

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  
VOLUME 18  
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**CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX**

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
1	Complaint	02/03/16	1	1–13
2	First Amended Complaint	03/25/16	1	14–23
3	Second Amended Complaint	05/09/16	1	24–33
4	Third Amended Complaint	01/31/17	1	34–49
5	Fourth Amended Complaint	06/21/17	1	50–65
6	Defendant Jacuzzi Inc.’s Amended Answer to Plaintiffs’ Fourth Amended Complaint	03/07/18	1	66–75
7	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	01/10/19	1 2	76–250 251–435
8	Opposition to 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	01/24/19	2 3 4	436–500 501–750 751–921
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
10	Transcript of All Pending Motions	02/04/19	5 6	1214–1250 1251–1315
11	Minute Order Re: Pending Motions	03/04/19	6	1316
12	Minute Order	03/12/19	6	1317–1318
13	Plaintiffs’ Motion for Reconsideration Re: Plaintiffs’ Renewed Motion to Strike Defendant Jacuzzi, Inc.’s Answer and Motion	05/15/19	6	1319–1347

	for Clarification Regarding the Scope of the Forensic Computer Search			
14	Appendix to 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	05/15/19	6 7	1348–1500 1501–1592
15	Defendant Jacuzzi Inc.'s Opposition to 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	05/28/19	7	1593–1612
16	Appendix of Exhibits to Defendant Jacuzzi Inc.'s Opposition to 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	05/28/19	7 8	1613–1750 1751–1778
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
18	Minute Order Re: Pending Motions	03/04/19	8	1791
19	Court Minutes – All Pending Motions	07/01/19	8	1792–1793
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
21	Recorder's Transcript of Hearing Pursuant to Defendant Jacuzzi's Request Filed 6-13-19,	07/01/19	8	1887–1973

	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			
22	Plaintiffs' Motion to Expand Scope of Evidentiary Hearing	08/09/19	8 9	1974–2000 2001–2045
23	Defendant Jacuzzi Inc.'s Opposition to Plaintiffs' Motion to Expand Scope of Evidentiary Hearing	08/19/19	9	2046–2062
24	Appendix of Exhibits in Support of Defendant Jacuzzi Inc.'s Opposition to Plaintiffs' Motion to Expand Scope of Evidentiary Hearing	08/19/19	9	2063–2241
25	Plaintiffs' Supplement to Motion to Expand Scope of Evidentiary Hearing	08/20/19	9	2242–2244
26	Appendix to Plaintiffs' Supplement to Motion to Expand Scope of Evidentiary Hearing on Order Shortening Time – Volume I of II	08/20/19	9 10 11 12	2245–2250 2251–2500 2501–2750 2751–2904
27	Appendix to Plaintiffs' Supplement to Motion to Expand Scope of Evidentiary Hearing on Order Shortening Time – Volume I of II	08/20/19	12 13 14 15 16	2905–3000 3001–3250 3251–3500 3501–3750 3751–3882
28	Court Minutes Re: Plaintiff's Motion to Expand Scope of Evidentiary Hearing	08/21/19	16	3883
29	Plaintiffs' Reply in Support of Motion to Expand Scope of Evidentiary Hearing	08/21/19	16 17	3884–4000 4001–4010
30	Recorder's Transcript of Evidentiary Hearing – Day 1	09/16/19	17	4011–4193
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
33	Plaintiffs' Evidentiary Hearing Brief	09/18/19	19	4585–4592
34	Minute Order	09/26/19	19	4593–4594
35	Court Minutes Re: Evidentiary Hearing	10/01/19	19	4595
36	Recorder's Transcript of Evidentiary Hearing – Day 4	10/01/19	19	4596–4736
37	Minute Order	10/08/19	19	4737–4740
38	Plaintiffs' Evidentiary Hearing Closing Brief	11/04/19	19 20	4741–4750 4751–4805
39	Plaintiffs' Appendix to Plaintiffs' Evidentiary Hearing Closing Brief	11/04/19	20 21 22 23 24	4806–5000 5001–5250 5251–5500 5501–5750 5751–5849
40	Defendant Jacuzzi Inc. Doing Business ad Jacuzzi Luxury Bath's Evidentiary Hearing Closing Brief	12/02/19	24	5850–5893
41	Errata to Defendant Jacuzzi Inc. Doing Business ad Jacuzzi Luxury Bath's Evidentiary Hearing Closing Brief	12/06/19	24	5894–5897
42	Appendix of Exhibits in Support of Defendant Jacuzzi Inc. Doing Business ad Jacuzzi Luxury Bath's Evidentiary Hearing Closing Brief	12/06/19	24 25	5898–6000 6001–6178
43	Plaintiffs' Reply Defendant Jacuzzi Inc. Doing Business ad Jacuzzi Luxury Bath's Evidentiary Hearing Closing Brief	12/31/19	25 26	6179–6250 6251–6257
44	Minute Order	03/05/20	26	6258–6261
45	Motion to Clarify the Parameters of the Waiver of Attorney-Client Privilege that Would be Required in Order to Present Evidence that it was Acting on Advice of	05/22/20	26	6262–6266

	Counsel			
46	Objections to “Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath’s Answer to Liability Only” with Counter-Proposed Order	05/22/20	26	6267–6276
47	Appendix of Exhibits to: Objections to “Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath’s Answer to Liability Only” with Counter-Proposed Order	05/22/20	26	6277–6478
48	Minute Order	05/28/20	26	6479
49	Plaintiffs’ (1) Response to Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath’s Objections to Plaintiffs’ Proposed “Order Striking Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath’s Answer as to Liability Only”; and (2) Opposition to Jacuzzi’s Motion Clarify the Parameters of the Waiver of the Attorney Client Privilege That Would be Required to Present That It was be Acting on the Advice of Counsel	06/05/20	26	6480–6494
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
51	Court Minutes Re: All Pending Motions	06/29/20	27	6506–6508
52	Recorder’s Transcript of Pending Motions	06/29/20	27	6509–6549
53	Minute Order	07/20/20	27	6550
54	Order for Evidentiary Hearing	07/22/20	27	6551–6555
55	Jacuzzi’s Notice of Waiver of Phase 2 Hearing and Request to Have Phase 2 of Evidentiary Hearing Vacated	09/18/20	27	6556–6561
56	Plaintiffs’ Response to Defendant Jacuzzi’s Notice of Waiver of Phase 2 Hearing and	09/21/20	27	6562–6572

	Request to Have Phase 2 of Evidentiary Hearing Vacated			
57	Court Minutes – Evidentiary Hearing	09/22/20	27	6573
58	Recorder’s Transcript of Evidentiary Hearing – Day 1	09/22/20	27	6574–6635
59	Minute Order	09/29/20	27	6636
60	Court Minutes Re: Competing Orders to Strike Jacuzzi’s Answer	10/05/20	27	6637–6638
61	Recorder’s Transcript of Pending Motions	10/05/20	27	6639–6671
62	Objections to Plaintiff’s Proposed “Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath’s Answer as to Liability Only” Submitted October 9, 2020	10/16/20	27	6672–6712
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
64	Brief Responding to Plaintiffs’ Request for Inflammatory, Irrelevant, Unsubstantiated, or Otherwise Inappropriate Jury Instructions	10/20/20	28	6751–6770
65	Appendix of Exhibits to Brief Responding to Plaintiffs’ Request for Inflammatory, Irrelevant, Unsubstantiated, or Otherwise Inappropriate Jury Instructions	10/20/20	28	6771–6904
66	Court Minutes – Status Check: Decision on Proposed Order	10/21/20	28	6905
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)	11/10/20	28	6906–6923

	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 Answer Re: Liability			
68	Transcript of Proceedings: Motion to Strike	11/19/20	28 29	6924–7000 7001–7010
69	Notice of Entry of Order (Striking Defendant Jacuzzi, Inc., d/b/a Jacuzzi Luxury Bath's Answer as to Liability Only)	11/24/20	29	7011–7048
70	Court Minutes: All Pending Motions	12/07/20	29	7049
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
72	Court Minutes – Hearing: Jury Instructions	12/21/20	29	7116–7117
73	Court Minutes – Decision	12/21/20	29	7118
74	Transcript of Proceedings: Jury Instructions	12/21/20	29	7119–7171
75	Minute Order	12/28/20	29	7172–7176
76	Minute Order	12/29/20	29	7177
77	Notice of Entry of Order Re-Opening Discovery	01/15/21	29	7178–7186
78	Notice of Entry of Order Regarding Motions in Limine	01/15/21	29	7187–7195
79	Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21	04/29/21	29	7196–7229
80	Plaintiffs' Appendix to Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's	04/29/21	29 30 31	7230–7250 7251–7500 7501–7623



	Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21			
81	Amended Order Setting Firm Civil Jury Trial, Pre-Trial Conference and Calendar Call	05/06/21	31	7624–7629
82	Minute Order	05/06/21	31	7630
83	Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath's Opposition to Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21 and Countermotion to Clarify Issues That the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial	05/13/21	31	7631–7646
84	Appendix of Exhibits in Support of Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath's Opposition to Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21	05/13/21	31 32	7647–7750 7751–7797
85	Notice of Taking Multiple Videotaped Depositions for Purposes of Trial Preservation Outside the State of Nevada	05/28/21	32	7798–7802
86	Plaintiffs' Reply in Support of Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21 and Opposition to Jacuzzi's Countermotion to Clarify Issues that the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial and FirstStreet	06/01/21	32	7803–7858

	for Boomers and Beyond, Inc. and AITHR Dealer, Inc.’s Joinder Thereto			
87	Minute Order	06/04/21	32	7859
88	Minute Order	06/18/21	32	7860
89	Amended Minute Order	06/18/21	32	7861
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
91	Court Minutes – All Pending Motions	07/06/21	32	7889
92	Minute Order	07/13/21	32	7890
93	Court Minutes – All Pending Motions	07/14/21	32	7891–7892
94	Recorder’s Transcript of Pending Motions	07/14/21	32 33	7893–8000 8001–8019
95	Minute Order Re: Plaintiffs’ Motion to Reconsider the Court’s Order Granting in Part, and Denying in Part, Jacuzzi’s Motion to Reconsider MILs Nos. 1, 4, 13, and 21	08/17/21	33	8020–8023
96	Order Granting Plaintiffs’ Motion to Reconsider the Court’s Order Granting in Part, and Denying in Part, Jacuzzi’s Motion to Reconsider MILs Nos. 1, 4, 13, and 21	09/29/21	33	8024–8038
97	Order Granting Jacuzzi’s Countermotion to Clarify Issues that the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial	09/29/21	33	8039–8047

**ALPHABETICAL TABLE OF CONTENTS TO APPENDIX**

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
89	Amended Minute Order	06/18/21	32	7861
81	Amended Order Setting Firm Civil Jury Trial, Pre-Trial Conference and Calendar Call	05/06/21	31	7624–7629
84	Appendix of Exhibits in Support of Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath’s Opposition to Plaintiffs’ Motion to Reconsider the Court’s Order Granting in Part, and Denying in Part, Defendant Jacuzzi’s Motion to Reconsider the Court’s Order Denying Defendant’s Motions in Limine Nos. 1, 4, 13, and 21	05/13/21	31 32	7647–7750 7751–7797
42	Appendix of Exhibits in Support of Defendant Jacuzzi Inc. Doing Business ad Jacuzzi Luxury Bath’s Evidentiary Hearing Closing Brief	12/06/19	24 25	5898–6000 6001–6178
24	Appendix of Exhibits in Support of Defendant Jacuzzi Inc.’s Opposition to Plaintiffs’ Motion to Expand Scope of Evidentiary Hearing	08/19/19	9	2063–2241
65	Appendix of Exhibits to Brief Responding to Plaintiffs’ Request for Inflammatory, Irrelevant, Unsubstantiated, or Otherwise Inappropriate Jury Instructions	10/20/20	28	6771–6904
16	Appendix of Exhibits to Defendant Jacuzzi Inc.’s Opposition to 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	05/28/19	7 8	1613–1750 1751–1778
47	Appendix of Exhibits to: Objections to “Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath’s Answer to Liability Only” with Counter-Proposed Order	05/22/20	26	6277–6478

14	Appendix to 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	05/15/19	6 7	1348–1500 1501–1592
26	Appendix to Plaintiffs’ Supplement to Motion to Expand Scope of Evidentiary Hearing on Order Shortening Time – Volume I of II	08/20/19	9 10 11 12	2245–2250 2251–2500 2501–2750 2751–2904
27	Appendix to Plaintiffs’ Supplement to Motion to Expand Scope of Evidentiary Hearing on Order Shortening Time – Volume I of II	08/20/19	12 13 14 15 16	2905–3000 3001–3250 3251–3500 3501–3750 3751–3882
64	Brief Responding to Plaintiffs’ Request for Inflammatory, Irrelevant, Unsubstantiated, or Otherwise Inappropriate Jury Instructions	10/20/20	28	6751–6770
1	Complaint	02/03/16	1	1–13
19	Court Minutes – All Pending Motions	07/01/19	8	1792–1793
91	Court Minutes – All Pending Motions	07/06/21	32	7889
93	Court Minutes – All Pending Motions	07/14/21	32	7891–7892
73	Court Minutes – Decision	12/21/20	29	7118
57	Court Minutes – Evidentiary Hearing	09/22/20	27	6573
72	Court Minutes – Hearing: Jury Instructions	12/21/20	29	7116–7117
66	Court Minutes – Status Check: Decision on Proposed Order	10/21/20	28	6905
51	Court Minutes Re: All Pending Motions	06/29/20	27	6506–6508
60	Court Minutes Re: Competing Orders to Strike Jacuzzi’s Answer	10/05/20	27	6637–6638
35	Court Minutes Re: Evidentiary Hearing	10/01/19	19	4595

28	Court Minutes Re: Plaintiff's Motion to Expand Scope of Evidentiary Hearing	08/21/19	16	3883
70	Court Minutes: All Pending Motions	12/07/20	29	7049
83	Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath's Opposition to Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21 and Countermotion to Clarify Issues That the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial	05/13/21	31	7631–7646
40	Defendant Jacuzzi Inc. Doing Business ad Jacuzzi Luxury Bath's Evidentiary Hearing Closing Brief	12/02/19	24	5850–5893
6	Defendant Jacuzzi Inc.'s Amended Answer to Plaintiffs' Fourth Amended Complaint	03/07/18	1	66–75
15	Defendant Jacuzzi Inc.'s Opposition to 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	05/28/19	7	1593–1612
23	Defendant Jacuzzi Inc.'s Opposition to Plaintiffs' Motion to Expand Scope of Evidentiary Hearing	08/19/19	9	2046–2062
41	Errata to Defendant Jacuzzi Inc. Doing Business ad Jacuzzi Luxury Bath's Evidentiary Hearing Closing Brief	12/06/19	24	5894–5897
2	First Amended Complaint	03/25/16	1	14–23
5	Fourth Amended Complaint	06/21/17	1	50–65
55	Jacuzzi's Notice of Waiver of Phase 2 Hearing and Request to Have Phase 2 of Evidentiary	09/18/20	27	6556–6561

	Hearing Vacated			
12	Minute Order	03/12/19	6	1317–1318
34	Minute Order	09/26/19	19	4593–4594
37	Minute Order	10/08/19	19	4737–4740
44	Minute Order	03/05/20	26	6258–6261
48	Minute Order	05/28/20	26	6479
53	Minute Order	07/20/20	27	6550
59	Minute Order	09/29/20	27	6636
75	Minute Order	12/28/20	29	7172–7176
76	Minute Order	12/29/20	29	7177
82	Minute Order	05/06/21	31	7630
87	Minute Order	06/04/21	32	7859
88	Minute Order	06/18/21	32	7860
92	Minute Order	07/13/21	32	7890
11	Minute Order Re: Pending Motions	03/04/19	6	1316
18	Minute Order Re: Pending Motions	03/04/19	8	1791
95	Minute Order Re: Plaintiffs’ Motion to Reconsider the Court’s Order Granting in Part, and Denying in Part, Jacuzzi’s Motion to Reconsider MILs Nos. 1, 4, 13, and 21	08/17/21	33	8020–8023
45	Motion to Clarify the Parameters of the Waiver of Attorney-Client Privilege that Would be Required in Order to Present Evidence that it was Acting on Advice of Counsel	05/22/20	26	6262–6266
69	Notice of Entry of Order (Striking Defendant Jacuzzi, Inc., d/b/a Jacuzzi Luxury Bath’s Answer as to Liability Only)	11/24/20	29	7011–7048

