in good faith to work that out and whether more than one should be
5 produced for depo.

6 MR. CLOWARD: You got it, Your Honor. So as far as the
7 date to get this on calendar, is there -- what was the --

8 THE COURT: Well, then I have September -- what's the day
9 right after Labor Day?

10 THE CLERK: You have the week of September 2nd is good
11 because the week after that, you have 13 on a trial stack.

12 THE COURT: Thank you.

13 So the week of September 2nd, isn't that going to be too
14 close to trial? I don't know what more --

15 MR. CRAWFORD: It's two months from trial.

16 THE COURT: Trial is when?

17 MR. CRAWFORD: End of October.

18 THE COURT: All right, Mr. Cloward, that might work. I
19 don't know what additional discovery, if any, you might need after we
20 do that evidentiary hearing.

21 If there's anything going forward that you think you might
22 need, you can bring it to my attention, you know, over the next
23 several weeks.

24 MR. CLOWARD: Okay.

25 THE COURT: Why don't we set it then? You know, check

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1 your calendar, Mr. Cloward.

2 MR. CLOWARD: I have a whole bunch of expert depositions
3 in another case.

4 THE COURT: Well, tell you what, this is your request.

5 MR. CLOWARD: I know.

6 THE COURT: So --

7 MR. CLOWARD: I know.

8 THE COURT: -- if I don't set something today, then I'm just
9 going to have to leave you guys to contact my JEA and try to work
10 out something with her.

11 THE CLERK: August 26th, [indiscernible] there's not hardly
12 any motions on that week --

13 THE COURT: August --

14 THE CLERK: -- August the 26th.

15 THE COURT: Will you check August 26th?

16 THE CLERK: Yeah.

17 MR. CLOWARD: That's a great day for me.

18 THE COURT: Or just check.

19 MR. CLOWARD: Wide open.

20 THE COURT: Any trials? When does my trial, my five-week
21 trial stack begin in August?

22 THE CLERK: Going to be August 5th.

23 THE COURT: August 5th?

24 THE CLERK: Uh-huh.

25 THE COURT: All right, there's -- the reason probably there's

1 nothing showing on August 26th yet is my trial stack doesn't begin
2 until August 5th and I have calendar call a few days before that.

3 I suppose if the parties want, I could just block out some of
4 those days and not do any trials. Hold on.

5 [The Court and the Clerk confer]

6 THE COURT: I think I can still do it that week, but it'd
7 probably have to be near the end of that week, because I do have this
8 Campbell v. Davis [phonetic] case, which I can give you the case
9 number so you can follow it as we go forward, but that's supposed to
10 be one whole week, but I think it might roll over in the next week, a
11 couple weeks.

12 MR. CRAWFORD: Your Honor, August 26th is fine with me.
13 That's only a week before the September 3rd anyway, so we're not
14 gaining much by trying to pound it in there, but if that's available and
15 everybody wants to do it, I can do it on the 26th.

16 MR. CLOWARD: 26th works great.

17 THE COURT: Well, because again, that's the rollover date.

18 MR. CLOWARD: 27th works as well.

19 THE COURT: So how about -- why don't we set aside the
20 27th? Do you think I need to set aside two days?

21 MR. CLOWARD: No.

22 THE COURT: Mr. Roberts, you're good at estimating these
23 things?

24 MR. ROBERTS: Your Honor, I would think --

25 THE COURT: I put you on the spot.

1 MR. ROBERTS: I would think if we had a full day, we would
2 only be one day. That's my guess. The issues as defined by the
3 Court, I think, are going to be pretty quickly dealt with by each
4 witness.

5 MR. CLOWARD: Yeah, I agree.

6 MR. ROBERTS: There's not a whole lot that happened that
7 I'm aware of.

8 [The Court and the Clerk confer]

9 [Counsel confer]

10 THE COURT: Yeah, all right, so we're going to set it for the
11 27th. Let's start at 8:30 in the morning. That's a Tuesday. I won't
12 be able to go into Wednesday.

13 MR. CLOWARD: Okay.

14 THE COURT: So if we can't finish in one day, we'll have to
15 move it probably to that September -- first week of September.

16 MR. CLOWARD: We'll --

17 THE COURT: I mean, we'll get as much done and then we'll
18 continue it, all right?

19 MR. CLOWARD: You got it.

20 MR. ROBERTS: And I thought, and I apologize, Your Honor,
21 I thought we were talking about the 26th and I understand I missed
22 something there with the Court's --

23 THE COURT: No, the 26th is the Monday. That's the day
24 that I -- I'm --

25 MR. ROBERTS: Right.

1 THE COURT: -- holding open for my other trial, which I'm
2 pretty sure that, despite the parties' best estimates, that is going to
3 roll into Monday.

4 MR. ROBERTS: Okay, I do have --

5 THE COURT: Do we have that case -- yes, sir?

6 MR. ROBERTS: I do have a calendar call in Cronor v. Beazer
7 [phonetic] before Judge Israel at 9:30 a.m. on the 27th, which I'm
8 going to need to attend, but that should be pretty quick based on my
9 experience with him.

10 So maybe we could say --

11 THE COURT: We'll work around it.

12 MR. ROBERTS: -- 10:30 or take a break for that?

13 THE COURT: Well, let's start at 8:30 and then we'll take a
14 break, you know, 9:30, you can let --

15 MR. ROBERTS: Right.

16 THE COURT: -- Judge Israel know that you're in another
17 matter and you'll get to his department as soon as you can.

18 You may -- judging how -- knowing how calendar call goes,
19 he's probably going to want you right when they start.

20 MR. ROBERTS: Yes.

21 THE COURT: All right. We'll accommodate you.

22 MR. ROBERTS: Thank you, Your Honor. Thank you, I
23 appreciate that.

24 MR. CLOWARD: Your Honor, thank you very much.

25 THE COURT: Is there anything else?

1 MR. CLOWARD: Just the -- I guess we would just ask the
2 Court to look at the April 2nd --

3 THE COURT: I have a note on that. I'm going to look
4 at -- that's regarding the Discovery Commissioner?

5 MR. CLOWARD: It was the stipulation and order regarding
6 discovery. We don't believe the discovery was limited in any way.