78	Notice of Entry of Order Regarding Motions in Limine	01/15/21	29	7187–7195
77	Notice of Entry of Order Re-Opening Discovery	01/15/21	29	7178–7186
85	Notice of Taking Multiple Videotaped Depositions for Purposes of Trial Preservation Outside the State of Nevada	05/28/21	32	7798–7802
46	Objections to “Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath’s Answer to Liability Only” with Counter-Proposed Order	05/22/20	26	6267–6276
62	Objections to Plaintiff’s Proposed “Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath’s Answer as to Liability Only” Submitted October 9, 2020	10/16/20	27	6672–6712
8	Opposition to 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	01/24/19	2 3 4	436–500 501–750 751–921
54	Order for Evidentiary Hearing	07/22/20	27	6551–6555
97	Order Granting Jacuzzi’s Countermotion to Clarify Issues that the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial	09/29/21	33	8039–8047
96	Order Granting Plaintiffs’ Motion to Reconsider the Court’s Order Granting in Part, and Denying in Part, Jacuzzi’s Motion to Reconsider MILs Nos. 1, 4, 13, and 21	09/29/21	33	8024–8038
49	Plaintiffs’ (1) Response to Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath’s Objections to Plaintiffs’ Proposed “Order Striking Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath’s Answer as to Liability Only”; and (2) Opposition to Jacuzzi’s Motion Clarify the Parameters of the Waiver	06/05/20	26	6480–6494

	of the Attorney Client Privilege That Would be Required to Present That It was Acting on the Advice of Counsel			
39	Plaintiffs' Appendix to Plaintiffs' Evidentiary Hearing Closing Brief	11/04/19	20 21 22 23 24	4806–5000 5001–5250 5251–5500 5501–5750 5751–5849
80	Plaintiffs' Appendix to Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21	04/29/21	29 30 31	7230–7250 7251–7500 7501–7623
33	Plaintiffs' Evidentiary Hearing Brief	09/18/19	19	4585–4592
38	Plaintiffs' Evidentiary Hearing Closing Brief	11/04/19	19 20	4741–4750 4751–4805
13	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	05/15/19	6	1319–1347
22	Plaintiffs' Motion to Expand Scope of Evidentiary Hearing	08/09/19	8 9	1974–2000 2001–2045
79	Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21	04/29/21	29	7196–7229
7	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	01/10/19	1 2	76–250 251–435



43	Plaintiffs' Reply Defendant Jacuzzi Inc. Doing Business as Jacuzzi Luxury Bath's Evidentiary Hearing Closing Brief	12/31/19	25 26	6179–6250 6251–6257
29	Plaintiffs' Reply in Support of Motion to Expand Scope of Evidentiary Hearing	08/21/19	16 17	3884–4000 4001–4010
86	Plaintiffs' Reply in Support of Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21 and Opposition to Jacuzzi's Countermotion to Clarify Issues that the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial and FirstStreet for Boomers and Beyond, Inc. and AITHR Dealer, Inc.'s Joinder Thereto	06/01/21	32	7803–7858
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 results show? You agreed that it showed injury, you agree that it  
2 showed people slipping? And he says, yes. That's the email that needs  
3 to be produced to the Court.

4 THE COURT: All right. Is there such an email?

5 THE WITNESS: I don't recall an email of that. But what  
6 counsel is saying is consistent with my memory, that he was not  
7 searching this -- at this time frame these words. That was the search in  
8 regard to --

9 THE COURT: No, no, but --

10 THE WITNESS: -- Commissioner --

11 THE COURT: -- but -- hold on.

12 THE WITNESS: Yeah.

13 THE COURT: We need to know. I need to know or -- what  
14 words he was directed to search. All right? And that's what --

15 THE WITNESS: Uh-huh.

16 THE COURT: -- I need to know. And so --

17 THE WITNESS: I --

18 THE COURT: -- if the email said, search these 20 terms or  
19 seven terms or some terms that weren't on the list, I don't need to know  
20 where -- from what list many the terms came, I just need to know what  
21 he was told, right, if there's an email about that.

22 THE WITNESS: Okay. I recall an email in -- around May of  
23 2017, that Mr. Bachmeyer --

24 THE COURT: Okay.

25 THE WITNESS: -- mentioned yesterday, and there was an

1 email or communication in July or August of 2018. I don't recall --

2 THE COURT: Okay.

3 THE WITNESS: -- if there were specific search terms in that  
4 email or whether I may have discussed something --

5 THE COURT: Okay.

6 THE WITNESS: -- with Mr. Bachmeyer.

7 THE COURT: Mr. Roberts, is that something that, to the  
8 extent such an email exists, that -- would you have an objection to  
9 producing that? Because I think it would help us in understanding the  
10 directions that were given to Mr. Bachmeyer to locate responsive dock  
11 that's.

12 MR. ROBERTS: As long as we can produce that in camera  
13 without waiving the privilege, I have no objection. But I will say that --

14 THE COURT: Okay.

15 MR. ROBERTS: -- it's my recollection that the 20 terms did  
16 not go to Mr. Bachmeyer. He did follow-up on some of the hits from the  
17 20 terms, but he was not the person asked to search the 20 terms.  
18 Although --

19 THE COURT: Okay.

20 MR. ROBERTS: -- he was asked to search the earlier list of  
21 terms targeted to injury claims.

22 THE COURT: Okay. It sounds like we would know that if --

23 MR. ROBERTS: So --

24 THE COURT: -- we had the email though. So you --

25 MR. ROBERTS: Yes.

1 THE COURT: -- could produce that in camera? And then --

2 MR. CLOWARD: Thank you.

3 THE COURT: And then I'll advise the parties whether it's my  
4 inclination to -- to disclose it. Okay?

5 MR. ROBERTS: Okay.

6 THE COURT: Thank you.

7 MR. ROBERTS: Thank you.

8 MR. CLOWARD: And we've requested a copy of the  
9 transcript. So we can refer specifically to what Mr. Bachmeyer said, and  
10 we can get that to Lee so that he understands exactly what is responsive  
11 to that question.

12 THE COURT: Very well?

13 MR. CLOWARD: Because I believe that the testimony was  
14 Mr. Bachmeyer received results from other folks who had performed  
15 other searches, and he reviewed those documents and saw injury  
16 and people slipping and falling.

17 So I guess the broader request that we would also ask is, is  
18 that the results that were collected as a result of this search be provided  
19 to the Court. So, first off, the exhibit -- or I mean email that Kurt  
20 Bachmeyer received, and then the entirety of the search that Jacuzzi  
21 obtained. Because then the Court can just simply look at those, compare  
22 them with what was produced to Commissioner Bulla, and if there's  
23 anything that's missing, then that will be very clear and convincing  
24 evidence that information was not provided intentionally.

25 THE COURT: What would be your response to that,

1 Mr. Roberts?

2 MR. ROBERTS: I believe that what he is asking for, the  
3 response to the hits on the 20 terms, is exactly what was already given  
4 to Commissioner Bulla. So we would be giving you the same thing that  
5 was given to Commissioner Bulla.

6 MR. CLOWARD: It's not.

7 MR. ROBERTS: But --

8 MR. CLOWARD: And I'll get there. It's not. I'm sorry to cut  
9 him off, but it's thought. She was given a -- and he's -- I don't -- he's not  
10 trying to do. He's misspeaking though. It was a spreadsheet that was  
11 given to Commissioner Bulla. It was a spreadsheet.

12 MR. ROBERTS: It's my understanding that the emails  
13 containing the hits were sent in the form of spreadsheets. So that's what  
14 he was reviewed was a spreadsheet.

15 THE COURT: Is --

16 MR. ROBERTS: That's what was sent to counsel, was a  
17 spreadsheet. That's how the hits are exported is into an Excel  
18 spreadsheet.

19 THE COURT: Do I have access --

20 MR. ROBERTS: That's my understanding.

21 THE COURT: -- to what was provided to Commissioner Bulla  
22 in --

23 MR. CLOWARD: It's in the vault.

24 THE COURT: -- in --

25 MR. CLOWARD: She placed it in the vault.



1 THE COURT: And that was in camera production?

2 MR. CLOWARD: Yes.

3 THE COURT: All right.

4 MR. ROBERTS: And we have no objection to the Court  
5 accessing that. And --

6 THE COURT: Okay.

7 MR. ROBERTS: And I will represent to the Court that we will  
8 try to locate those emails, spreadsheets. And to the extent that there's  
9 any difference or we can --

10 THE COURT: All right.

11 MR. ROBERTS: -- provide that for the Court to --

12 THE COURT: Thank you. So I'll --

13 MR. ROBERTS: -- to compare.

14 THE COURT: -- get that, I'll look it over. I'm going to get the  
15 email from Mr. Roberts in camera that went to Mr. Bachmeyer regarding  
16 the scope of his review, including what search terms he was asked to  
17 look at.

18 MR. CLOWARD: In addition --

19 THE COURT: Okay?

20 MR. CLOWARD: -- to the email that he specifically received  
21 and opened up and reviewed, correct?

22 THE COURT: Well, I think that's relevant. I think I need to  
23 know --

24 Mr. Roberts, I need to know what he was asked to do, and  
25 then the results of that. So I think both emails; the email --

1 MR. CLOWARD: Thank you.

2 THE COURT: -- the email that directed him to do something,  
3 and then the email that said, here are all the documents. So if you could  
4 get both of those to me in camera, I would greatly appreciate that.

5 MR. ROBERTS: I can, but I'd like to clarify based on my  
6 understanding that, if you remember, he said, I was copied on the  
7 results. The letter asking that something be done was not sent to him. It  
8 was sent to someone else, and then he was copied on the results. That's  
9 my understanding.

10 THE COURT: All right. All right. I'll accept that unless Mr.  
11 Templer testifies otherwise.

12 MR. ROBERTS: Okay.

13 THE COURT: So thank you. I can accept that.

14 All right. So there may not be an email directly to Mr.  
15 Bachmeyer.

16 MR. CLOWARD: But I do still want the results that he  
17 received.

18 THE COURT: We're going to get that. He said he's going  
19 to --

20 MR. ROBERTS: Yes.

21 THE COURT: -- give me the email.

22 MR. CLOWARD: Okay.

23 THE COURT: Yeah. We've got that covered.

24 MR. CLOWARD: Thank you.

25 THE COURT: Okay.

1 MR. CLOWARD: I just want -- that's the -- thank you. Okay.

2 THE COURT: Yeah.

3 BY MR. CLOWARD:

4 Q You agree --

5 THE COURT: So when can I get that, Mr. Roberts?

6 MR. ROBERTS: I can --

7 THE COURT: Tomorrow morning --

8 MR. ROBERTS: -- attempt to retrieve --

9 THE COURT: -- perhaps?

10 MR. ROBERTS: -- that with Mr. Templer tonight after the

11 hearing and would provide it to the Court in the morning if we --

12 assuming -- we should be able to retrieve it remotely from my office.

13 THE COURT: Perfect. Thank you.

14 MR. ROBERTS: Is that correct, Mr. Templer? Should be?

15 THE WITNESS: It should be, yes.

16 MR. ROBERTS: Yeah.

17 THE COURT: All right. Very good. Thank you.

18 MR. ROBERTS: I'm not in possession of a copy, but I did

19 review those emails previously without receiving a copy of them.

20 THE COURT: Understood. I accept that. Thank you. All  
21 right. Let's go.

22 MR. CLOWARD: Okay.

23 THE COURT: Let's go about five, ten more minutes and then  
24 we're going to take a break.

25 MR. CLOWARD: You got it.

1 THE COURT: All right.

2 MR. CLOWARD: All right. Now -- and I'll try and speed up  
3 the pace, Your Honor. I'm sorry. I'm straggling a little bit. And so --

4 THE COURT: No. Hey, you guys have the whole week, and  
5 then maybe some time next week. So --

6 MR. CLOWARD: Okay.

7 BY MR. CLOWARD:

8 Q Mr. Templer, you agree that it was told -- I guess you agree  
9 that it was yourself and Mr. Cools who were the ones -- right here, the  
10 documents were reviewed by Jacuzzi's in-house counsel with my  
11 assistance. My assistance, meaning Mr. Cools, and then in-house  
12 counsel would be yourself, correct?

13 A That's what it -- the way I would interpret it, yes.

14 Q Were -- did you, in fact, review the results of the 20 agreed  
15 upon search terms?

16 A Yes.

17 Q And that was done with Mr. Cools?

18 A Yeah.

19 Q Was there anyone else involved in that review?

20 A I guess I'd have to ask at what period of time. And the  
21 reason I hesitate on that is -- I don't know if you want me to elaborate.  
22 Mr. Bachmeyer was involved at a later time, after Commissioner Bulla's  
23 order, reviewing some of those earlier results.

24 Q Anyone --

25 A So the initial review, I don't recall anybody else being

1 involved with other than counsel. But there was input from at least  
2 Mr. Bachmeyer later on that.

3 Q Okay.

4 A And that's what he was explaining yesterday.

5 Q Okay. Anyone other than yourself, Mr. Cools, and  
6 Mr. Bachmeyer that would have participated in the review of that  
7 information?

8 A Of the results?

9 Q Yes.

10 A Mr. -- other people at Snell & Wilmer could have looked at it.  
11 But inside Jacuzzi, I don't think anybody else reviewed the results.

12 Q Outside of Jacuzzi, at Snell & Wilmer, who are you aware of  
13 in addition to Mr. Cools that actually participated of those -- in review of  
14 those documents?

15 A Am I actually aware of? Nobody.

16 Q Okay.

17 A But I know that there's other people at Snell & Wilmer that  
18 worked on the case.

19 Q Understood.

20 A So I don't know their involvement.

21 Q Understood. I just wanted to know if you were particularly  
22 aware of anybody. Okay.

23 And then you agree that -- still in disbelief, I had questions to  
24 Mr. Cools, and he sent me a letter saying, hey, look, we've -- we've  
25 looked, and there's -- there's nothing there. We're going to go ahead

1 and relook. We've done that search. And there's nothing there.

2 MR. CLOWARD: Let's pull up that letter. It's Exhibit 188,  
3 Brandon.

4 THE COURT: So where in -- 188 is the big, long opposition  
5 with attachments.

6 THE WITNESS: Okay.

7 MR. CLOWARD: Page 89 I believe. Could I have that other  
8 binder, Ian, 180 through 192? Maybe the letter's not in there.

9 THE COURT: Well, maybe you can look for it at the break.

10 MR. CLOWARD: I'm sorry, Judge. I'll find it at the -- do you  
11 want to take -- can we take the break now, and I'll --

12 THE COURT: Yeah. Let's take our 15-minute recess now.  
13 And you can step down, Mr. Templer.

14 THE WITNESS: Thank you.

15 THE COURT: And we'll be back at 10:10 --

16 [Recess taken from 10:05 a.m. to 10:28 a.m.]

17 THE MARSHAL: All right. Department 2, come to order.  
18 Back on the record.

19 THE COURT: Go ahead, sit down.

20 A quick question for you guys. You know, I ask a lot of  
21 questions, and -- I -- you know, one time I was appealed because they  
22 said I was helping one side or the other side.

23 Maybe this is a question for Mr. Polsenberg back there. Are  
24 you guys --

25 MR. POLSENBERG: I haven't --

1 THE COURT: Are you guys --

2 MR. POLSENBERG: -- objected yet, Judge.

3 THE COURT: -- okay generally with me asking questions or  
4 would you prefer that I -- you know, that -- like Mr. Cloward, you know,  
5 ask whatever questions he needs to ask to support his case, and then  
6 you ask whatever questions you need to ask, Mr. Roberts, for your case,  
7 or if you guys would prefer -- and this is tedious stuff -- if you guys  
8 would prefer I just sit here and not ask questions, I think I would honor  
9 that unless it was something very -- super important that I think is being  
10 overlooked.