7 THE COURT: Oh.

8 MR. CLOWARD: Their position was that the minute order
9 that Your Honor --

10 THE COURT: Tell you what, I'll take a look at that. Why
11 don't I issue a minute order --

12 MR. CLOWARD: Thank you, Your Honor.

13 THE COURT: -- on the scope of discovery after looking at
14 that --

15 MR. CLOWARD: Okay.

16 THE COURT: -- and after considering what we've done here
17 today.

18 MR. ROBERTS: And with regard to that, it's our position
19 that discovery was being extended to accomplish the discovery being
20 allowed by the Court in the prior order, but that's --

21 THE COURT: Just and before we all leave, what additional
22 discovery, if any, does the Defendant need in this case, if I were to
23 allow any additional discovery by the Defendant? Is there anything at
24 this time?

25 MR. ROBERTS: Not that I know of, but we may want to

1 take the Pullen incident, if the Plaintiffs opt not to.

2 THE COURT: Understood.

3 MR. ROBERTS: Those witnesses, but other than that, I
4 can't think of anything.

5 THE COURT: So let me ask the Plaintiff, what additional
6 discovery do you think you need beyond that which I've already
7 ordered today?

8 MR. CLOWARD: Yeah, the things that were addressed at
9 the hearing, you know, many -- a while ago were the other similar
10 incidents. The other similar incidents were produced in unredacted or
11 redacted form. So we didn't have the full redactions. And then the
12 dealers as well.

13 And so, those are really the only, I guess, hot button issues
14 were just those issues.

15 THE COURT: And so my response to that is haven't you
16 had that for a -- probably at least three months now? And why didn't
17 you proceed with those depositions before today?

18 MR. CLOWARD: Yeah, we've been attempting to do that.
19 We felt like that this issue with the forensic search was probably the
20 very most important thing. We didn't want to go out and take
21 depositions without really knowing the full extent of the other similar
22 incidents.

23 So we've been trying to iron out this issue, because it's
24 predicate to --

25 THE COURT: So tell -- so let me just stop you, because I

1 need to let my staff take a break now. We've been going a long time.

2 MR. CLOWARD: Sure.

3 THE COURT: Send a letter to Mr. Roberts or to the
4 Defendants, identifying the additional depositions that you want to
5 take.

6 MR. CLOWARD: Certainly.

7 THE COURT: And then, you can respond with an objection
8 or whatever you agree to, if anything. Both of you copy me on those
9 letters and then I'll decide what's appropriate.

10 Understand here, I've taken over the discovery
11 responsibilities in this case --

12 MR. CLOWARD: Sure.

13 THE COURT: -- for basically three reasons -- four reasons.
14 It's a complex case, number one. Number two, I'm up to speed on all
15 the issues.

16 Number three, our Discovery Commissioner position was in
17 a state of transition.

18 MR. CLOWARD: Sure.

19 THE COURT: And then number four, even the discovery
20 rules have been changing.

21 So I thought it was critical for me to step in, handle all these
22 discovery issues.

23 MR. CLOWARD: Certainly.

24 THE COURT: All right?

25 MR. CLOWARD: Thank you.

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THE COURT: Thank you. All right.

UNIDENTIFIED SPEAKER: Thank you, Your Honor.

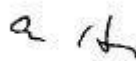
MR. CRAWFORD: Thank you for all your time this morning.

THE COURT: Okay, thank you.

[Proceeding concluded at 11:39 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

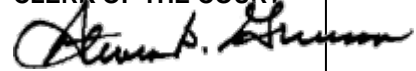


Chris Hwang
Transcriber

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DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator of the
Estate of SHERRY LYNN CUNNISON, Deceased;
ROBERT ANSARA, as Special Administrator of the
Estate of MICHAEL SMITH, Deceased heir to the
Estate of SHERRY LYNN CUNNISON, Deceased; and
DEBORAH TAMANTINI individually, and heir to the
Estate of SHERRY LYNN CUNNISON, Deceased,

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS & BEYOND, INC.;
AITHR DEALER, INC.; HALE BENTON, Individually,
HOMECCLICK, LLC; JACUZZI INC., doing business as
JACUZZI LUXURY BATH; BESTWAY BUILDING &
REMODELING, INC.; WILLIAM BUDD, Individually
and as BUDD'S PLUMBING; DOES 1 through 20; ROE
CORPORATIONS 1 through 20; DOE EMPLOYEES 1
through 20; DOE MANUFACTURERS 1 through 20;
DOE 20 INSTALLERS I through 20; DOE
CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

AND ALL RELATED MATTERS

CASE NO.: A-16-731244-C

DEPT NO.: II

HEARING REQUESTED

**PLAINTIFFS' MOTION TO
EXPAND SCOPE OF
EVIDENTIARY HEARING**



PLAINTIFFS' MOTION TO EXPAND SCOPE OF EVIDENTIARY HEARING

I. STATEMENT OF FACTS

This product liability case arises out of Sherry's purchase and use of a Jacuzzi Walk-in Tub in ***February of 2014*** that resulted in her untimely and tragic death. Due to the defective design of the Tub, Sherry slipped off the seat while reaching for the Tub controls and became wedged in such a way that she was unable to stand back up. Sherry was trapped in the Tub for three days when, due to a wellness check request, rescuers discovered Sherry. Four emergency responders tried extracting Sherry from the tub but snapped her arm in the process because the door opens inward. Because of the inward opening door, it became apparent that it would be unable to get Sherry out of the tub without removing the door. The firefighters had no other choice but to cut the door off the walk-in Tub to free Sherry. She was rushed to the hospital where she later died of dehydration and rhabdomyolysis.

A. Jacuzzi's Eighteenth NRCP 16.1 Disclosure

With trial less than three months away, Plaintiffs have now learned ***once again*** that Jacuzzi has withheld critical evidence in this case.

On Friday July 26, 2019, ***the business day before*** the deposition of Jacuzzi's Director of Customer Service, Kurt Bachmeyer, two Customer Service Employees, Eda Rojas and Deborah Nuanes and the assistant to Mr. Bachmeyer, Mayra Lopez, Jacuzzi served its Eighteenth Supplemental NRCP 16.1 Disclosure. The disclosure contained evidence of up to¹ forty-seven (47) prior and subsequent incidents² with ***forty-three (43)*** of those being ***prior*** to the Cunnison incident.

...

...

¹ As the Court can see below the language used for some of the entries is in the ***plural*** which would indicate that more than one customer existed per entry. Plaintiffs conservatively estimated the number of complaints to be at least forty-seven (47) but believe the number will actually prove to be much higher.

² Throughout this litigation Jacuzzi has explained away its repeated non-disclosure by suggesting that Plaintiffs failed to use the correct wording when requesting something. Therefore, when Plaintiffs refer to the incidents, that term is synonymous with claims, occurrences, notices, episodes, warnings, notifications, occasions, events, complaints or any other word that would cause Jacuzzi to know about a defect in the walk-in Tub.

The disclosure was comprised of the following three exhibits:

70. K. Bachmeyer email and other correspondence. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility	JACUZZI005190-5270
71. Email correspondence regarding customer complaints regarding slipperiness. Confidential information has been redacted. See enclosed Privilege Log. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI005271-5688
72. Salesforce records regarding Customer complaints regarding slipperiness. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI005689-5722

The entirety of Jacuzzi's Eighteenth NRCP 16.1 Disclosure is attached to this motion.

For the Court's convenience, the following is a summary of the documents pertinent to this Motion:

Customer Name	Bate-Stamps	Summary of Complaint	Date (Month/Year)
Unknown	Jacuzzi005287	Report states, " <i>broken hip</i> " and says unit is <i>too slippery</i> . Feels we should have <i>grab bars</i> on both sides."	July/2012
Irene Stoldt	Jacuzzi005623	"customer I Stoldt; installed 9/18/12 installer Keith Cottett -- customer reported that unit would not drain; she <u>got stuck in the tub</u> and had to crawl out of <u>door</u> ."	Sept./2012
Customer C Lashinsky	Jacuzzi005623	"customer C Lashinsky; installed 12/29/12 installer Anthony Home Improvement -- customer Partner slipped in tub, they had to remove the door to get her out... "	Dec./2012



Donald Raidt	Jacuzzi005367	"he <i>slipped and fell</i> causing him to <i>hurt his back</i> . . . Is <i>willing to get a lawyer</i> if the tub is not taken out and he is refunded..."	April/2013
David Greenwell	Jacuzzi005374; Jacuzzi005623	"he slipped in the tub and was trapped for two hours trying to get out because he slipped on the floor. He said the unit needs more grip." "got stuck in the footwell had to call fire department to get out. "	June/2013
Home Safety Bath Customers One & Two	Jacuzzi005320	"we get this [slipperiness issue] complaint a lot, we have <i>two customers right now that injured themselves seriously and are threatening law suits.</i> "	June/2013
Home Safety Bath Customers Three, Four & Five	Jacuzzi005320	"we have sent out bath mats to put in the tub to <i>three other customers</i> because they <u>slipped</u> and were afraid to use the tub...."	June/2013
Paul Kinzer	Jacuzzi005340 - Jacuzzi005345; and Jacuzzi005478 - Jacuzzi005485	"the floor, seats and walls of the tub are too slippery, Mr. Kinzer <u>slips off the seat</u> when in the tub and <u>slips on floor</u> when getting out; the <u>grab bar</u> is slippery; Mr. Kinzer's hands slip when grabbing the bar; the door knocks his knees when closing the door and it's hard for him to get into the tub. " " <u>This is the man who has been injured in his tub.</u> " "we would like to have the agent also supply the slip resistant coating . . . we will supply the product....20 minute application..."	Nov./2013
Airtite Customers One, Two & Three (at a minimum)	Jacuzzi005666- Jacuzzi005667	"Hello: I have <u>so many people stating the tub seat and floor are extremely slippery. Literally, unsafe.</u> Is there any type of mat or something that we can do to help this issue? I tried to find online anything to help, but nothing the size we need."	Nov./2013



Unknown Jacuzzi Customers One & Two	Jacuzzi005327	" <u>we have a big issue</u> and . . . Due to the circumstances involved with time line and <u>slip injuries this needs to be settled....</u> " (injuries plural)	Dec./2013
Unknown	Jacuzzi005299	Customer complained that Jacuzzi needed " <u>hand rails</u> on both sides. <u>Door hard to open or close with someone in the tub</u> -- needs more space." Customer stated, that the "drain was very hard to work with wet hands." That the "foor was very <u>slippery.</u> "	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 4 -- customer says the drain is hard to use and that he/she would not have bought it if I knew what I'd have to go through	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 14 -- customer says <u>surface is too slippery</u>	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 15 -- <u>door not wide enough</u> and is too short	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 18 -- customer says <u>surface is too slippery</u> and the <u>seat</u> in the tub is <u>very slippery</u>	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 21 -- customer says "I would suggest a left and right extra <u>hand grabber</u> on the front of the tub <u>to help pull/lift out</u> "	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 26 -- customer says the <u>surface</u> is <u>too slippery</u> and the <u>floor is very slippery</u>	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 29 -- buttons are hard to use	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 32 -- "tub too small, <u>door not wide enough, door swings in not allowing access.</u> "	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 34 -- "surface too slippery, <u>seat slippery.</u> "	June/2013