11 MR. ROBERTS: Your Honor, we have no objection. If we  
12 have a specific question, we'll object --

13 THE COURT: Okay.

14 MR. ROBERTS: -- but I think it's helpful, just like a jury gets  
15 to ask questions --

16 THE COURT: Right.

17 MR. ROBERTS: -- that are -- about what's important to them,  
18 I think the Court should have the same privilege.

19 THE COURT: All right. I mean, you might think some of my  
20 questions are --

21 MR. ROBERTS: If I do, I'll object --

22 THE COURT: -- not relevant, but --

23 MR. ROBERTS: -- Your Honor.

24 THE COURT: Object if you think that some question  
25 shouldn't be asked.

1 MR. CLOWARD: And --

2 THE COURT: Mr. Cloward, are you okay with that?

3 MR. CLOWARD: Yeah. For the record, Plaintiffs actually  
4 appreciate it. I mean, the --

5 THE COURT: Okay.

6 MR. CLOWARD: -- the purpose of the hearing is to get the  
7 Court whatever information it feels it needs. So we're --

8 THE COURT: All right.

9 MR. CLOWARD: -- happy to have that.

10 THE COURT: Thank you. Let's keep going.

11 MR. CLOWARD: Okay.

12 THE COURT: Did you find the -- yes?

13 MR. ROBERTS: Before Mr. Cloward starts, I need to put  
14 something on the record.

15 THE COURT: Okay.

16 MR. ROBERTS: It won't take long, Your Honor.

17 THE COURT: No. Take your time. We've got to make good  
18 records here.

19 MR. ROBERTS: I did have a conference with the deponent  
20 [sic] regarding the assertion of a privilege at the break.

21 THE COURT: Deponent? You mean the witness?

22 MR. ROBERTS: The witness. I'm sorry. That was *Coyote*  
23 *Springs*. I think the -- I was dealing with depositions. But, yes, with the  
24 witness. And in *Coyote Springs* it said that, if you discuss privilege at a  
25 break, counsel for the deponent -- in this case, the witness -- must place



1 on the record, one, that a conference took place; two, the subject of the  
2 conference; and three, the result of the conference, i.e., whether to assert  
3 the privilege or not.

4 I was concerned that I may have overstepped my role as  
5 counsel in agreeing to provide what are arguably and probably  
6 privileged documents to the Court for in camera review. Since the  
7 privilege is owned by Jacuzzi, I felt that I should --

8 THE COURT: Ahh-ahh.

9 MR. ROBERTS: -- confer with the witness, explain to him  
10 what I thought we would be producing pursuant to your request. And  
11 Mr. Polsenberg discussed whether or not the -- you know, just confirmed  
12 my understanding that as long as the Court represented that we would  
13 not be waiving privilege by providing to you, that he concurred that it  
14 would not waive privilege to provide them to the Court from in camera  
15 inspection.

16 And as a result of that conference, we decided to waive the  
17 privilege for the limited purpose of producing the requested emails to  
18 the Court for in camera review. But we did not waive the privilege for  
19 any broader purpose of providing those into the public record.

20 THE COURT: Mr. Cloward, do you understand --

21 MR. CLOWARD: Yeah.

22 THE COURT: -- do you understand the scope now of the  
23 submission of those documents for the Court in camera?

24 MR. CLOWARD: Absolutely. I'm --

25 THE COURT: All right. And so --

1 MR. ROBERTS: And I'll also just re-ask Mr. Templer to  
2 confirm that he thought it would be feasible for us to be able to gather  
3 those documents after court in order to provide them to the Court in the  
4 morning. To the extent --

5 THE COURT: Mr. Templer?

6 MR. ROBERTS: -- that's a slightly different subject matter, I  
7 wanted to disclose that.

8 THE COURT: Okay. Very good. Also, as I've indicated, I will  
9 receive those in camera documents and review those in camera  
10 documents. And if I intend to rely upon them, I will let the parties know.

11 MR. ROBERTS: Thank you, Your Honor.

12 THE COURT: Okay? Thank you. Let's continue.

13 MR. CLOWARD: Okay. Thank you.

14 Brandon, if you'll pull up that next exhibit.

15 BY MR. CLOWARD:

16 Q Okay. Now, this is the letter --

17 MR. CLOWARD: Your Honor, this is not in the binder. I'm  
18 going to have my staff --

19 THE COURT: Okay.

20 MR. CLOWARD: -- bring it down and have it inserted. This is  
21 the letter we couldn't find.

22 THE COURT: Very good. Thank you.

23 BY MR. CLOWARD:

24 Q So you agree that in April --

25 MR. CLOWARD: Can you pull it down just so we could see

1 the date, Brandon?

2 BY MR. CLOWARD:

3 Q On April 23rd, 2018, Jacuzzi's counsel, Mr. Cools, sent a letter  
4 to myself, indicated that, Jacuzzi luxury bath search for prior incidents  
5 related to the claims asserted in this case, in light of Plaintiffs' expanded  
6 design criticisms in this case, as agreed, Jacuzzi has performed a search  
7 for prior incidents using the search terms you proposed. As part of the  
8 search, the company looked not only for incidents involving the Jacuzzi  
9 5229 bath -- walk-in bathtub, but also other Jacuzzi walk-in bathtub  
10 models that had different designs, dimensions, and characterizations.

11 Did I read that correctly?

12 A The last word's characteristics, not characterizations.

13 Q Character --

14 A But other than that, yes.

15 Q Okay. And you agree that Jacuzzi represented that, the  
16 search is now complete, and no responsive documents were discovered,  
17 correct?

18 A That's what it letter says, yes.

19 Q Okay. So was that search performed before the December  
20 supplementation of the discovery?

21 A Which --

22 Q This search that Mr. Cools --

23 A I understand that. Which December? The '17 or '18?

24 Q '18 -- or '17. December '17, 2017.

25 A Again, as I stated earlier, I don't think that the December '17

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1 production dealt with this issue. But to answer your question, this  
2 search was done after December 2017.

3 Q Okay. And you agree -- I don't want there to be confusion in  
4 the record on this. You don't think that that December '17 -- 2017  
5 interrogatory amendment had to do with this issue, but that's what your  
6 counsel represented in court, in the pleadings that we went over, right?

7 A I don't think that's an accurate characterization.

8 MR. CLOWARD: I don't want to replay it, Your Honor. I  
9 will --

10 THE COURT: You've shown the documents. They're in the  
11 records.

12 MR. CLOWARD: Yeah.

13 THE COURT: I know what they say, and the timing. So you  
14 can argue that at the end.

15 MR. CLOWARD: Okay.

16 THE COURT: Thank you.

17 MR. CLOWARD: Now, Brandon, will you pull up Bill  
18 Demeritt's deposition testimony, 6115 through 20?

19 THE WITNESS: Is there an exhibit I should be looking at?

20 MR. CLOWARD: No. I'm going to show you. Page 61, lines  
21 15 through 20.

22 [Whereupon a video record was played in open court at 10:35 a.m.  
23 and paused at 10:36 a.m.]

24 BY MR. CLOWARD:

25 Q Okay. So, Mr. Templer, you agree that claims of injury are

1 routed to either yourself or Mr. Demeritt, true?

2 A Again, this gets into the whole discussion earlier about what  
3 is a claim. But like if there was a claim from an attorney, yes, I would  
4 expect it to. If somebody called in and made a statement to a customer  
5 service agent, I don't know if it would be or not.

6 Q You agree that Mr. Demeritt was the Rule 30(b)(6) designee  
7 prepared and produced on behalf of Jacuzzi with regard to this issue,  
8 right?

9 A I don't recall what the topics were. He was produced as a  
10 20(b)(6) deponent. I don't recall which deponent -- which specific  
11 categories.

12 Q Okay. Do you agree with his testimony as stated?

13 A Again, it depends on the type of claim or -- I don't know if  
14 he's referring to a complaint filed in a lawsuit or somebody just calling in  
15 and making a statement to one of our customer service agents.

16 Q Okay.

17 MR. CLOWARD: Now, Brandon, go to page 62, lines 10  
18 through 21.

19 [Video resumed at 10:37 a.m., and ended at 10:38 a.m.]

20 BY MR. CLOWARD:

21 Q Now, Mr. Templer, you are present during that entire  
22 deposition, true?

23 A True.

24 Q You could have talked to Mr. Cools and Mr. Demeritt during  
25 the -- during the breaks, correct?

1 MR. ROBERTS: Objection, Your Honor. I believe that  
2 mischaracterizes the law. Once a witness is sworn, he's not supposed to  
3 talk to him.

4 MR. CLOWARD: I don't believe -- my question was, was --  
5 could you have done that? The law doesn't prohibit them from doing it.  
6 What the law says is that if they do that, then they need to come in -- or if  
7 they do that, then it's fair game for me to entire into that. *Coyote*  
8 *Springs* doesn't prevent anyone from doing anything. All that it says is I  
9 get to inquire.

10 MR. ROBERTS: Your Honor, I --

11 MR. CLOWARD: So that's a mis- --

12 MR. ROBERTS: I'm not talking just about *Coyote Springs*.  
13 There -- there's case law out there that says woodshedding a witness or  
14 advising a witness as to what he should testify to once he's taken the  
15 oath is improper and unethical. And Mr. Templer is an attorney.

16 THE COURT: Well, gentlemen, I know you can't inquire --

17 MR. ROBERTS: In any event, the objection --

18 THE COURT: -- while --

19 MR. ROBERTS: -- is calls for a legal opinion.

20 THE COURT: Yes.

21 MR. ROBERTS: Thank you, Your Honor.

22 THE COURT: Yeah. Let's accept that. That does call for a  
23 legal opinion as to whether you can talk to a witness on a break but  
24 during the middle of his testimony.

25 MR. CLOWARD: Okay.

1 THE COURT: I know that I always admonish a witness not to  
2 discuss his testimony after -- in a break during trial. I would assume the  
3 same thing would apply during a deposition. I haven't actually  
4 considered that. But I'm going to sustain the objection.

5 MR. CLOWARD: Okay.

6 THE COURT: Okay.

7 BY MR. CLOWARD:

8 Q Mr. Templer, at any time, did you notify anyone that, you  
9 know, "I don't think Mr. Demeritt's testimony was accurate when he said  
10 that, we don't -- we don't -- I'm not aware of any injury claims?

11 MR. ROBERTS: Objection to the extent it calls for  
12 communications with Snell & Wilmer.

13 THE WITNESS: I don't think --

14 THE COURT: So --

15 MR. CLOWARD: I'm not asking for the substance of the  
16 communication, just whether that took place, which is --

17 MR. ROBERTS: Well --

18 MR. CLOWARD: -- what the Court said I could do.

19 MR. ROBERTS: But --

20 THE COURT: Yeah. So he's asking not regarding the  
21 substance of communications with --

22 MR. ROBERTS: But that is the substance.

23 THE COURT: -- Snell & --

24 MR. ROBERTS: The question itself asks for the --

25 THE COURT: Let's hear the --

004269

004269

1 MR. ROBERTS: -- substance.

2 THE COURT: Let's hear the question one more time.

3 BY MR. CLOWARD:

4 Q Did he ever at any point indicate any concern about  
5 Mr. Demeritt's testimony not being truthful?

6 THE COURT: Oh, indicate. Specify who you're referring to  
7 as the indicatee. All right? Who -- you know, because I don't want him  
8 to discuss with -- I don't want him to discuss when he said to outside  
9 counsel without the accuracy of a statement, because I think that's  
10 delving into more than the subject matter. It's getting into an actual  
11 position taken by the parties. All right?

12 So you can ask him, did you discuss with him or with Snell &  
13 Wilmer the accuracy, but not what --

14 MR. CLOWARD: Yeah.

15 THE COURT: -- what he said to Snell & Wilmer about the  
16 accuracy.

17 MR. CLOWARD: Okay.

18 THE COURT: I hope you understand the distinction.

19 MR. CLOWARD: Yeah. Understood. Thank you --

20 THE COURT: All right.

21 MR. CLOWARD: -- Your Honor.

22 THE COURT: Thank you. Does that satisfy your --

23 MR. ROBERTS: Yes.

24 THE COURT: Okay. Very well.

25 BY MR. CLOWARD:



1 Q Mr. Templer, did you ever discuss with Snell & Wilmer the  
2 accuracy of Mr. Demeritt's testimony?

3 A I did discuss with Snell & Wilmer the testimony, yes.

4 Q Okay. And specifically the accuracy of the testimony?

5 A I don't recall specifically.

6 Q Okay.

7 A Possibly.

8 Q And my question earlier was -- you know, you sat in the  
9 deposition during the entirety of the meeting, right?

10 A Correct.

11 Q Did you discuss during the pendency of the deposition the  
12 accuracy of Mr. Demeritt's or was it after?

13 A Could you restate that? I'm sorry. I missed part of it.

14 Q Sure. I asked you a moment ago whether you discussed the  
15 accuracy of Mr. Demeritt's testimony with outside counsel. And you  
16 indicated you did. And so what I wanted to do was narrow down the  
17 time frame. Was it during the deposition, was it after the deposition?  
18 When was that?

19 A That I don't remember.

20 Q Do you recall doing that during the deposition?

21 A Again, I don't remember when that conversation took place.

22 Q Okay. And you were there during the deposition, right? You  
23 remember the deposition?

24 A Yes.

25 Q You were personally there?

1 A Correct.

2 Q And do you disagree with my statement that never a single  
3 time did Jacuzzi admit to a single claim, incident, or anything involving  
4 injury or walk-in tub prior to Ms. Cunnison's incident?

5 A You mean during that deposition was that ever -- is that what  
6 you're asking?

7 Q Do you disagree with my statement that Jacuzzi never  
8 admitted a single time during the deposition to a single claim, incident,  
9 or anything involving injury in a walk-in tub prior to Ms. Cunnison's  
10 incident, true?

11 A I don't recall all the questions, but I don't think that was  
12 ever -- anything was ever mentioned at that deposition, no.

13 Q Okay. Do you ever remember any discussion during that  
14 deposition of a single prior claim, incident, or injury in the walk-in tub?

15 A No. That's what I'm saying. I don't recall what the questions  
16 were, but I don't recall that issue being discussed at the deposition. I  
17 don't recall any disclosure of anything at the deposition like that.

18 Q Okay. And you're aware at the deposition Mr. Demeritt also  
19 testified that there were no subsequent incidents, true?

20 A I don't recall.

21 Q Okay. We can raise that with Mr. Demeritt next week, but --

22 A I don't dispute what's in the deposition transcript; I just don't  
23 recall if that was discussed or not.

24 THE COURT: Understood. Not a problem.

25 MR. ROBERTS: Your Honor, I'm going to --

004272

004272

1 THE COURT: You're going to object after the fact? Okay.

2 MR. ROBERTS: Well --

3 THE COURT: To what?

4 MR. ROBERTS: And I was trying to find subsequent incidents  
5 or subsequent claims. It was my recollection he was asked about  
6 subsequent claims. But --

7 THE COURT: All right.

8 MR. ROBERTS: And as a risk manager, I think that's an  
9 important distinction. But --

10 THE COURT: It may very well be. So why don't you provide  
11 me -- whoever thinks it's relevant, provide me with whatever excerpts of  
12 a deposition, which is sworn testimony, for my review.

13 MR. CLOWARD: Sure.

14 THE COURT: All right?

15 MR. ROBERTS: We'll include that in our post-hearing brief.

16 MR. CLOWARD: We'll do that.

17 THE COURT: So whatever you think is appropriate.

18 All right. Thank you.

19 BY MR. CLOWARD:

20 Q And timewise, in the chronology of events, the deposition  
21 took place on May 24th, 2018, correct?

22 A I don't recall the date, but it sounds about right.

23 Q Okay. And as a result of the deposition testimony, do you  
24 remember during the deposition, after I'd asked Mr. Demeritt all the  
25 questions about prior and subsequent incidents, claims, things of those

004273

004273

1 natures, then I showed him a lawsuit that had been filed, and then I  
2 showed him a consumer product safety commission report? Do you  
3 remember that?

4 A I remember the -- yeah, I think remember the Baize complaint  
5 you showed him and the -- I believe you showed a CPSC filing.

6 Q Okay. And based on the discrepancy of the testimony and  
7 the documents that we had, we then filed a motion to strike on July 12 --  
8 or excuse me -- on June 22nd, 2018, correct?

9 A You filed a motion to strike. I don't know the date though.

10 Q Okay. I'm laying the -- do you disagree with that date?

11 A I just don't know the date.

12 Q Okay.

13 A I'm sure it's in the court file. So I have no reason to dispute  
14 it, if that's the accurate date.

15 Q Okay. And then on July 12, 2018, Jacuzzi's position in its  
16 opposition to Plaintiffs' motion to strike was that Mr. Demeritt had only  
17 been prepared to discuss prior claims and not subsequent, and that's  
18 why he forgot about the subsequent incidents, true?