Unknown	Jacuzzi005301; 5338	Customer survey 35 -- "faucet too hard to reach, door not wide enough, hard to enter/exit ," "after sitting faucet can't be reached. Door should open out as there is barely enough room to get in. Difficult to exit."	June/2013
Unknown	Jacuzzi005301; 5338	Customer survey 36 -- "drain hard to use."	June/2013
Christine Reynolds	Jacuzzi005295	"she is calling because she has slipped twice in the tub and feels it is too slippery." She "claims she continues to slip in the tub."	August/2013
Cathryn Reynolds aka Catherine Reynolds	Jacuzzi005285	"customer feels tub is too slippery . Is suggesting that we offer a mat that fits the tub. What she bought doesn't fit. Will try to find a mat for her."	August/2013
Mrs. Howard	Jacuzzi005303	"Mrs. Howard called today and she said the tub is 'just not what she expected' it to be, she called it 'dangerous' because she slips on the seat . . . "	June/2013
Patricia Brandon	Jacuzzi005305 - Jacuzzi005307	She complained to Jacuzzi that, "to my chagrin, that I could only enter the tub sideways. I am 83 years old, and a very little overweight, but NOT that large. Anyone who is larger than I would hardly be able to enter the tub if at all . Then when I sat down, I realized I would need to be extremely cautious, because the seat is so small . Fortunately, I grabbed the hand bar to prevent a fall." Further she continued that she is extremely frustrated because she spent \$15,000 on a "Jacuzzi I'm afraid to use!"	June/2013



Mrs. Borroz	Jacuzzi005315; Jacuzzi005438	"Mrs. Borroz called in and left a message for me. <u>She slipped in her tub and hit her arm on the grab bar.</u> She is requesting we send her a matt to put in the bottom of the tub, so it is not so slipperydo you have any suggestions? I had already suggested to her to go to Wal-Mart or bath and body and get one there, but she is saying they are all too big..."	Sept./2013
Mr. Flashberger	Jacuzzi005320	"Mr. [I assume Flashberger] says the bottom of the tub is extremely slippery , he has slipped, and also a friend has slipped in using it."	June/2013
Mr. Flashberger's friend	Jacuzzi005320	" Mr. Flashberger's friend also slipped in the tub..."	June/2013
Unknown	Jacuzzi005334	Would you recommend a Jacuzzi tub? "Not at this time. 1. Not as wide as out tub was 2. <u>Door swings to inside not allowing adequate access for disabled person. . .</u> "	June/2013
Unknown	Jacuzzi005334	"seat slippery -- <u>you fall off onto tub floor -- door opens in so very hard to get up or be helped up...</u> "	June/2013
Ruth Young	Jacuzzi005335	"my comments are as follows; 1) the tub takes too much water and takes too long to fill. 2) after sitting down, the faucets and shower head cannot be reached; 3) <u>door should open out as there is barely room to squeeze by to get in;</u> 4) it is difficult to exit as there is nothing on the right hand side to hang onto . . . p.s. one thing more, I do use a rubber bath mat, as I find the bottom of the tub slippery..."	June/2013
Edward Kleitches	Jacuzzi005336	"your stainless still <u>controls</u> should have some indentation to provide for a better <u>grip</u> , when your hands are wet it is difficult to let the water out."	May/2013



Customer Harris	Jacuzzi005380; Jacuzzi005722	"customer Harris was documented as slippery tub and buttons and drain handle hard to turn..." "She said she said the floor of the tub is very slippery . She said she slipped off of the seat. "	May/2014
Customer Carman	Jacuzzi005381	"customer Carman, the issue was documented as drain handle to hard too turn."	May/2014
Manuel & Patricia Arnouville	Jacuzzi005414	"regina this is Xbox wanted to let you know that we actually hear this complaint more and more often and the numbers increasing installations. <i>I would highly recommend that we consider putting something a little bit more abrasive Not only on the floor but also on the <u>seats</u> as we have had customers call concerned that they slip off the <u>seat</u> so wouldn't be a bad thing to consider adding to the new job just my thoughts.</i> " Manuel & Patricia Arnouville - Serial # BDFDK9 -- they are not using the tub because the wife keeps slipping off the seat and they are afraid of using the tub	Dec./2012
Fred Fuchs	Jacuzzi005465	"the customer has called in and is very upset because he says he has almost fallen 3 times since having his new walk-in tub installed. He says that the <u>floor of the tub is too slippery</u> . He says there is no grip or no-slip feeling to the tub."	March/2013
Atlas Home Improvement Customers One, Two & Three	Jacuzzi005646	"we are having a <i>few</i> customers <u>slipping on bottom</u> of a Jacuzzi tub, I am wondering if you have any recommendations on a product and or a bath mat suitable for this issue."	Oct./2013

1 2 3 4 5 6	FirstStreet Customers One & Two	Jacuzzi005643	"FS has a couple of tubs in the field <u>that people want removed because the customers claim they are too slippery</u> to use. We proposed Liquiguard Solid Step Cote - an after- market anti clip coating that Emmett Luder uses on tubs for the elderly. "	Mar./2014
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7 **B. Forty-Three (43) of the Forty-Seven (47) Incidents Triggered at Least One**
8 **of the Twenty Search Terms (with many of them triggering multiple search**
9 **terms) the Parties Agreed to Use Back in February of 2018³**