19 A I don't think that's the entirety of the opposition. There was  
20 also a dispute about the Baize's complaint being an incident. But the  
21 part about him being prepared only for prior incidents, I do recall that.

22 Q Okay.

23 MR. CLOWARD: Now, Brandon, if you'll pull up Exhibit 177.  
24 This is the July 20, 2018 hearing. We're going to start at page 9.

25 THE COURT: Give me a moment to find that page.

1 MR. CLOWARD: You got it, Judge. 1-7-7. You don't have to  
2 highlight it.

3 BY MR. CLOWARD:

4 Q Now, you agree that -- this is -- this is me talking and I say,  
5 we are just concerned that somehow, coincidentally, we represent the  
6 only two people in the nation that have an injury and that have died as a  
7 result. Just coincidentally, my law firm, me, Ben Cloward, I'm the only  
8 person that represents anyone that's been hurt in a Jacuzzi tub. Yet  
9 despite the assertion made by Jacuzzi, I conducted hours of research,  
10 and when I say hours, I'm talking 10 to 15 hours of research.

11 And then Mr. -- or Commissioner Bulla says, okay, Mr. -- or, so,  
12 Mr. Cloward, I have a suggestion. Then on line 20 she says, so here's  
13 my suggestion: I'm going to make them turn everything over to you  
14 first. I'm going to continue the motion to strike the answer, but I'm  
15 going to have at Defendant not only turn over any similar incidents  
16 before, but also after.

17 Do you see where Commissioner Bulla said that she's going to  
18 have Jacuzzi turn over similar incidents, both before and after?

19 A I see that statement. That was my understanding of what the  
20 order ultimately from this hearing was.

21 Q Okay.

22 MR. CLOWARD: Go to the next page, Brandon, page 10.

23 BY MR. ROBERTS:

24 Q Commissioner Bulla and line 20, she says, now, I don't know  
25 how many injuries in this tub we've had. I recognize some of them may

004275

004275

1 be -- could maybe be an injured finger in shutting a door or there might  
2 be other issues and other types of injuries. But this is a very serious --  
3 obviously a serious product defect, as alleged, and I think it warrants an  
4 examination of the product itself.

5 Do you see where she said that?

6 A I can read that, yes.

7 Q Okay. And then on page 11 Commissioner Bulla says, and  
8 before a decision -- or actually, she starts off and she says, but I think --  
9 and this is on line 1 -- but I think in terms of looking at the injuries overall  
10 and then trying to place them -- I can't think of the word I'm looking for --  
11 on a continuum, you know, from less serious to more serious, I think  
12 understanding what kind of problems this jacuzzi tub had over time is  
13 relevant.

14 Do you agree that Commissioner Bulla is saying here, I think it's  
15 important, it's relevant to understand the kind of problems that the tub  
16 had?

17 MR. ROBERTS: Objection to the extent it calls for his  
18 personal interpretation of the order. The order is for this Court to  
19 determine -- to interpret.

20 THE COURT: I agree with that, but let's find out if he did  
21 anything with this information from the discovery commissioner, or I  
22 guess if this information was used in connection with determining what  
23 to produce. That's the ultimate issue here.

24 MR. CLOWARD: Okay. I'm just trying to think of how to ask  
25 my question without invading --

1 THE COURT: Right. Right. So this is difficult. Why don't  
2 you just ask him -- well, I don't want to tell you --

3 MR. ROBERTS: Well --

4 THE COURT: -- what to ask.

5 MR. CLOWARD: Yeah.

6 THE COURT: But --

7 MR. ROBERTS: I could make a suggestion if Mr. Cloward is  
8 open to it. But --

9 THE COURT: Very well.

10 MR. ROBERTS: You could ask him if he read that order  
11 contemporaneously or whether he was informed of his outside counsel's  
12 interpretation of the order.

13 THE COURT: And --

14 MR. CLOWARD: Well, but again --

15 THE COURT: Well, when you say --

16 MR. CLOWARD: -- then that goes to the --

17 THE COURT: When you say order, there is --

18 MR. ROBERTS: Well, the transcript.

19 THE COURT: -- certain comments in the transcript, and then  
20 there's a subsequent report of recommendation.

21 MR. ROBERTS: And I don't know that this witness personally  
22 reviewed either one of those or --

23 THE COURT: Well, let's find out that --

24 MR. ROBERTS: So --

25 THE COURT: -- and let's find out what he did with the

004277

004277

1 information. That's really what we need to know here, right?

2 MR. ROBERTS: Yes.

3 THE COURT: You understand, Mr. Cloward, that --

4 MR. CLOWARD: Yeah, I do. And I guess what I'm trying to --  
5 it was represented that -- by Mr. Roberts that Mr. Templer would serve  
6 as the corporate representative or spokesperson for Jacuzzi, and so I'm  
7 trying to straddle between his knowledge, but also I'm trying to prove to  
8 the Court that Jacuzzi knew of these certain things.

9 And so, you know, without calling Josh Cools, without  
10 calling the other folks involved, I should be able to go through the record  
11 with a representative and show, Jacuzzi was told this, Jacuzzi was told  
12 that, Jacuzzi was told this, regardless of whether Mr. Templer was told  
13 that or not. The fact of the matter is whether Commissioner Bulla told  
14 Jacuzzi this. That's what my line of inquiry is for.

15 THE COURT: Well, if --

16 MR. ROBERTS: Well --

17 MR. CLOWARD: And I think --

18 THE COURT: If indeed Mr. Templer had been designated as  
19 the corporate representative for purposes of the evidentiary hearing, I  
20 would agree with that because the state of mind, so to speak, of Jacuzzi  
21 is relevant as one of the Rule (b) factors. But I thought Mr. Roberts said  
22 at the beginning of this that he's not here in the capacity as the corporate  
23 representative by Jacuzzi, he's not speaking on behalf of Jacuzzi. Is that  
24 what you said?

25 MR. ROBERTS: It is --



1 MR. CLOWARD: Well --

2 MR. ROBERTS: -- because we don't think Rule 30 applies to  
3 an evidentiary --

4 MR. CLOWARD: Pull it up.

5 MR. ROBERTS: -- hearing. But I think I need to clarify  
6 further. Although Mr. Cloward is correct in that we represented that  
7 Mr. Templer made efforts to find out what was known to Jacuzzi, to the  
8 extent that outside counsel at Snell & Wilmer got the transcript, attended  
9 the hearing, heard what she said, and then advised Jacuzzi of what  
10 Commissioner Bulla said they had to do -- and no one at Jacuzzi read  
11 this transcript contemporaneously -- I don't know that he had a duty to --

12 THE COURT: Well, let's find out.

13 MR. ROBERTS: -- inform himself of Snell & Wilmer's  
14 deliberative --

15 THE COURT: Here's --

16 MR. ROBERTS: -- thought process --

17 THE COURT: I understand.

18 MR. ROBERTS: -- interpreting this.

19 THE COURT: Here's what --

20 MR. CLOWARD: May I respond?

21 THE COURT: -- I want to know, Mr. Cloward -- and I will in  
22 part sustain, in part overrule the objection because I think it is proper for  
23 you to inquire whether he independently read this transcript or the  
24 subsequent report of recommendation, and how he interpreted it in  
25 connection with the collection of documents for production. But if the

1 only source of learning about this transcript is in -- is with  
2 communications with outside counsel, I don't want you to go there.

3 MR. CLOWARD: Well, let me address a few things.

4 THE COURT: All right.

5 MR. CLOWARD: Number one, Mr. Roberts represented to  
6 us -- and so in our preparation for this -- this hearing -- that Mr. Templer  
7 would be speaking on behalf of Jacuzzi. So we planned on that. That  
8 was the way that we planned on. We relied on that comment, that's --  
9 that representation, and we've --

10 THE COURT: Right.

11 MR. CLOWARD: -- we've prepared that.

12 THE COURT: That's why I'm allowing you to ask his  
13 understanding of this part of the testimony, this part of Judge Bulla's  
14 order, provided Mr. Templer didn't obtain that information from outside  
15 counsel.

16 MR. CLOWARD: Well --

17 THE COURT: Right? So, yes, he -- I understand if I accept  
18 your representation, he's the designee of Jacuzzi for purposes of what  
19 Jacuzzi knew and did with the information, but not for purposes of  
20 revealing communications with outside counsel. I see a difference there.

21 MR. CLOWARD: And the point I guess that is -- I'm  
22 struggling with is that my responsibility is to show what Jacuzzi knew  
23 and what they didn't know. They can say all day long -- Mr. Roberts can  
24 say all day long -- he can continue to make objections and say, well, you  
25 know, maybe Mr. Templer didn't know that, or he didn't know that in

1 person. That's fine. If he doesn't know that in person, then let's have the  
2 witness that's the representative of speaks on behalf of Jacuzzi --

3 THE COURT: Well, there's --

4 MR. CLOWARD: -- so I can walk through everything --

5 THE COURT: There's a way to do this. Just say, did you  
6 develop an understanding of what this meant? And don't have him, how  
7 did you get that understanding? Who did you talk to? What did they  
8 say? And then we -- I don't want to know if he was getting advice of  
9 counsel from Snell & Wilmer, Weinberg Wheeler.

10 I do want to know what his understanding was, right, of this  
11 -- of Bonnie Bulla's orders, right, and how that understanding was used  
12 in collecting the documents that were produced.

13 MR. CLOWARD: Okay.

14 THE COURT: Now, your counsel -- your esteemed counsel is  
15 standing up -- or co-counsel is --

16 MR. ROBERTS: I just wanted --

17 THE COURT: -- standing up behind you.

18 MR. ROBERTS: I wanted to clarify that my objection --

19 THE COURT: Yes.

20 MR. ROBERTS: -- to the question is not based in any way on  
21 his status of a corporate representative or not. It's based on the fact  
22 that -- it's my understanding that regardless -- even if he'd been a  
23 30(b)(6) witness, he could not be asked questions about communication  
24 from outside counsel to Jacuzzi, giving them legal advice about what  
25 they had to produce. But --

1 THE COURT: And I ruled the way I did accepting that --

2 MR. ROBERTS: Right.

3 THE COURT: -- position. All right?

4 MR. ROBERTS: So I think -- I'm not objecting to the Court's  
5 ruling; I just wanted to clarify, based on Mr. Cloward's dialogue, with the  
6 Court. And I think the person who knows is someone at --

7 THE COURT: Right.

8 MR. ROBERTS: -- Snell & Wilmer. And the Court has found  
9 that he -- you know, the --

10 THE COURT: Here's --

11 MR. ROBERTS: -- you're not going to waive that privilege.

12 THE COURT: Correct, it's not waived. Just to simplify this,  
13 Mr. Cloward, you can ask him whatever he -- you want as long as you  
14 don't invade the attorney-client privilege with respect to communications  
15 between Mr. Templer and outside counsel.

16 MR. CLOWARD: Well, I guess my problem is, is --

17 THE COURT: And because I'm not allowing you to invade  
18 those communications, because we have at this point in time the  
19 representation of Mr. Roberts, that they're not asserting advice of  
20 counsel as one of the defenses in this action, at least that's his position  
21 at this point in time, right, so if they advised, don't produce these -- well,  
22 don't produce these documents, Mr. Roberts isn't saying that they're not  
23 at fault for not producing -- for relying upon our advice. That's what he's  
24 saying.

25 So that's why I'm not letting you get into those

1 communications. This is -- at least this -- at this point in time, it's on  
2 Jacuzzi. So let's find out, you know, what he believed he had to do.  
3 That's really what I need to know, right?

4 MR. ALLEN: May I clarify something, Your Honor --

5 THE COURT: Yeah.

6 MR. ALLEN: -- for the Court, so it can understand what's  
7 going on here?

8 THE COURT: Okay.

9 MR. ALLEN: We understand your court's reason for this  
10 hearing, I just don't understand whether Jacuzzi withheld certain  
11 documents --

12 THE COURT: Right.

13 MR. ALLEN: -- or whether the attorneys did. And then I just  
14 understood that, from Defense counsel, that they don't have a  
15 representative from Jacuzzi to speak as to the end of the corporation, but  
16 yesterday they represented that this gentleman would be that, that  
17 they're withdrawing.

18 So I believe my co-counsel's issue here is, who can we cross-  
19 examine as to what the intent of corporation is, when we have people  
20 that are workers coming up that are going to tell you what we do with  
21 the documents and where they go, this afternoon?

22 And so we're hamstrung on giving Your Honor what Your  
23 Honor wants, because of the confusion created by Defense counsel, with  
24 he is the corporate representative and he is our inside counsel, and now  
25 we're going to hide, when it gets really sticky in here, we're going to hide

1 behind attorney/client privilege.

2 I think it's unfair for us in the burden in this hearing to  
3 proceed without somebody -- them designating, I know what happened  
4 here, from Jacuzzi's standpoint, and we can delve into it; does that make  
5 sense, Your Honor?

6 THE COURT: It does. In the past -- it makes sense judged on  
7 my understanding of what you're saying.

8 MR. ALLEN: Well --

9 THE COURT: It does. There's -- in the past, it makes sense  
10 in terms my understanding what you're saying.

11 MR. ALLEN: Well --

12 THE COURT: In the past when I have imposed sanctions  
13 after applying the Ribeiro factors, and I've been reviewed on appeal, and  
14 I think this was the Valley View case, the Supreme Court looked at  
15 something called the, I don't know, the corporate responsibility doctrine  
16 or corporate -- something to that effect, and the Supreme Court made it  
17 clear that the Court had to determine if specific people in upper  
18 management of the corporation were actually responsible for a willful  
19 misfeasance, or failure, willful failure to comply with the discovery order;  
20 that we can't just generally say -- I can't just generally rule that the  
21 corporation failed to do something.

22 We need to actually identify if there's a specific person;  
23 president, officer, manager, somebody in the upper level management  
24 that actually made a decision that is wrongful conduct that rises to a  
25 level of willfulness if you're going to impose a sanction such as striking

1 an answer; that's my understanding of what the Supreme Court says is  
2 responsible.

3 So in that sense I don't know that it's possible for Jacuzzi to  
4 present somebody who is a 30(b)(6) representative. It's your  
5 responsibility to get here the person that you believe is the one who  
6 directed willful misconduct by Jacuzzi, and I need to hear from that  
7 person, right? That's --

8 MR. ALLEN: Well, I thought that --

9 THE COURT: That's my understanding of the law.

10 MR. ALLEN: I thought that was -- Your Honor's order was for  
11 somebody to have, to have them present and bring to us --

12 THE COURT: Well, I allowed you to have the people that you  
13 thought were needed to be here, that's pretty much what I allowed. I  
14 allowed you to examine all the people that you thought were relevant,  
15 except for outside counsel. I thought --

16 MR. CLOWARD: This is the --

17 THE COURT: -- I allowed that.

18 MR. CLOWARD: This is the Court's ruling on page 67.

19 THE COURT: Okay. Uh-huh.

20 MR. CLOWARD: The Court said: I want Jacuzzi to produce at  
21 the evidentiary hearing: 1) the person at Jacuzzi who received these  
22 communications from the Pullen family; and then 2) the person most  
23 knowledgeable about all matters I identified, and the matters that you  
24 identified are previous to that. And so our understanding in preparation,  
25 when we prepared the hearing, was is that, you know, they're not going

004285

004285

1 to be able to hide behind a general comment that, well, I didn't read the  
2 particular transcript.

3 I mean, Commissioner Bulla, and I was set to go through the  
4 transcripts, because if you just read, literally, if you just read just the  
5 transcripts you see what happened here. Commissioner Bulla was  
6 telling them, look, if this is what Jacuzzi knew about the product you've  
7 got to produce everything. She orders --

8 THE COURT: Okay.

9 MR. CLOWARD: I mean, it's so crystal clear what happened.

10 THE COURT: So let me interject again. If I can recall when I  
11 wrote that minute order --

12 MR. CLOWARD: That was the hearing --

13 THE COURT: -- I was putting the responsibility on Jacuzzi to  
14 come forward with the people with knowledge of what was searched and  
15 what was produced, right. I wasn't requiring them to designate one  
16 person who would serve as the representative for all of the issues. They  
17 produced the people with knowledge, all right, and not one person, that  
18 is the corporative representative for everything, unless Mr. Roberts  
19 should read otherwise, of course.