10 Jacuzzi's Risk Manager William Demeritt who was produced as the Jacuzzi Rule 30(b)(6)
11 designee was questioned at his deposition about the steps that were taken to identify similar
12 incidents using the 20 search terms the parties had agreed upon. Mr. Demeritt testified
13 assignments were given to three employees, Mr. Castillo, Ms. Reyes and Mr. Bachmeyer to search
14 for incidents where the 20 words that had been provided were found.⁴ Mr. Demeritt testified that
15 he could not give an estimate of the number of incidents that were retrieved by Mr. Castillo, Ms.
16 Reyes and Mr. Bachmeyer, but that it was "a voluminous amount, and each word that was
17 searched had different amounts."⁵

18 After the voluminous number of documents was turned over to Corporate Counsel Ron
19 Templer, Jacuzzi claimed that despite searching for similar incidents using the foregoing search
20 terms, "no prior similar incidents" existed which was "consistent with Jacuzzi's discovery
21 responses related to prior incidents."⁶ Jacuzzi boldly declared, "Upon review of the results from
22

23 ³ For the Court's convenience, the search terms (listed in the order they were given to Jacuzzi by Plaintiffs)
24 are set forth: 1) Fall, 2) Slip, 3) Elderly, 4) Overweight, 5) Entering, 6) Exiting, 7) Door, 8) Stability, 9) Stable body
25 position, 10) Water controls, 11) Seat, 12) Hand holds, 13) Hand grips, 14) Grab rails, 15) Grab bars, 16) Grip bar,
17) Design, 18) Incident, 19) Testing, 18) Audit. See, Ex. 1 Email to Joshua Cools from Ben Cloward, dated
February 12, 2018.

26 ⁴ See Ex. 2 William B. Demeritt - Vol. I, 23:9-15, May 24, 2018.

27 ⁵ *Id.* at 23:19-22.

28 ⁶ See Ex. 3 Jacuzzi Mot. For Protective Order, at 7:17-23, filed September 11, 2018.

those searches, all of which were “false positives” – they did not contain *any prior incidents* of personal injury *even remotely related to the claims Plaintiffs have asserted . . .*”⁷

On more occasions than Plaintiffs can count, Jacuzzi has defiantly proclaimed to the Discovery Commissioner, This Honorable Court and the Nevada Supreme Court that there are *no prior claims*⁸ and that the entire universe of relevant evidence has been turned over. Both inside and outside counsel was involved in the review of documentation and what was ultimately turned over in this case.⁹ It is painfully obvious and sad that neither Jacuzzi nor its’ counsel, Snell & Wilmer have been truthful with the parties or the Courts. At a prior hearing the Court inquired as to the reason why Mr. Cools was no longer working for Snell & Wilmer. The explanation given by Jacuzzi’s counsel was that he received a partnership and promotion implying that it had nothing to do with the discovery issues. It should also be noted that every lawyer (with the exception of one) at the firm where Josh Cools allegedly accepted a partnership (Evans Fears & Shuttert¹⁰) is a former member of Snell & Wilmer and apparently worked directly for, or closely with Vaughn Crawford.

⁷ *Id.* At 7:19-23 (emphasis added).

⁸ In the page and pages filed by Jacuzzi declaring that no prior claims exist, Jacuzzi has also used the following language to emphatically state there were no problems with the walk-in tubs at issue:

- “prior other *incidents*...” *See, Ex. 4*, Jac. Opp. To Pl. Mot to Strike at 2, filed July 12, 2018 (emphasis added).
- “*claims* made prior . . .” *See, Ex. 5*, Jac. Resp. to Pl.’s 1st Set of ROGs, 9:21-10:9, served June 19, 2017 (emphasis added).
- “Jacuzzi has produced all relevant *evidence* related to other prior incidents.” *See, Ex. 4*, Jac. Opp. To Pl. Mot to Strike at 7, filed July 12, 2018 (emphasis added).
- “Defendant states it is only aware of the *claims* brought by Plaintiffs’ attorney.” *See, Ex. 5*, Jac. Resp. to Pl.’s 1st Set of ROGs, 9:21-10:9, served June 19, 2017 (emphasis added).
- “Defendant does not have any [*documentation, emails, memorandums, technical data, and internal documents* of *any and all discussion, communication* or *otherwise pertaining to safety considerations* regarding the *inward opening door versus an outward opening door*] responsive documents.” *See, Ex. 6*, Jac. Resp. to Pl.’s 1st Set of RFP, 16:19-28 (emphasis added).
- “Jacuzzi will produce a witness to testify generally regarding *lawsuits, claims, dealer bulletins, complaints, or incident reports* related to other substantially similar incidents of injury or damage as Ms. Cunnison’s.” *See, Ex. 7*, Jac. Obj. to Pl.’s Fifth Amended Notice to take Rule 30(b)(6) designee, served May 17, 2018, (emphasis added).

⁹ *See, Ex. 8*, Tr. of Hearing, at 7: 12-19, dated September 19, 2018.

¹⁰ Kelly Evans worked at Snell & Wilmer, Chad Fears worked at Snell & Wilmer, Jay Shuttert worked at Snell & Wilmer, David Gutke worked at Snell & Wilmer, Justin Hepworth worked at Snell & Wilmer, Joshua Cools worked

1 Until now, Plaintiffs had given Snell & Wilmer and its' attorneys the benefit of the doubt,
 2 but it is clear that this firm has assisted Jacuzzi in whitewashing the record and withholding
 3 evidence to the detriment of Plaintiffs in this matter. Plaintiffs are seeking to expand the scope of
 4 the evidentiary hearing as well as requesting pre-hearing discovery to obtain a copy of several
 5 critical documents that are in either Jacuzzi's, Snell & Wilmer's or the Court's possession (in
 6 camera production that Commissioner Bulla placed in the court vault.)
 7

8 **C. Jacuzzi and firstSTREET have Misled the Plaintiffs Regarding an Alert**
 9 **System Called 911 Alert System**

10 Ruth Curnutte is a Jacuzzi customer that purchased a Jacuzzi walk-in bathtub. On her first
 11 use, she was "thrashed" against the wall of the tub and had her head go under water causing her
 12 to fear for her life. She was so concerned about this that she reported the incident to multiple
 13 agencies, one of which, was the Consumer Product Safety Commission ("CPSC"). Jacuzzi and
 14 firstSTREET have represented that neither company had anything to do with this product. The
 15 deposition of Ms. Curnutte, an 88-year-old Floridian took place on Wednesday. At that
 16 deposition, Ms. Curnutte testified that she was told by the salesperson to not use the tub without
 17 the 911 Alert System.¹¹

18 Ms. Curnutte provided a letter that was written on Jacuzzi and AITHR letter-head that
 19 indicated that the 911 Alert system was being provided as a courtesy by Jacuzzi.¹² Further, she
 20 provided a packing slip that shows that the 911 Alert was provided and mailed directly from
 21 firstSTREET.¹³ Finally, there was marketing materials that Ms. Curnutte provided that indicated
 22 that the 911 Alert system had been in place since at least 2014.¹⁴ Ms. Curnutte testified that she
 23 was told to use the 911 Alert system and keep it nearby while she bathed.¹⁵
 24
 25

26 at Snell & Wilmer, and Alexandria Layton worked at Snell & Wilmer. The only lawyer that is listed as working at
 27 Evans Fears & Shutter that is *not* a former Snell alumnus is Hayley Miller – who only recently joined EFS in 2018.

28 ¹¹ Plaintiffs will supplement the record with citations and exhibits once the deposition transcript is received.

¹² Plaintiffs will supplement the record with citations and exhibits once the deposition transcript is received.

¹³ Plaintiffs will supplement the record with citations and exhibits once the deposition transcript is received.

¹⁴ Plaintiffs will supplement the record with citations and exhibits once the deposition transcript is received.

¹⁵ Plaintiffs will supplement the record with citations and exhibits once the deposition transcript is received.

Clearly the implementation of a 911 Alert system would suggest that there were safety issues with the walk-in tub and all three parties (Jacuzzi, AITHR and *firstSTREET*) have misled Plaintiffs with respect to the 911 Alert system. This is just more evidence of the continued gamesmanship in this matter.

III. RELIEF REQUESTED

There can be no question that Plaintiffs have been irreparably prejudiced in that Plaintiffs have not been able to meaningfully evaluate the multiple prior complaints, have been unable to have the experts address the complaints and have wasted countless days, weeks and months fighting to obtain the information necessary to prove Plaintiffs' allegations against Jacuzzi and *firstSTREET*.

A. The Scope of the Evidentiary Hearing Should be Expanded So That the Court Can Determine Why Jacuzzi Failed to Disclose Relevant, Discoverable Information

As this Court is aware, Jacuzzi has represented over and over at hearings, in written motions, in verified discovery responses and in sworn deposition testimony that no prior incidents existed. These statements were patently false as the most recent document production proves. The evidentiary hearing must be enlarged to allow for investigation into the decision-makers behind the decisions to withhold critical documents and prepare witnesses to purposefully deny and fabricate the history of this patently dangerous product.¹⁶ It is clear that William Demeritt was knowledgeable about the problems associated with this tub, yet he chose to not be truthful during his deposition and denied a single claim existing prior to Sherry's unfortunate incident.

...

...

...

¹⁶ William Demeritt specifically asked Kurt Bachmeyer in June of 2013 to get a group of Jacuzzi key employees together (Regina Reyes, Ray Torres and Audrey Martinez) to discuss steps to resolve these issues that were "continually coming up." See, Pages Jacuzzi005623 – Jacuzzi005621 (for ease of review, Plaintiffs suggest to the Court to start on page Jacuzzi005623 which is the first page of the email chain where three Jacuzzi customers are listed – Stoldt (stuck in the tub); Greenwell (stuck in the tub); Lashinsky (stuck in the tub)). Also, Plaintiffs have attached a copy of just those three pages as **Ex. 9** for the Court's convenience.

1 **B. Josh Cools, Vaughn Crawford, Ron Templar, William Demeritt, Jess**
2 **Castillo, Regina Reyes and Kurt Bachmeyer Should Be Ordered to Appear**
3 **at the Evidentiary Hearing to Testify as to their Knowledge Regarding**
4 **Jacuzzi's Calculated Discovery Decisions**

5 Jacuzzi and Snell & Wilmer represented on a multitude of occasions that all discovery
6 evidence had been turned over and that exhaustive searches were conducted regarding this matter
7 which all revealed no responsive documents. Those statements were obviously false, and Jacuzzi
8 and Snell & Wilmer must account for why those misrepresentations were made and who was
9 involved in that decision process so that this Honorable Court can adequately address the address
10 the sixth Young factor. Furthermore, it is apparent that Ron Templar and William Demeritt have
11 been actively involved in concealing the truth in this case. They must also appear before the
12 Court to answer for the litigation decisions in this matter. Finally, the other witnesses should be
13 ordered to come and testify regarding what documents they gathered, how they gathered those
14 documents, what discussions were had regarding those documents, and the disposition of the
15 documents obtained. This is necessary for the Court to determine the willfulness of Jacuzzi's
16 conduct and the proportionality of any sanction imposed (Young first and third factors).