20 MR. CLOWARD: Well --

21 THE COURT: Mr. Roberts, did you agree that any one  
22 individual would serve as the corporate representative?

23 MR. ROBERTS: No. Well, yes and no. Going back to the  
24 original order, which is the one that the Court said, produce the person  
25 most knowledgeable, regarding the Pullen matter, and what the



1 company did with it, and whether they treat it as a claim, to paraphrase.  
2 That is Mr. Templer, he's the person most knowledgeable about that.

3 THE COURT: The Pullen matter?

4 MR. ROBERTS: But the confusion -- yes. The confusion here  
5 is that person most knowledgeable is an archaic term which used to be  
6 in the discovery rules, the new Rule 30(b)(6) does not refer to the person  
7 most knowledgeable. Mr. Templer is the person most knowledgeable  
8 about Pullen, he's prepared on it, he's testified to it.

9 In the motion to expand the scope there were specific people  
10 identified that had to be produced, Mr. Templer is one of them and he's  
11 here. But I think the Court --

12 THE COURT: So how do we get past this?

13 MR. ROBERTS: I think Plaintiffs' counsel is  
14 misunderstanding my objection and what I'm objecting to. And there is  
15 no one in Jacuzzi who would be more knowledgeable about this  
16 transcript than Mr. Templer. If Mr. Templer didn't read it  
17 contemporaneously with the hearing nobody did. If Mr. Templer didn't  
18 form an understanding, based on reading it, nobody did.

19 So my objection is, that in order to show willfulness, by  
20 showing them this document, you have to establish a foundation that  
21 someone at Jacuzzi, and Mr. Templer will be the only one, read it and  
22 based what he did upon his interpretation of it. If he based his  
23 interpretation on advice from counsel about what this transcript said,  
24 then they can't inquire about that, but they can certainly inquire after this  
25 -- Commissioner Bulla said this and issued an amended order, what did

1 you do? What did you look for? What did you ask people to look for,  
2 and that's fair game.

3 We're not disputing that we're bound by this order. Jacuzzi,  
4 whether they read it or not were bound to comply with it, and we  
5 stipulate to that. But for the purposes of showing willfulness, you can't  
6 go back and show willfulness by showing any witness at Jacuzzi a  
7 document that no one at Jacuzzi personally read at the time.

8 And Mr. Cloward has never gotten to those questions, but it's  
9 my understanding that these transcripts were read by Mr. Templer, for  
10 the first time, in preparing for his hearing

11 MR. CLOWARD: Your Honor, that's a significant burden.  
12 That's not the law, that is not the law. The case law does not say, in  
13 order for the Judge to show -- to impose sanctions -- Ian, get me that  
14 footnote.

15 [Counsel confer]

16 MR. CLOWARD: The standard is not -- I have to show that  
17 this witness read this transcript, and it violated what the judge ordered,  
18 that is not the law. And that burden would be impossible, because how  
19 often does corporate counsel get the transcript and read word-for-word,  
20 you would never, in any circumstance, ever be able to prove a case of  
21 willful misconduct in that heavy a situation.

22 THE COURT: The burden is on the Defendant. If they want  
23 to shift responsibility from their client to themselves they've got to  
24 present that as part of their defense. If you have examination of  
25 witnesses from Jacuzzi that are saying, I got these instructions to

1 produce certain things, or not instructions, I received the order and I had  
2 to produce certain documents, and here's what I did to search for those  
3 documents, and here's why I searched for those particular documents, as  
4 long as you're not getting into advice of counsel, and here's what I  
5 produced.

6 And you show me the individual who made that decision on  
7 what to produce, right? Then that's -- then you've established  
8 willfulness, willful conduct by Jacuzzi, and then I have to determine if  
9 that was misconduct, or not misconduct; and that's your burden.

10 MR. CLOWARD: I think --

11 THE COURT: Then if counsel for Jacuzzi wants to say, well,  
12 wait a minute, it was our fault, they have to do that on defense.

13 MR. CLOWARD: And very, very respectfully --

14 THE COURT: Okay.

15 MR. CLOWARD: -- I would like to read the Valley View case --

16 THE COURT: You may.

17 MR. CLOWARD: -- because *Young v. Johnny Ribeiro*, the  
18 ultimate case on this kind of sanction issue --

19 THE COURT: All right.

20 MR. CLOWARD: -- this is what the Court says. It says, the  
21 Court's express oral admonition to Young, to rectify any inaccuracies in  
22 his deposition testimony suffices to constitute an order to provide or  
23 permit discovery under NRCP 37(b)(2). So you know, the order is --

24 THE COURT: Read that one more time; is that verbatim?

25 MR. CLOWARD: It's --

1 THE COURT: All right. Read it one more time.

2 MR. CLOWARD: I'll show it to you.

3 THE COURT: Well, you can just read it -- okay. All right.

4 MR. CLOWARD: I'll just --

5 [Court reviews document]

6 THE COURT: Yeah. I guess I would have to study more the  
7 context in which that statement was made, but that statement suggests  
8 that if there was an inaccuracy in the deposition and it wasn't corrected,  
9 some discovery might be allowable on that.

10 Mr. Roberts, did you read that?

11 MR. ROBERTS: Your Honor, I think you have to take that  
12 quote, exactly as the Court said, in the context of what the discovery  
13 sanction was involving, and it was involving the willful fabrication of  
14 evidence, and the witness had a chance to admit that he fabricated the  
15 evidence and didn't, and he didn't clarify evidence that had been  
16 fabricated. He actually made up diary entries to support his testimony,  
17 he fabricated them, and he never admitted it, and the Court found that  
18 they were fabricated, and he never admitted it; and I think that's a  
19 completely different context --

20 MR. CLOWARD: It's not --

21 MR. ROBERTS: -- than what we have here. Because here  
22 we've already remedied the situation. We've already produced all the  
23 documents that Mr. Cloward said should be produced, and we're  
24 continuing to try to comply. I'm not saying we won't find something  
25 else, or you won't find something else, but the situation that he's alleged

1 has been remedied already, prior to the evidentiary hearing.

2 MR. CLOWARD: And Your Honor, may I respond? It's not  
3 different, because in the course of my outline I show how many times  
4 Commissioner Bulla specifically instructed Jacuzzi to supplement,  
5 supplement, supplement. I expect supplementation --

6 THE COURT: Right. If --

7 MR. CLOWARD: -- I expect supplementation.

8 THE COURT: -- they were ordered again, and again, and  
9 again to produce something, and they didn't produced it, that's going to  
10 be considered by me in determining willfulness by Jacuzzi.

11 MR. CLOWARD: And so, you know, the standard that Mr.  
12 Roberts announced that I have to show that Mr. Templer read this and  
13 then disregarded this, that is not the standard. That is not -- that is a  
14 misstatement of what the standard is. For Ribeiro, if they violate an  
15 order, even if it's an oral order, which I am prepared to show, over and  
16 over and over they violated by failing to supplement, then that is  
17 sufficient for the Court to strike the answer, and I can prove that, if I can  
18 just have the objections stop and allow me to question the witness.

19 Because it's relevant what Jacuzzi knew their obligations and  
20 understandings were, and if they're saying that it's not advice of counsel,  
21 they're not relying on advice of counsel, then implicitly they know that  
22 this is what their obligations are. If they have voluntarily removed Snell  
23 Wilmer so that we can't even talk to them, then the only person that  
24 would have that decision making power is sitting on the stand.

25 THE COURT: I think that's exactly what I said, and I'm going

1 to allow you to question him on what their interpretation is of what they  
2 had to produce, and what they did with that information, but not how  
3 they obtained that interpretation, right? I don't want him to stay I got  
4 that interpretation from my communications with outside counsel. Ask  
5 him, what was your understanding of what you had to produce, right?

6 Did you read the Discovery Commissioner order, right? And  
7 did you form an opinion on what that order meant, if they actually read  
8 it. But not, if you didn't read it what did you talk to Snell and Wilmer  
9 about what their discovery commissioner said.

10 MR. CLOWARD: Uh-huh.

11 THE COURT: So, I mean, I said the same thing, I've been  
12 consistent for the last half an hour on what I think the parties need to do.  
13 If you need to make any further record you can, but I'm not going to  
14 change my ruling on this.

15 MR. CLOWARD: Yeah. I mean, I just want to make sure that I  
16 understand, moving forward, so --

17 THE COURT: All right.

18 MR. POLSENBERG: Judge, I have just one little thing, NRS  
19 49.405 says you cannot comment on or draw inferences from the  
20 implication of a privilege. I think Mr. Cloward's been pretty cautious  
21 about that, but I think Mr. Allen went over the line.

22 MR. ALLEN: May I, Your Honor?

23 THE COURT: Does that -- hold on.

24 MR. POLSENBERG: I just --

25 THE COURT: Mr. Polsenberg, does that change in any way --

1 MR. POLSENBERG: Not the way you've --

2 THE COURT: -- the accuracy of the ruling that I made?

3 MR. POLSENBERG: No. You've been very careful.

4 THE COURT: Okay.

5 MR. POLSENBERG: Thank you, Your Honor.

6 THE COURT: Any further record.

7 MR. ALLEN: Yes. May I address, Your Honor's medical order  
8 gave us relief that we sought in the motion to expand. We specifically  
9 stated that based upon the foregoing reason, to request the Court that a  
10 scope of an evidentiary hearing being expanded so the Court can  
11 determine what Jacuzzi failed to disclose relevant discoverable  
12 information.

13 THE COURT: Right.

14 MR. ALLEN: And we ask for Josh Cools, Vaughn Crawford,  
15 Ron Templer, Bill Demeritt, Jessie -- Jessica Steele, Regina Reyes, and  
16 Kurt Bachmeyer should be ordered to appear at this evidentiary hearing,  
17 testify as to their knowledge regarding Jacuzzi's calculated discovery  
18 decisions, and Plaintiff be prevented to conduct discovery regarding  
19 Jacuzzi's Defense counsel's involvement and the failure to produce.

20 And I believe that we should be able to get into this  
21 attorney/client privilege because it's the only way for Your Honor to  
22 understand exactly what happened here. Otherwise there's confusion  
23 back and forth here, and at this point in time in this hearing, we should  
24 be able to examine these witnesses of all this attorney/client privileges  
25 that you have asked us not to go into. And it's the only way to clearly

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004293

1 make that record as to this specific discovery issues.

2 THE COURT: Well, I disagree with that, because what I want  
3 to hear is, did Jacuzzi know from the orders what it had to do, what did it  
4 do to compile the documents that were responsive, who made the  
5 decision at Jacuzzi what to produce and what not to produce, and what  
6 was ultimately produced and when. None of that requires the revealing  
7 of attorney/client communications with outside counsel.

8 And that's what I said, again --

9 MR. ALLEN: Yeah.

10 THE COURT: -- for the last half an hour.

11 MR. ALLEN: But we think it should be open just for that  
12 issue.

13 THE COURT: Yeah.

14 MR. ALLEN: So we should be able to examine it --

15 THE COURT: I'm not going to do that, but what other --

16 MR. ALLEN: -- because everybody else has to -- did you tell  
17 Jacuzzi this, that here is this, what the Court said, did you tell them that?

18 THE COURT: I'm not -- I understand, I'm not --

19 MR. ALLEN: But that's my record, and that's why I --

20 THE COURT: -- and I'm not ready to open it that far yet.

21 MR. ALLEN: Okay.

22 THE COURT: Or I'm not saying that I'm never going to do  
23 that for this proceeding --

24 MR. ALLEN: Yes, sir.

25 THE COURT: -- which might go for a couple of more weeks,



1 but I'm not ready to do that at this point in time.

2 MR. ALLEN: Yes, Your Honor. That was the only thing --

3 THE COURT: But you made a good record.

4 MR. ROBERTS: Well, just for the record, Your Honor, that  
5 had nothing to do with my objection. Thank you, Your Honor.

6 THE COURT: All right. Can we proceed --

7 MR. ROBERTS: Yes. Thank you, Your Honor.

8 THE COURT: -- everybody? So we all made a very good  
9 record. I think we've all -- and I appreciate everyone have patience and  
10 professionalism here, so thank you everybody.

11 MR. ALLEN: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 MR. CLOWARD: May I proceed?

14 THE COURT: Yes.

15 BY MR. CLOWARD:

16 Q Okay. Mr. Templer, you agree that the Commissioner  
17 indicated that she was going to continue the motion to strike, and she  
18 wanted to see what was produced, correct?

19 A Correct.

20 Q And without getting into the substance of any  
21 communication you agree that your counsel informed you and Jacuzzi as  
22 to the Court's relevant rulings, right? And please answer the question  
23 instead of looking to Mr. Roberts for relief here, for him to answer.

24 MR. ROBERTS: I'm going to object --

25 BY MR. CLOWARD:

1 Q Please just answer the question.

2 MR. ROBERTS: -- Your Honor. I instructed the witness to  
3 pause to give me a chance to object if the question --

4 THE COURT: You know, I understand --

5 MR. ROBERTS: -- to invoke the privilege, and I think this is  
6 sufficiently close that it was appropriate for the witness to look to me to  
7 see if I was going to object.

8 MR. CLOWARD: It's been --

9 MR. ROBERTS: And not by --

10 MR. CLOWARD: -- every question, Judge.

11 MR. ROBERTS: That's an improper comment on record.

12 THE COURT: So, guys, come on. I don't think that the  
13 witness, from what I've perceived, is looking to Mr. Roberts to find out  
14 how he should answer something. It appears to me, given -- it should be  
15 evident here. Mr. Cloward, some of the things are privilege, some are  
16 not privilege, some are really close to the line, and I don't think it's  
17 wrong for Mr. Templer to wait a minute and look to Mr. Roberts to find  
18 out if he's going to object. I think that's all he's doing here. I'm not  
19 viewing that as anything improper, at least at this point.

20 MR. CLOWARD: Okay.

21 THE COURT: But after a very brief pause I would appreciate  
22 answering the question directly.

23 THE WITNESS: I will, Your Honor. And --

24 THE COURT: All right. Thank you.

25 THE WITNESS: -- the only reason I was looking is to see if I

1 was allowed to answer the question because of potential privilege  
2 issues.

3 THE COURT: All right.

4 THE WITNESS: That was the only reason I was looking at  
5 Mr. Roberts.

6 THE COURT: All right. Very good.

7 THE WITNESS: Could you ask the question one more time?  
8 Sorry.

9 BY MR. CLOWARD:

10 Q Yeah. Certainly. Jacuzzi's counsel, after hearings, would  
11 notify Jacuzzi of important rulings and orders of the Judge, right?

12 A Correct.

13 Q And in this situation the Commissioner was very clear how  
14 serious this was. She indicated that she may end up having to defer it to  
15 the Honorable Judge Scott, the District Court Judge, because it's a  
16 dispositive sanction under Rule 37, one that she is not going to hear, but  
17 before that decision was made she wanted to provide alternative relief,  
18 which was to produce, have Jacuzzi produce the information that  
19 Plaintiffs were seeking; and you understood that, right?

20 A I have not received -- not seen this transcript until today. I  
21 understood what the scope of an order was following that here, what  
22 Commissioner Bulla wanted Jacuzzi to do.

23 Q Okay. So you --

24 A So it was not based on a review of this transcript.

25 Q Okay. You understood that Commissioner Bulla wanted

1 Jacuzzi to provide incidents before and after the Cunnison death, true?

2 A My understanding was Jacuzzi was to provide incidents  
3 involving serious personal injury or death, involving walk-in tubs.

4 THE COURT: Both before and after?

5 THE WITNESS: Before and after, yes.

6 THE COURT: Okay.

7 BY MR. CLOWARD:

8 Q And she was very clear in her expectations --

9 MR. CLOWARD: If you would turn, Brenda, to page 16.

10 BY MR. CLOWARD:

11 Q Do you agree that specifically on line 16,

12 She doesn't know how you meaning Jacuzzi, keep your incident  
13 events, or your accident reports, or your -- I don't even know what you  
14 call them, but I want everything turned over to Mr. Cloward before and  
15 after his client's accident that involve significant injury or death in one of  
16 your tubs, whether it is the exact identical tub that Plaintiff fell in the  
17 Plaintiff's decedent fell in.

18 And you understood that, right?

19 A Again, I didn't read this transcript. I understood that Jacuzzi  
20 was turn over incidents involving serious personal injury or death  
21 involving a walk-in tub.