17
18 **C. Plaintiffs Should be Permitted to Conduct Discovery Regarding Jacuzzi's**
19 **Defense Counsel's Involvement in its Failure to Produce**

20 This relief is different than the relief sought in subsection B above. Here, Plaintiffs are
21 specifically requesting for the Court to set out a special discovery schedule to allow for Plaintiffs
22 to request discovery regarding the willful, calculated and deliberate withholding of documents in
23 addition to what appears to be the premeditated fabrication of information given to Commissioner
24 Bulla in an attempt to ease her into believing that Jacuzzi had carefully searched all relevant
25 information which was submitted for *in camera* review. The information that was given to
26 Commissioner Bulla clearly had been sterilized with critical documents being removed. Plaintiffs
27 should be allowed to conduct discovery into this issue so that the Court can properly assess the
28 Young factors.

1 **IV. CONCLUSION**

2 Jacuzzi's recent document disclosure should have been disclosed at the beginning of
 3 discovery. In order for the Court to be able to determine why these documents (and the related
 4 documents which undoubtedly have not been disclosed) were never disclosed until three months
 5 before trial, one week before the parties scheduled the first phase of the forensic computer search,
 6 and one business day before the deposition of Jacuzzi's customer service employees, the
 7 evidentiary hearing's scope must be expanded.

8 Based on the foregoing, Plaintiffs request that the Court grant the following relief: 1) the
 9 scope of the evidentiary hearing be expanded so that the Court can determine why Jacuzzi failed
 10 to disclose relevant, discoverable information; 2) that Josh Cools, Vaughn Crawford, Ron
 11 Templar, William Demeritt, Jess Castillo, Regina Reyes, and Kurt Bachmeyer should be ordered
 12 to appear at the evidentiary hearing to testify as to their knowledge regarding Jacuzzi's calculated
 13 discovery decisions; and 3) Plaintiffs be permitted to conduct discovery regarding Jacuzzi's
 14 defense counsel's involvement in its failure to produce.

15 DATED THIS 9th day of August, 2019.

RICHARD HARRIS LAW FIRM

/s/ Benjamin P. Cloward

BENJAMIN P. CLOWARD, ESQ.

Nevada Bar No. 11087

801 South Fourth Street

Las Vegas, Nevada 89101

Attorney for Plaintiffs



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the amendment to EDCR 7.26, and Administrative Order 14-2, I hereby certify that on this 9th day of August, 2019, I caused to be served a true copy of the foregoing **PLAINTIFFS' MOTION TO EXPAND SCOPE OF EVIDENTIARY HEARING** as follows:

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below; and/or

☒ Electronic Service — in accordance with Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion Rules (N.E.F.C.R.).

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*Attorneys for Defendant/Cross-Defendant,
Jacuzzi, Inc. dba Jacuzzi Luxury Bath*

/s/ Nicole M. Griffin

An employee of RICHARD HARRIS LAW FIRM



EXHIBIT 1

001989

001989

EXHIBIT 1

Nicole Griffin

From: Cools, Joshua <jcools@swlaw.com>
Sent: Thursday, February 15, 2018 9:09 AM
To: Benjamin Cloward
Cc: Nicole Griffin
Subject: RE: Cunnison

Ben – Please give me a call today to discuss these terms. I would like to clarify that you are proposing these terms for the “other incident” search, not internal communications about Ms. Cunnison’s claim. Thanks. – Josh

From: Cools, Joshua
Sent: Wednesday, February 14, 2018 9:18 AM
To: 'Benjamin Cloward'
Cc: Nicole Griffin
Subject: RE: Cunnison

Ben – In addition to giving me a call about these terms, please let me know asap if March 21 or 22 are going to work for you for the 30b6 deposition. I need to let my client know if they need to continue holding that or look for new dates. – Josh

From: Benjamin Cloward [<mailto:Benjamin@richardharrislaw.com>]
Sent: Monday, February 12, 2018 7:23 PM
To: Cools, Joshua
Cc: Nicole Griffin
Subject: Cunnison

Hi Josh,

We would like for your client to add the following search terms:

1. Fall
2. Slip
3. Elderly
4. Overweight
5. Entering
6. Exiting
7. Door
8. Stability
9. Stable body position
10. Water controls
11. Seat
12. Hand holds
13. Hand grips
14. Grab rails
15. Grab bars
16. Grip bar
17. Design
18. Incident

19. Testing

20. Audit

Please let me know if you have questions.

Thank you,

Benjamin P. Cloward, Esq.

-Nevada Trial Lawyer of the Year (Nevada Justice Association) – 2016

-Board Certified Personal Injury Specialist (State Bar of Nevada) – Since 2016

-ABOTA Member Since 2016, Graduate of Gerry Spence Trial Lawyer College 2013



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EXHIBIT 2

001992

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EXHIBIT 2

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4

ROBERT ANSARA, as Special)

Administrator of the Estate of)

5

SHERRY LYNN CUNNISON, Deceased;)

et al.,)

6

Plaintiffs,)

7

vs.)

No. A-16-731244-C

8

FIRST STREET FOR BOOMERS & BEYOND,)

INC.; et al.,)

9

Defendants.)

(Pages 1 - 120)

10

11

AND RELATED CROSS-ACTIONS.)

12

(Complete Caption On Following Page)

13

14

15

V O L U M E I

16

17

Videotaped deposition of WILLIAM B.

18

DEMERITT, Rule 30(b)(6) Corporate Designee

19

for Jacuzzi, taken on behalf of the Plaintiffs,

20

at 600 Anton Boulevard, Suite 1400, Costa Mesa,

21

California, commencing at 9:49 a.m., on Thursday,

22

May 24, 2018, before Kathleen Mary O'Neill,

23

CSR 5023, RPR.