22 Q Okay. And do you agree that here she's not limiting this.  
23 She didn't say, hey, I only want claims to be turned over. She says,

24 Incident events, your accident reports. I don't know what you call  
25 them at Jacuzzi, but I want everything turned over to Mr. Clowder, you

1 agree with that, right?

2 A Everything. No she wanted information --

3 Q Continue to limit --

4 A -- or documents -- let me finish.

5 Q Okay.

6 A Regarding serious personal injury or death.

7 Q Okay. But it wasn't -- it didn't have to be termed a claim for  
8 anything, righty?

9 A Correct.

10 Q So you agree that after this hearing Jacuzzi understood that  
11 it was to turn over claims, incidents, accidents, issues, if it involved  
12 serious personal injury or death, true?

13 A Yes.

14 Q Now on page 17 she -- you were aware there was a certain  
15 timeline by which you had to respond to this -- to her order, right?

16 A I don't specifically recall, but I imagine there was one.

17 Q Okay. Do you remember how she continued the motion to  
18 strike to August 29th? So the motion to strike the answer was pending.  
19 She continued it she didn't rule on it. She continued it until August 29th,  
20 and she says, as alternative relief I want Jacuzzi to produce this stuff by  
21 August 17th. And then she says, I want the alternative relief that I'm  
22 going to be -- to provide today with respect to this motion, information  
23 from 2008 to the present, of any types of accidents or incidents involving  
24 the Jacuzzi tub, leading to significant -- I know that's somewhat of an  
25 objective term, but personal injury or death.

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1 Do you agree that that was what was ordered?

2 A Again, I don't recall what the order was, I can read what's  
3 said during the hearing.

4 Q Your understanding though, after the hearing, was that  
5 Jacuzzi was supposed to turn over incidents, claims, accidents, whatever  
6 it is from 2008 to the present by a certain date. Jacuzzi was ordered to  
7 do that, right?

8 A Yes.

9 Q Okay. And in particular were you aware that I said to the  
10 Commissioner, hey, Commissioner, can we just call it injury or death,  
11 would that be okay? And she said, yes. But personal injury, not like  
12 injury to the tub. Mr. Cools clarified and said, well, how about a pinched  
13 finger? And the Commissioner said, yes, and then she went on to  
14 explain why, even a pinched finger would be subject to her ruling.  
15 You're aware of that, right?

16 A I'm aware -- I'm not aware of this passage, I'm aware that the  
17 company was to turn over for serious personal injury or death.

18 THE COURT: Okay. Was it your understanding that it had to  
19 be serious personal injury, or any personal injury?

20 THE WITNESS: At the time I don't recall. I've read the order  
21 recently, and I did see it, it said serious personal injury, so I don't recall.  
22 I don't know if I have the recollection for that understanding back in the  
23 August timeframe.

24 THE COURT: All right.

25 THE WITNESS: I just don't recall.

1 THE COURT: All right.

2 BY MR. CLOWARD:

3 Q And as a matter of fact on the -- she says August 17th of  
4 2018, is when she wanted compliance, you agree that in fact Jacuzzi did  
5 comply and on August 17th, 2018 did indicate that Jacuzzi provided ten  
6 subsequent incidents, correct?

7 A I recall producing information regarding incidents. I don't  
8 recall the dates of those incidents, or the exact date they were produced.

9 Q Okay. You don't disagree with my representation to the  
10 Court that those were produced on August 17, 2018?

11 A I don't recall the date, but if that's the date I don't have any  
12 reason to dispute that.

13 Q Okay. And, again, the timing, so that the Court understands,  
14 the production was August 17th. Now the pending, there was still a  
15 pending motion to strike that the Commissioner had set to conclude on  
16 August 29th; you agree, right?

17 A I remember there was a subsequent hearing, I don't recall if  
18 that was the date. I think I -- that was a hearing I actually attended, I  
19 believe.

20 Q Okay. Let's pull up August 29, 2018.

21 MR. CLOWARD: It's 179, Brandon. Exhibit 179. We'll start  
22 with page 2.

23 BY MR. CLOWARD:

24 Q And --

25 THE COURT: You said 179?

1 MR. CLOWARD: Correct, Your Honor, Exhibit 179.

2 THE COURT: The transcript for January of 2019?

3 MR. CLOWARD: No, that's --

4 THE COURT: Oh, wait a minute, this was filed. Okay. It  
5 looks like -- oh, it looks like the hearing was August 29th, the transcript  
6 was filed January 14th. All right, got it. Thank you.

7 MR. CLOWARD: Now, can you pull that up, Brandon, start on  
8 page 2?

9 BY MR. CLOWARD:

10 Q And before you review that, just so that the Court is clear,  
11 what was your understanding of what the Court had ruled at the  
12 previous hearing; that Jacuzzi was to provide what again?

13 A Incidents involving seriously personal injury or death in a  
14 walk-in tub. And just to clarify the record, and looking at this transcript,  
15 this is not the hearing I attended.

16 Q Okay. Thank you for the clarification.

17 Now at this hearing Mr. Cools made the representation that,  
18 following the hearing I went back to Jacuzzi and we ran a search based  
19 off the parameters you provided, which was any personal injuries or  
20 death claims related to the walk-in tubs before and after the incident, and  
21 we identified nothing that had not been previously produced, or prior to  
22 the incident there subsequent claims that were produced.

23 And is it your understanding that Jacuzzi and Mr. Cools went back  
24 after the earlier August hearing and actually conducted another search?

25 A There was a search run, I don't recall if it was a complete

004302

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1 search or we were using the results from the prior search with different  
2 filters. I think that it was a combination of both.

3 Q Okay. And do you agree that Jacuzzi represented to the  
4 Court that it had performed this search and it found no prior incidents,  
5 correct?

6 A Again, I don't recall what was produced, but I don't have any  
7 reason to dispute what you're saying.

8 Q Was your understanding, after the August directive from  
9 Commissioner Bulla, to go perform this search, was it your  
10 understanding that Jacuzzi found no prior incidents, claims, injuries,  
11 anything that was prior to Ms. Cunnison's event?

12 A Again, I don't recall what was produced. If what was  
13 produced at that time did not have anything prior, that would be my  
14 testimony. I just don't recall, as I sit here ,what the dates of the claims  
15 were produced are. I am not disputing what you're saying, I'm just  
16 saying I don't recall the dates of the incidents we disclosed in August --

17 THE COURT: Well, he's not asking --

18 THE WITNESS: -- of 2018.

19 THE COURT: -- what was produced in litigation, he was  
20 asking what was discovered by Jacuzzi's search that happened between  
21 the August 18th hearing and this August 29th hearing where there was  
22 additional search performed? He's asking if you know if Jacuzzi found  
23 anything new during that timeframe?

24 THE WITNESS: I think the question was for prior incidents.

25 THE COURT: For prior incidents, yeah. Did Jacuzzi discover

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1 any prior incidents through the search that they conducted in that  
2 timeframe?

3 THE WITNESS: That involves personal injury or death? I  
4 don't recall anything, but if we did it would be on what was disclosed,  
5 but I don't recall anything as I sit here.

6 THE COURT: All right.

7 BY MR. CLOWARD:

8 Q And you agree that Jacuzzi represented that it went back and  
9 ran a search based on what the Court parameters were, right?

10 A I believe that's what it says, yes.

11 Q So Jacuzzi went and did another search, correct?

12 A Yes. There was search done at that time.

13 Q And the search that was performed were for the search terms  
14 that the parties had agreed upon, right?

15 A In which time are we talking? In this timeframe?

16 Q Yes.

17 A Those search terms were run in March -- February, March of  
18 2018. The second set of -- back in this timeframe of Commissioner  
19 Bulla's order there were different search terms that were run. And I think  
20 it was against the hits that had come up with that prior list.

21 Q So you didn't go and do another search, using the -- you  
22 didn't go look with a set of fresh eyes for these search terms that the  
23 parties were fighting over?

24 A No. At that time there was a different set of search terms.

25 Q So all you did was you -- basically you got the pile, the

1 bucket that you had already gone through that you knew didn't have  
2 anything in there, and you just reviewed the bucket, and said, yeah,  
3 there's -- we looked at it again and there's nothing in there; is that fair?

4 A No.

5 Q Okay. Help me understand then?

6 A We produced stuff that after we went back through it,  
7 pursuant to Commissioner Bulla's order.

8 Q Okay. So the first time that you represented to the Plaintiff  
9 that there were no prior claims in there, you went through those again,  
10 and there were no claims, prior claims that you identified?

11 A I don't think that was the scope of our discovery responses.

12 Q What was the scope of your discovery response?

13 A I believe discovery response -- the written discovery  
14 responses were back in May of 2017, at which time Plaintiffs were asking  
15 for claims for personal injury and property damage. At that time the  
16 claims were limited to, my understanding, and having reviewed the  
17 discovery responses from Plaintiffs, was the height of the tub walls,  
18 inward versus outward opening door, grab handles, and I think with the  
19 door. I don't recall what the fourth one was. That's what Kurt  
20 Bachmeyer mentioned yesterday.

21 Q You mentioned several times, or Jacuzzi's mentioned several  
22 time that the claims have somehow evolved, we dispute that, but has the  
23 claim that Sherry Cunnison died because of this tub; has that claim ever  
24 changed?

25 A Just the basic claim that the tub was related to her death, no.

1 Q And the basic claim that Jacuzzi knew or should have known  
2 the risk of the tub, like people -- to people like Ms. Cunnison, you agree  
3 that's been consistent, right?

4 A Can you say that one more time?

5 Q That Jacuzzi knew or should have known of the risk of the  
6 tub to people like Ms. Cunnison?

7 A I'm not sure how to answer that. I think the understanding of  
8 the company, at all times was based on product defect claims the  
9 Plaintiffs have presented in those, and our understanding have  
10 materially changed over time.

11 Q Okay. And just for the Court's edification, so that we have no  
12 wiggle room on that, when was the material change in the claim that  
13 suddenly now Jacuzzi says, okay, now I understand Plaintiffs have  
14 changed their view what's wrong with the tub, so this is the date that  
15 we're going to plant our flag; when is that?

16 A I don't know the specific dates. I know when the first claim  
17 came in you had sent a letter stating that the claim was that the tub  
18 would not drain, and the was the basis for the defect at that time, and  
19 that was the only claim asserted, to my knowledge.

20 THE COURT: Mr. Templer, help me to understand  
21 something. You said a couple of different times that it was your  
22 understanding of what the discovery commissioner wanted is  
23 documentation of all incidents relating to, or resulting in serious  
24 personal injury or death, before or after the incident --

25 THE WITNESS: Uh-huh.

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1 THE COURT: -- in this case. And so I'm wondering, so that's  
2 what your understanding is of what the discovery commissioner wanted  
3 Jacuzzi to produce. Did you further narrow the parameters of what the  
4 discovery commissioner asked for, based on your understanding the  
5 Plaintiff's claims in this case?

6 THE WITNESS: No. Not at that time.

7 THE COURT: Okay. So --

8 THE WITNESS: That was just looking for --

9 THE COURT: So was it irrelevant then what your  
10 understanding of the Plaintiff's claims were in complying with the  
11 discovery commissioner's order?

12 THE WITNESS: In complying with that order I think it was  
13 irrelevant what the Plaintiff's defect claims were. My -- our  
14 understanding, the company's understanding was she requested all  
15 incidents involving a walk-in tub, and I think it even mentioned a finger  
16 being jammed in a door --

17 THE COURT: Right. I saw that.

18 THE WITNESS: -- which clearly wasn't relevant to the  
19 Plaintiff's claims, but our understanding was that that would have to be  
20 produced as well.

21 THE COURT: Right. And she said something like that may or  
22 may not be relevant and admissible at trial.

23 THE WITNESS: Yeah. I mean, I --

24 THE COURT: And that was your understanding too, right?

25 THE WITNESS: I didn't have an understanding as to the

1 admissibility issue --

2 THE COURT: Okay.

3 THE WITNESS: But I had an understanding as to what  
4 needed to be produced, and that would have needed to be produced --

5 THE COURT: Okay.

6 THE WITNESS: -- at that time.

7 THE COURT: All right. Thank you. I appreciate that.

8 BY MR. CLOWARD:

9 Q And you agree that Ms. Cunnison has never claimed, or Ms.  
10 Cunnison and her lawyers, obviously, Ms. Cunnison couldn't, but her  
11 lawyers never have claimed that she jammed her finger in the tub, right?

12 A Right.

13 MR. CLOWARD: Now -- you see on page 5, Brandon.

14 BY MR. CLOWARD:

15 Q On page 5, Mr. Estrada voices some concerns. He says, well,  
16 you know, Your Honor, we're just a little bit concerned that we go from  
17 having no incidents now. So basically on line 20, kind of in between 23  
18 and 24, it says, now we go from zero subsequent incidents to a dozen, or  
19 about a dozen. Conveniently all of these documents have to do with  
20 subsequent incidents. It's worrisome to us that there's been --

21 MR. CLOWARD: Go to the next page, Brandon.

22 BY MR. CLOWARD:

23 Q -- you know, you have a dozen subsequent, and conveniently  
24 nothing from prior. And Commissioner Bulla kind of says, hey look, Mr.  
25 Estrada, you don't have any factual support to say that they did. But

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1 then she goes on, and so she kind of says, I don't want you to make, you  
2 know, to pre-suppose that something's there.

3 But then she goes on and she says, look, if it turns out that  
4 they had ten incidents before yours and they failed to disclose, that's  
5 support for a motion to strike an answer. So Jacuzzi knew at this hearing  
6 the severity of Commissioner Bulla's request, right?

7 A I wasn't at that hearing, I have not read this transcript until  
8 today, but I knew the scope of the order.

9 Q Was it your understanding, after this hearing, that  
10 Commissioner Bulla had indicated, listen, if I find that there are a whole  
11 bunch of incidents prior, then that right there is going to be, you know,  
12 information for a motion to strike. Is that something that Jacuzzi knew of  
13 and was concerned about?

14 A I don't think that was ever relayed to me. But to answer your  
15 question, without getting into communications, the company was trying  
16 to produce everything that was ordered by the discovery commissioner.

17 Q I mean, if you're not aware of this specific language you still  
18 knew, even if you didn't know that she said, hey, if I find that there are  
19 ten, then that's subject for a motion to strike, you knew it was very  
20 serious to comply with her order, right?

21 A Yes. We were -- the company was trying to comply with her  
22 order.

23 Q Extremely serious.

24 A It's a court order.

25 Q Yeah. And then during that timeframe you're aware that

1 Plaintiff's served some additional discovery based on Bill Demeritt's  
2 testimony about the folks that were involved with gathering the  
3 documents. Remember how we tried to take Jessica Steele's deposition,  
4 Kirk Bachmeyer's deposition and others during that time period?

5 A I remember some discovery responses were -- excuse me,  
6 discovery requests were served, and I think that may have been partially  
7 what prompted this round of court hearings, because I remember there  
8 was a motion for a protective order. I remember those depositions were  
9 set at some point. I don't recall if it was in the same timeframe.

10 Q Okay. So let's go to the hearing on the motion for a  
11 protective order that Jacuzzi filed.

12 MR. CLOWARD: And for the Court's reference and ease, the  
13 motion for a protective order was filed on September 11, 2018, and the  
14 hearing that took place was September 19 --

15 THE COURT: Okay.

16 MR. CLOWARD: -- 2018. So almost exactly one year ago.

17 THE COURT: All right.

18 MR. CLOWARD: Brendon 180, on page 330.

19 BY MR. CLOWARD:

20 Q Is this the hearing that you attended, Mr. Templer?

21 A It was around this time. I'm trying to --

22 Q If you look on the first page --

23 A I seem to recall the Judge addressing -- the Commissioner  
24 addressing me at some point, so --

25 Q On the first page I think it says appearances. I can't



1 remember if your name --

2 A It does, but my name is not listed there.

3 Q Okay.

4 A I seem to recall Mr. Cools advising the Court that I was there,  
5 and the Judge addressing me at some point. I was trying to find that.  
6 But this is -- it was around this timeframe, so this may be the hearing.

7 Q Okay. It may or may not. I --

8 A I just don't recall without looking further.

9 Q Okay.

10 A If you want me to look through this whole thing I can try --

11 Q No.

12 A -- and figure it out?

13 Q No. If you'll just focus on page 3 there. So page 3,  
14 Commissioner Bulla indicates that she has a better understanding, and  
15 we're starting on line 4. She says, I think I have a better understanding  
16 of that now, based on subsequent production that took place. Those  
17 were those ten subsequent incidents.

18 What I would like both sides to do is contact an expert in the field  
19 and give me a cost of what it would take. I'm not really excited about  
20 mirroring hard drives, but I think we run into too much difficulty, but  
21 what I am considering is a forensic analysis of the computers to do the  
22 search terms that Plaintiff had previous requested, so that we make sure  
23 that there are no additional incidents or documents that would be  
24 relative or relevant in the case.

25 You understood that Commissioner Bulla, at that point, is saying,

1 hey, look, I understand now what the Plaintiffs want here, and so she  
2 says, I'm going to examine -- I 'm going to order a forensic examination.  
3 You're aware that she ordered a forensic examination, right?

4 A I was aware that she issued an order allowing it, looking at  
5 the -- just a little further, a couple of tabs later, it's the November 2  
6 hearing, that's the one I was at. I was not at this hearing.

7 Q Okay. Let's try and focus on this one. I appreciate --

8 A As to --

9 Q -- that.

10 A -- clarification.

11 Q Thank you. So let's just focus on this one. You agreed that  
12 Jacuzzi knew, as a result of this hearing the Commissioner expressed her  
13 concern, and that was why she was ordering the forensic examination to  
14 take place, or at least requesting that the parties go out and obtain some,  
15 I guess you would say estimates for that search, right?

16 A I don't know that I would express it as the Commissioner  
17 expressing concern. I think the Commissioner -- my understanding was  
18 the Commissioner understood your concern and was ordering it; order --  
19 requesting the parties go out and get the information for a forensic  
20 search for that reason.

21 MR. CLOWARD: Okay. And then Brandon, I'm going to  
22 focus on the bottom of the page, and then flip real quick.

23 BY MR. CLOWARD:

24 Q And the Commissioner says, hey, look, you know, Mr. Cools,  
25 I'm not faulting you, so I don't want you to take this as a personal affront,

1 but I do think that there is a good faith basis for making the argument  
2 that they don't have the evidence, because of how the information was  
3 produced.

4 You agree at that time she's telling Mr. Cools that, hey, look, I'm  
5 not faulting you, but I do think the Plaintiffs have a good faith basis for  
6 this request. Was that your understanding --

7 A I didn't read this transcript until today, and I don't think I had  
8 that knowledge.

9 Q Okay, fair enough.

10 MR. CLOWARD: Okay. Brandon -- Your Honor, one  
11 moment --

12 THE COURT: Yeah, sure.

13 MR. CLOWARD: The Court's indulgence.

14 [Counsel confer]

15 THE COURT: So, looking at the page 4 of the transcript,  
16 about seven lines down, it looks like at least at this point in time you  
17 didn't believe that Mr. Cools or Snell & Wilmer had done anything  
18 wrong, right? Willfully, or -- it looks like at this point in time; would that  
19 be correct?

20 MR. CLOWARD: That was my historical -- I guess my  
21 historical relationship with the Snell Wilmer firm.

22 THE COURT: All right. I mean, you weren't blaming him,  
23 you were still finding fault with Jacuzzi, but at least you didn't think  
24 that --

25 MR. CLOWARD: I didn't think that it was -- I thought that it

1 was -- it was Jacuzzi, itself --

2 THE COURT: Okay. And I know --

3 MR. CLOWARD: -- that was causing the problem.

4 THE COURT: -- your position might have changed later,  
5 but --

6 MR. CLOWARD: Yes.

7 THE COURT: Okay. Thank you.

8 MR. CLOWARD: Because -- and, Your Honor, I want to make  
9 sure, is because I had very personal conversations with Mr. Cools. Sit-  
10 down calls, like, hey, man --

11 THE COURT: Right.

12 MR. CLOWARD: -- you know, level with me here, you know,  
13 are you sure -- I mean, geez, and the representations were consistently,  
14 there's nothing, there's nothing, there's nothing.

15 THE COURT: Okay.

16 MR. CLOWARD: And so I felt assured --

17 THE COURT: Well, I see the documentation --

18 MR. CLOWARD: Yeah.

19 THE COURT: -- regarding what Mr. Cools was saying, so  
20 thank you.

21 MR. CLOWARD: Okay. Your Honor, I'm sorry, I have a cite --

22 THE COURT: No, take your time.

23 MR. CLOWARD: -- a citation, and it's just incorrect on my  
24 outline.

25 [Counsel confer]

1 MR. CLOWARD: Brandon, please go to page 3.

2 BY MR. CLOWARD:

3 Q Okay. Now on line 19 the Commissioner says, I think as I  
4 understand the Plaintiff, the real concern is do we have all of the incident  
5 reports, or complaints or problems related to this tub, and have they  
6 been produced?

7 Was it your understanding that Commissioner Bulla was  
8 concerned about only claims?

9 A Again --

10 THE COURT: So this -- Mister --

11 THE WITNESS: Excuse me --

12 THE COURT: Oh, go ahead and answer the question first.

13 THE WITNESS: Again, my understanding was she was  
14 looking for any claimants now, and how you want to characterize it, that  
15 involves serious bodily injury or death in a walk-in tub.

16 BY MR. CLOWARD:

17 Q Okay. So, okay. So your understanding was that was not  
18 limited to a quote/unquote "claim," right?

19 A It's been a year, I don't recall specifically, but I don't believe I  
20 had that understanding at that time.

21 Q Okay. And are you aware, on page 6, was it your  
22 understanding that she further gave her expectations as to what she  
23 expected, in particular on page 6, at the bottom on page 23 she says:

24 We have to somehow define the parameters of the search to the  
25 tub at issue, or a similar type of tub, but really the product liability case I

1 guess the design is one of the issues. But it's not just what happened  
2 before this incident, it's actually, you know, what is relevant to the  
3 design of the product, and it could also be what occurs after the event.

4 And you agree that the Commissioner is saying, look, it's  
5 important to know not only what happened before, but it's also to know  
6 what happened after, because the design is one of the issues, right?  
7 Was that your understanding, Mr. Templer, or what Jacuzzi was  
8 supposed to be doing to comply with her order?

9 A Well, again, I wasn't provided with this transcript, I didn't  
10 read it, so I -- but my understanding was at that time the response was  
11 not to be limited to incidents either before or after Ms. Cunnison's  
12 incident, but it was to include both before and after.

13 Q Okay.

14 A Both before and after.

15 Q Okay. And when the Commissioner pointed this out, Mr.  
16 Cools, on page 7, midway through, he's trying to reassure the  
17 Commissioner, and say, hey, look, you know, that's what we did.

18 We searched not only this tub, but other walk-in tubs for anything  
19 prior to this incident, using those search terms, there's nothing related,  
20 no personal injuries related to Plaintiff's claim.

21 Correct?

22 A That's what the transcript states.

23 Q So Jacuzzi is representing to the, Judge, you agree, the  
24 Commissioner, that, hey, we've already done this search. We used the  
25 search terms and there's nothing from prior, right?

1           A     I don't which search terms he's referring to here, but there  
2 was a representation that we produced what we located.

3           Q     Mr. Templer, has Jacuzzi, prior to the Judge's ruling, and I'm  
4 just talking about Judge Scotti's ruling, a couple of months ago, prior to  
5 that ruling had Jacuzzi ever at one time performed a search of these 20  
6 terms, of all of the databases, and I'm not talking just the warranty, I'm  
7 not talking about, you know, just the RNT, I'm talking about all of the  
8 things that Mr. Cools represented in his declaration, did Jacuzzi ever do  
9 that?

10          A     Of all databases?

11          Q     Of the five databases that we talked about with Mr.  
12 Bachmeyer, that Jacuzzi uses to store information, so; 1) the RNT; 2) the  
13 KBM; 3) the sales force; 4) the email, and then I believe; 5) is also the  
14 legacy system, that you can use the click view. Had Jacuzzi ever done  
15 that?

16          A     Those terms, I don't know that ever run -- made a run against  
17 all email. We have recently run some, and the results are so vast. For  
18 instance, my recollection is the word slip. When it was recently run  
19 against our database, our email system, it turned up nearly a million hits  
20 because the way that term is used throughout the company. So it -- not  
21 a million emails have not been searched through.

22          Q     Okay.

23          A     I believe the responses indicated that if we needed to get a  
24 forensic expert in or something we could do that, but at your expense,  
25 but that has not been done.

1 Q And, Mr. Temple, my question going back to -- I want to be  
2 very clear so that the hearing transcript, for the record, is clear on this  
3 issue. So let's just start off, did Jacuzzi, prior to the Judge's ruling, did  
4 Jacuzzi ever search the RNT system for these 20 search terms?

5 A I believe so.

6 Q And you have those results, and those could be provided to  
7 the Judge?

8 A I believe they're captured within -- I'm just trying to thinking,  
9 the way things worked. Yes, and no. I can explain what happened. I  
10 guess that's probably the easiest way to do this. The RNT system, and  
11 my understanding was the beta was captured into sales force when the  
12 company went to sales force. Sales force has been searched for those  
13 terms.

14 Q Okay. So your testimony, let's -- first let's just focus on the  
15 RNT, okay. Did Jacuzzi specifically search the RNT database; yes, or no?

16 A I can't answer it, yes or no, because again, I don't think the  
17 RNT database still exists, it was migrated into sales force.

18 Q Okay, understood. The KBM system. Did Jacuzzi ever search  
19 the KBM system for these 20 search terms?

20 A Yes.

21 Q And what was done with those results?

22 A I reviewed them, and those results were also submitted to  
23 Commissioner Bulla, and she reviewed them.

24 Q Okay. And were those also provided to Mr. Bachmeyer?

25 A I don't believe so.



1 Q Okay. Next, is the Legacy click view system. Did Jacuzzi  
2 ever review a search of the Legacy Click View system for search terms 1  
3 through 20?

4 A I don't believe that's a separate database, to my  
5 understanding. Click View is a business -- I'm trying to remember the  
6 acronym, business intelligence software. It enable -- it enables people to  
7 pull information out of KBM. I don't think it's a separate database.

8 Q Okay. So just so that we have a record, did you ever use  
9 Click View, that application to search for these 20 search terms?

10 A I did not. I've never used Click View in my life, to my  
11 knowledge.

12 Q And I'm not talking about you --

13 A I --

14 Q -- I'm talking about Jacuzzi.

15 A I was in the middle of my answer.

16 Q Sorry.

17 A I believe, not those terms, but I think Mr. Bachmeyer used  
18 Click View on a prior search. I don't know if it was on this search or not.  
19 I don't think it was, but I'm not positive.

20 Q Okay. Now the Legacy database, did Jacuzzi ever search the  
21 Legacy database for these search terms, 1 through 20?

22 A So again, I'm not -- my understanding there is not a separate  
23 Legacy database, it's all part of KBM.

24 Q So, just so that we have a clean record, that would be fair to  
25 say, then, that Jacuzzi never performed an independent search of a

1 database called the Legacy Database for these 20 terms, true?

2 A I'm not aware of that, sir. Again, I'm not aware of Legacy  
3 being a separate database.

4 Q Okay. And then number 5, the sales force, did Jacuzzi ever  
5 search the sales force database for these 20 search terms?

6 A Yes.

7 Q And when was that done?

8 A Around March of 2018.

9 Q March of 2018?

10 A Yes.

11 Q So you searched the sales force database for terms like fall,  
12 slip, elderly, overweight, door, and so forth?

13 A I didn't personally search, but somebody ran those terms  
14 through sales force.

15 Q And who was it that ran those terms?

16 A I'm not a hundred percent positive. I believe, when I  
17 mentioned Bill Lay earlier, I believe he's the one that provided those  
18 results. I don't if he personally ran the search or not.

19 Q And when --

20 THE COURT: You said March of 2018, that would have been -  
21 - are you -- that would have been last year in March? So --

22 THE WITNESS: Yeah. It's when Mr. Cloward and Mr. Cools  
23 agreed on these 20 terms, I think was run through the sales force  
24 database at that time.

25 THE COURT: Okay. Is that when --

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1 THE WITNESS: Again there --

2 THE COURT: -- those terms were agreed upon, around then?

3 MR. CLOWARD: It was actually --

4 THE COURT: I didn't know it was that early, but --

5 MR. CLOWARD: It was actually, I think, and don't quote me

6 on this, Your Honor, but I believe he and I had discussions, and then I

7 sent him an email in I think December of 2017, or Jan --

8 THE COURT: Oh, that far back.

9 MR. CLOWARD: Oh, yeah. Or -- oh, yeah. Or January of

10 2018. And I can provide the Court with a copy of that email at the break.

11 THE COURT: Fax.

12 MR. CLOWARD: I will forward that to the clerk, if the Court

13 would like to see that?

14 THE COURT: Or point to me in a prior brief where you've

15 discussed it, that's fine.

16 MR. CLOWARD: You got it, Judge.

17 THE COURT: Give me one moment. Give me one moment.

18 [Counsel confer]

19 THE COURT: All right. My notes are clear. Thank you.

20 MR. CLOWARD: Okay. And, Your Honor, I want to be

21 respectful of the Court. I would prefer to continue for another half an

22 hour or so, but if the Court --

23 THE COURT: Will you want lunch now, is that --

24 MR. CLOWARD: No, I actually want to keep going.

25 THE COURT: Oh, okay.

1 MR. CLOWARD: For just a moment.

2 THE COURT: And then do a half an hour now, and then we'll  
3 take our lunch.

4 MR. CLOWARD: Yeah.

5 THE COURT: Is that okay, guys? All right. It's okay with my  
6 staff. Marshal? All right. So we'll go another half an hour then.

7 MR. CLOWARD: Okay. Thank you.

8 BY MR. CLOWARD:

9 Q Okay. Now, that's the email. You agree that might be the  
10 sixth one, that might be in our list. I think I may have renumbered, or  
11 misnumbered. But you testified that Jacuzzi has never searched the  
12 email systems for these 20 search terms, right?

13 A They did not search the entirety of the email system, select.  
14 Email accounts have been searched, I don't know it's -- if I recall if it's  
15 against all 20 terms, but some email accounts have been, but not against  
16 the entire company.

17 Q Okay. And you're aware that the Commissioner ordered that,  
18 right?

19 A I was not aware of that. I was aware that the Commissioner  
20 order other incidents, and the company looked in the locations that it  
21 expected that type of information to be stored.

22 Q Okay. So is it your -- I guess, is it Jacuzzi's position that  
23 Commissioner Bulla never contemplated emails?

24 A I would have no idea what she contemplated. I understood  
25 the order, again, to be incidents involving personal -- serious personal

1 injured, and the company looked in the locations it thought that type of  
2 information would be kept.

3 Q Okay. So let's just focus now --

4 MR. CLOWARD: I'm going to focus on, Brandon, Exhibit 180.  
5 Well, Your Honor, I'm sorry to do this. This -- I was hoping to jump to  
6 something really quick, but I need to lay some foundation, and it's not  
7 going to -- it will be possibly longer than a half an hour, so --

8 THE COURT: Okay.

9 MR. CLOWARD: Maybe --

10 THE COURT: I'm flexible, here. Would you prefer to take  
11 lunch now, is that what you're suggestion, or what?

12 MR. CLOWARD: I think so.

13 THE COURT: Or do you want to take your longer period, and  
14 where you're saying go to 12:45?

15 MR. CLOWARD: Maybe that --

16 THE COURT: If that's the case --

17 MR. CLOWARD: That would work.

18 THE COURT: Mr. Roberts, opposing counsel is standing  
19 behind you.

20 MR. ROBERTS: I just needed to inform the Court that we  
21 received a proposed schedule. We've got two witnesses scheduled for  
22 this afternoon. Regina Reyes who is scheduled at 1:00 and we've got  
23 Audrey Martinez scheduled at 3:00. It's my understanding neither one of  
24 them can be available tomorrow. Mr. Templer is available tomorrow.  
25 While we're not going to insist that Mr. Templer to take a break to allow

1 these witnesses, we do think that if Mr. Cloward wants those witnesses,  
2 then that's what he needs to do.