24

25

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001993

1 DISTRICT COURT
 2 CLARK COUNTY, NEVADA
 3

4 ROBERT ANSARA, as Special)
 Administrator of the Estate of)
 5 SHERRY LYNN CUNNISON, Deceased;)
 MICHAEL SMITH individually, and)
 6 heir to the Estate of SHERRY LYNN)
 CUNNISON, Deceased; and DEBORAH)
 7 TAMANTINI individually, and heir)
 to the Estate of SHERRY LYNN)
 8 CUNNISON, Deceased;)
)
 9 Plaintiffs,)
)
 10 vs.) No. A-16-731244-C
)
 11 FIRST STREET FOR BOOMERS & BEYOND,)
 INC.; AITHR DEALER, INC.; HALE)
 12 BENTON, Individually, HOMELICK,)
 LLC.; JACUZZI LUXURY BATH, doing)
 13 business as JACUZZI INC.; BESTWAY)
 BUILDING & REMODELING, INC;)
 14 WILLIAM BUDD, Individually and as)
 BUDDS PLUMBING; DOES 1 through 20;)
 15 ROE CORPORATIONS 1 through 20; DOE)
 EMPLOYEES 1 through 20; DOE)
 16 MANUFACTURERS 1 through 20; DOE 20)
 INSTALLERS 1 through 20; DOE)
 17 CONTRACTORS 1 through 20; and)
 DOE 21 SUBCONTRACTORS 1 through)
 18 20, inclusive,)
)
 19 Defendants.)
)

20
 21 AND RELATED CROSS-ACTIONS.)
)
 22
 23
 24
 25

001994

001994

1 APPEARANCES:

2 For Plaintiffs:

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24 702/784-5200

25 jcools@swlaw.com

001995

001995

1 APPEARANCES: (Continued)
2 For Defendants/Cross-Defendants First Street for Boomers
3 & Beyond, Inc. and AITHR Dealer, Inc.:

4 THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

5 BY: MEGHAN M. GOODWIN, ESQ.

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7 P.O. Box 2070

8 Las Vegas, Nevada 89125

9 702/366-0622

10 mmg@thorndal.com

11

12 Videographer:

13 DEAN JONES

14 OASIS REPORTING SERVICES

15 702/476-4500

16

17 Also present:

18 RON TEMPLER

19 (Corporate representative for Jacuzzi)

20

21

22

23

24

25

001996

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1	I N D E X		
2	DEPONENT	EXAMINED BY	PAGE
3	William B. Demeritt	Mr. Cloward	7
4			
5	Videotape No. 1	Page 6	
6	Videotape No. 2	Page 92	
7			
8	EXHIBITS FOR IDENTIFICATION:		PAGE
9	1 Saferproducts.gov Incident Report,		92
10	3 pages		
11	2 6/17/16 Plaintiff's Original Petition,		96
12	13 pages		
13	3 "Chicago Woman Sues: Stuck in Bathtub		104
14	30 Hours," 2 pages		
15	4 Homeability.com "Walk-in Tubs:		105
16	Homeability Uncovers Scams & Shady		
17	Practices," 10 pages		
18	5 Ohio Department of Developmental		110
19	Disability, "Safety Is Not an		
20	Accident It's Everyone's Business,"		
21	2 pages		
22			
23			
24			
25			

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1 COSTA MESA, CALIFORNIA

2 THURSDAY, MAY 24, 2018

3 9:49 A.M.

4
5 THE VIDEOGRAPHER: Good morning.

6 This is the videotaped deposition of William B.
7 Demeritt. Today we are located at 600 Anton Boulevard,
8 Suite 1400 in Costa Mesa, California.

9 Today is Thursday, May 24th in the year 2018.

10 We're here today in the matter of Robert Ansara
11 vs. First Street for Boomers & Beyond, Incorporated.
12 The case number of this deposition is A-16-731244-C.

13 This case is being heard in the District Court
14 for the State of Nevada, in and for the County of Clark.

15 My name is Dean Jones with Oasis Reporting
16 Services.

17 Would all present please identify themselves
18 beginning with the deponent.

19 THE WITNESS: William Demeritt.

20 MR. COOLS: Joshua Cools, attorney on behalf of
21 Jacuzzi.

22 MR. TEMPLER: Ron Templer, corporate
23 representative for Jacuzzi.

24 MS. GOODWIN: Meghan Goodwin on behalf of
25 defendant First Street for Boomers & Beyond and AITHR

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1 And that would be the gentleman sitting --

2 A. Yes.

3 Q. -- to your right?

4 A. My right.

5 Q. Okay. So what were you informed by

6 Mr. Castillo about what he found?

7 A. That he had gathered the documents and provided
8 them to -- to our corporate counsel.

9 Q. What documents did he gather?

10 A. Incident reports where the 20 words that you
11 had provided were found.

12 Q. How many incident reports?

13 A. I have no idea.

14 Q. Do you have an estimate?

15 A. No. I don't.

16 Q. I mean, was it more than --

17 A. I don't know.

18 Q. -- five?

19 A. If I had an idea, I would have told you. No.
20 I don't have an idea. I know that it was a voluminous
21 amount, and each word that was searched had different
22 amounts.

23 Q. So each word had maybe X number of --

24 A. X is a good --

25 Q. -- documents?

001999

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REPORTER'S CERTIFICATE

I, Kathleen Mary O'Neill, Certified Shorthand Reporter No. 5023, RPR, duly empowered to administer oaths, do hereby certify:

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition;

Prior to being examined, the deponent was by me first duly sworn;

Said deposition is a true, correct, and complete transcript of said proceedings taken to the best of my ability.

The dismantling, unsealing, or unbinding of the original transcript will render the Reporter's Certificate null and void.

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure, no request being made for review, the transcript was sealed and sent to the noticing attorney.

Dated: May 29, 2018


KATHLEEN MARY O'NEILL
CSR 5023, RPR, CLR