3 THE COURT: All right. So Regina Reyes, scheduled for 1:00,  
4 and who --

5 MR. ROBERTS: Audrey Martinez at 3:00. And they're both  
6 available to fill those time slots as scheduled.

7 THE COURT: And that was what was in that email --

8 MR. ROBERTS: To the Court --

9 THE COURT: -- that went to Court --

10 MR. ROBERTS: -- proposed by Mr. Cloward.

11 THE COURT: Well, Mr. Cloward, how about if we take lunch,  
12 and we can do Regina at 1:00 and Audrey Martinez at 3:00, and then if  
13 Martinez is finished before 5:00 you can continue again with Templer, or  
14 just do Templer tomorrow? I don't want to have the schedule disrupted  
15 too much, you know, if there's already arrangements to have those other  
16 two witnesses here.

17 MR. CLOWARD: I understand. I think the questioning for  
18 those witnesses is very short. I mean, we're I think half an hour, an hour  
19 at the very, very most. So if the Court's permission I would prefer to  
20 continue with Mr. Templer at this time. If I lose the opportunity to  
21 depose those witnesses, then I'm willing to take that --

22 THE COURT: Well --

23 MR. CLOWARD: You know, I've already offered to pay for  
24 Audrey's travel here, so we're --

25 THE COURT: Oh, Audrey's traveling from --

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1 MR. CLOWARD: We've --

2 THE COURT: From where?

3 MR. CLOWARD: We've offered to pay for that.

4 MR. ROBERTS: She's an exhibit-employee, she agreed to  
5 testify by phone, but she wanted reimbursement for her travel, because  
6 she's no longer a Jacuzzi employee. And Mr. Cloward did agree to pay  
7 for her travel to fly here today.

8 THE COURT: So where is she now?

9 MS. LLEWELLYN: She's scheduled to be here at 3:00.

10 THE COURT: All right. Is it possible to remove Regina to  
11 maybe 3:30, so we can have lunch and the finish with Templer.

12 MR. ROBERTS: Sure, sure, that's fine. But they're both -- it's  
13 my understanding that Regina Reyes is available from after lunch to the  
14 end of the day, with --

15 THE COURT: All right.

16 MR. ROBERTS: -- with no constraints on her spot.

17 THE COURT: He's only going take a half an hour with her.  
18 So Mr. Cloward, can we do that? Can we --

19 MR. CLOWARD: Yeah. I believe that's fair.

20 THE COURT: Let's go ahead and take our lunch now, then --

21 MR. CLOWARD: Okay.

22 THE COURT: -- right. And then at -- you know, we'll come  
23 back at let's say 1:15, and then you can finish up with Mr. Templer, and  
24 when you're done with Templer, then we'll go right into Reyes, and then  
25 we'll be done before 3:00 for Martinez then.

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1 MR. CLOWARD: Okay. Thank you, Your Honor.

2 THE COURT: Does that work?

3 MR. CLOWARD: Yes.

4 MR. ROBERTS: Yes.

5 THE COURT: Okay. So you are excused for lunch, and I  
6 admonish you not to discuss the testimony that you've given with  
7 anybody.

8 THE WITNESS: I felt I'd probably be eating lunch by myself  
9 today.

10 THE COURT: All right. Well, no, you can have with lunch  
11 with them, and talk about --

12 THE WITNESS: Talk about football.

13 THE COURT: -- other stuff, yeah.

14 MR. ALLEN: How long for lunch Your Honor?

15 THE COURT: Let's come back at 1:15. All right.

16 [Lunch Recess taken from 12:10:08 p.m. to 1:21 p.m.]

17 THE MARSHAL: Remain seated. Court will please come to  
18 order, we're on the record.

19 THE COURT: Mr. Cloward, you may proceed.

20 MR. CLOWARD: Thank you, Your Honor.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. CLOWARD:

23 Q Okay. So, Mr. Templer, going back to where we left off.

24 MR. CLOWARD: Brandon, you could pull up 180, starting on  
25 page 6. We'll just kind of -- so that we can -- it's not showing up on the



1 monitor for some reason. Is the monitor off; your monitor?

2 [Pause]

3 MR. CLOWARD: Okay, perfect.

4 BY MR. CLOWARD:

5 Q Okay. Now just to kind of refresh where we were going,  
6 Commissioner Bulla indicates he specifically --

7 [Court Recorder and counsel confer]

8 MR. CLOWARD: Oh, no I don't. I'm sorry, I forgot.  
9 Brandon, go to page 7.

10 Okay. Can you hear me, Ma'am?

11 COURT RECORDER: Yes. Thank you.

12 BY MR. CLOWARD:

13 Q So this indicates here, to just kind of refresh where we were  
14 at, Commissioner Bulla is saying, hey, I look I think that the design is  
15 important, so it's not just what happened before, but it's also what  
16 happens after.

17 Do you remember us covering that before the break?

18 A Generally, yes.

19 Q Okay. And then Jacuzzi represents through Mr. Cools that --  
20 the point, Your Honor, is that's what we did. We searched not only this  
21 tub, but other walk-in tubs prior to this incident, using those search  
22 terms, and there's nothing related, no personal injuries related.

23 Do you remember how we covered that before the break?

24 A In general, yes.

25 Q And we went through those agreed upon search terms prior,

1 correct?

2 A Correct.

3 Q And we've gone through the things that Jacuzzi did search,  
4 and the things that Jacuzzi did not search, correct?

5 A Correct.

6 Q Prior to this time is Jacuzzi -- are you aware of any limitation  
7 on the Commissioner's search, that says, hey, you only have to search X,  
8 Y and Z?

9 A Yes.

10 Q Okay. And what was that?

11 A Searching for injuries, significant injuries, and death in all  
12 walk-in tubs.

13 Q And I'm sorry, that was a bad question. Were you aware of  
14 any limitation on the sources of information placed by Commissioner  
15 Bulla that Jacuzzi was to search?

16 A No.

17 Q Okay.

18 MR. CLOWARD: And then if we want to go on page 9,  
19 Brandon.

20 BY MR. CLOWARD:

21 Q At the very bottom, she says, and we need to -- this is line 24.  
22 She says -- it's page 9, line 24, at the very bottom she says,

23 And we need to do a search of all those complaints from 2008 to  
24 the present, to the extent that they exist, and that would include both  
25 documents on computers as well as any hard copies that were

1 maintained, separately or letters, letter of complaints, or whatever else  
2 you have. I mean, your client needs to understand, Defense counsel, is  
3 its their knowledge that becomes relevant; what they knew about this  
4 product prior to the fall.

5 Now you -- was that your understanding that Commissioner Bulla  
6 is saying, look, I want to know, 2008 to the present, and Jacuzzi needs to  
7 understand that it's the -- it's what they knew about this product, before  
8 the fall?

9 A Again, I was not at the hearing, I didn't read this transcript  
10 until now, so I didn't have statement from Commissioner Bulla, prior to  
11 day.

12 Q All right.

13 A Again, I just knew what the general scope of the order was.

14 Q Understood. And after this hearing was it your  
15 understanding that she wanted Jacuzzi, specifically, to understand the  
16 scope of the information that she felt like was important to be turned  
17 over?

18 A I'm not sure what you mean by "scope"? You mean the  
19 locations, or the types of documents, or --

20 Q The types of documents?

21 A I guess, I -- no, I didn't know that. Again, my understanding  
22 was that the company was to turn over incidents of serious personal  
23 injury and death, and the company did a search in a place that it's  
24 reasonably expected that type of information to be maintained.

25 Q Okay. Now you give the limitation, reasonably expected.

1 You agreed, yesterday, Mr. Bachmeyer testified he was never asked, as  
2 the Director of Customer Service, never asked to search through his  
3 emails, right?

4 A I don't remember him saying that.

5 Q Okay.

6 A It's possible he did, I don't remember him saying that.

7 Q Well, let me ask you. Do you think it would be reasonably  
8 expected to find issues with regard to this tub, and that the customer  
9 service director would have information that's reasonably expected?

10 A Mr. Bachmeyer wasn't the customer service director at that  
11 time, he was warranty, and at the time, again, in speaking with people,  
12 the understanding was that the information that was requested,  
13 incidents involving serious personal injury or death, should be within the  
14 KBM sales force customer service databases.

15 Q And my question, Mr. Templer, is this very specific question.  
16 You gave a limitation, you said, we did what we reasonably expected.  
17 We looked into places that we reasonably expected. And my question  
18 was simply, do you think, is it reasonably expected that the director of  
19 customer service would have information responsive to what the  
20 Commissioner was ordering?

21 A At the time I expected it to be in the customer service  
22 databases, not in emails outside of those databases.

23 Q Okay.

24 A Or other documents outside of those databases.

25 Q And after this hearing you agree that Commissioner -- you

1 agree that Jacuzzi never supplemented its written discovery responses  
2 as a result of the things that Commissioner Bulla was asking, true?

3 A Information was produced. I don't recall if it was in the form  
4 or a supplemental discovery response, or in some other manner.

5 Q And who was that produced to?

6 A I'm sorry. Maybe I'm misunderstanding the question. In  
7 regard to the -- this whole Commissioner Bulla order, it started in July  
8 and went through, I think way at the beginning of November. Stuff was  
9 produced to you and to the Court to review in camera.

10 Q Okay. Now my question, in particular, was a result of the  
11 September 19, 2018 hearing, you agree with me that Jacuzzi never  
12 supplemented with any additional, either prior or subsequent incidents  
13 until I think possibly the Pullen matter, correct?

14 A I don't recall the dates of all production. I know -- I believe it  
15 was in response to this hearing, that Jacuzzi did produce information to  
16 the Court to review in-camera, but to produce directly to Plaintiffs -- I  
17 take that back, there was some production after this. I don't know that  
18 there was any new incidents, I don't recall that, but I remember there  
19 was an issue about disclosure of consumer names, and their privacy  
20 concern of Jacuzzi.

21 Q Correct. And that was when Jacuzzi provided unredacted  
22 copies of the ten incidents, correct?

23 A Again, I don't recall. That's probably true, I don't recall  
24 specifically what was produced at that time.

25 Q Okay. I'm representing that after this hearing, on September

004331

004331

1 19, 2019, until I believe it was the first of the year, toward -- around the  
2 time of Judge Scotti's ruling, Jacuzzi did not produce any new, prior or  
3 subsequent incidents. Do you have any reason to disagree with that?

4 A I don't have a reason to disagree. I'm just saying we did  
5 produce some documents, unredacted documents. To the best of my  
6 recollection it was the same documents that had been previously been  
7 produced in redacted form.

8 Q Okay. Now let's just take a look --

9 MR. CLOWARD: And, Brandon, if you'll pull up page --  
10 actually, we're going to stay on page 10 for a moment.

11 BY MR. CLOWARD:

12 Q I just want to point out, after the Commissioner says, it's  
13 important that you client needs to understand, Defense counsel, this is at  
14 line 4, is their knowledge becomes relevant. And Commissioner Bulla  
15 says,

16 We don't know the answer to that right now. A lot of what we  
17 have, as you indicate the incidents were after the fall, so we don't know  
18 with any certainty exactly what knowledge of known before the fall. And  
19 I don't know, when did this fall take place, February 14, or February 19 of  
20 2014, so we don't know.

21 And then again, Mr. Cools is reassuring the Court, saying, well,  
22 we've run that search, we've run that. We have searched that, and it's  
23 Jacuzzi's position there are none. And he says, It's our representation  
24 and discovery responses into counsel, so I understand what you're  
25 saying, that might not be enough.

1           And then the Commissioner goes on to explain what she wants.  
2           The scope of what she wants in line 20 through 24. Was it your  
3           understanding that -- I think what is concerning to me is what occurs in  
4           the regular course of business. Was that your understanding of the  
5           scope of her inquiry, and the information that she was seeking?

6           A     I didn't have an understanding of this at that time, so I didn't  
7           have the transcript, and I wasn't at the hearing.

8           Q     Okay.

9                     MR. CLOWARD: Go to page 11, Brandon.

10          BY MR. CLOWARD:

11          Q     And following up with what the Commissioner says here, she  
12          says, and that's something that I am going to require the Defendant to  
13          follow-up on.

14                 Did the Defendant ever follow-up, pursuant to Commissioner  
15          Bulla's request and search again for this information, 2008 to present?

16          A     Searches were done. I couldn't give you a specific date.

17          Q     So as you sit here today you're unable to tell this Honorable  
18          Court, whether or not, after this September 19, 2018 hearing, when  
19          Commissioner Bulla says, and that's something that I am going to  
20          require the Defendant to follow-up on, you're not able to say whether or  
21          not Jacuzzi went back, searched again, and provided the information; is  
22          that correct?

23          A     It's accurate, but I can't state that one way or the other.

24          Q     Fair enough.

25                 Now was it your understanding after this hearing -- was it

004333

004333

1 your understanding that after the hearing that we have to -- we have to  
2 go back, or we have to look again, Commissioner Bulla is wanting us to  
3 look again, we got -- we need to follow-up; is that your understanding?

4 A Again, I don't recall having that understanding.

5 Q Okay.

6 A It may have been, but I don't recall, though, sitting here  
7 today.

8 Q All right.

9 MR. CLOWARD: Next, Brandon, if you want to shift to 21,  
10 page 21.

11 BY MR. CLOWARD:

12 Q Now this is the next kind of line of questioning that I think is  
13 important. This is where I was kind of explaining to the Commissioner  
14 why I wanted to depose Mr. Demeritt. And as you see here, I explain,  
15 look, during the deposition of Bill Demeritt I asked him about these  
16 searches, and he said that he receive voluminous documents. You were  
17 at that deposition, do you remember that?

18 A I -- no. I remember the general talk, and I don't recall him  
19 saying he received voluminous documents.

20 Q Okay. Well, at this time I'm explaining to the Commissioner,  
21 you know, Mr. Demeritt, tell me about these documents, and what  
22 happened to them, how many pages were there, how many incidents  
23 were there? And this is on line 16 of page 21. What were the types of  
24 incidents? Do you see where I was asking the Judge [sic] that, on line  
25 21?



1           A     I don't think you're asking the judge that, you're representing  
2 what you were asking Mr. Demeritt, I see that.

3           Q     Okay. And the Commissioner said, hey, on line 21, what was  
4 that stack of stuff?" Right? Do you see where she asked for that?

5           A     I see that.

6           Q     And then she goes on, and I guess the response that Jacuzzi  
7 gave was, well, the stack of stuff, there's a spreadsheet of claims with or  
8 hits, essentially with those terms. And your understanding was that the  
9 hits with the terms were for the 20 agreed upon search terms, right?

10          A     At the time of Mr. Demeritt's deposition that was -- we had  
11 those search terms. So I'm not following your question exactly, but --

12          Q     This line of questioning, and you can review it if you need to,  
13 so that you give yourself the context. This line of questioning was in  
14 regard to the searches that were conducted by Jacuzzi counsel and  
15 yourself, of these 20 search terms. Mr. Cools is representing these are --  
16 these are the hits that we got from those terms, and then that was  
17 provided to Commissioner Bulla. You agree with that, right?

18          A     That -- that's a letter.

19          Q     Okay. And on the next page she asks for the search term, or  
20 I guess for those -- the stack of documents to be turned over to her;  
21 correct, do you remember that?

22          A     I remember they were turned over to her. I didn't read the  
23 transcript, or I wasn't at the hearing, but they were requested and turned  
24 over.

25          Q     Okay. So it was your understanding that the stack of

1 documents, the hits, were turned over to the Commissioner, right?

2 A I think there was two different things handed over to the  
3 Commissioner, or maybe three, actually. One I believe was the KBM,  
4 search of those terms. And, again, I don't think it was produced in a  
5 stack of documents. I think that was provided on a thumb drive, if I'm  
6 not mistaken.

7 There was another spreadsheet with a search that had been  
8 done on the sales force of those same terms. And then I believe there  
9 was a third set of document produced to Commissioner Bulla, which  
10 were the unredacted hits that we had produced to you, they had the  
11 customer names on them, so she could make a ruling on the propriety of  
12 privacy objections.

13 Q Okay. So you agree that the -- I guess that the stack of  
14 documents that were provided to Commissioner Bulla, should match up  
15 with the stack of documents that Mr. Bachmeyer testified about, that  
16 were circulated internally to Jacuzzi, right?

17 A I'm not sure what documents you referred to, are circulated  
18 internally within Jacuzzi. Again, Commissioner Bulla, what was  
19 submitted to her, I just testified about that, and I'm not aware of anything  
20 else submitted to her, and I think there was a cover memo that went  
21 along with it, explaining what was being provided.

22 Q Sure. But what was being represented to Commissioner  
23 Bulla, as the stack of documents with the hits, are the documents that  
24 Jacuzzi claimed to have hold during the search, right.

25 A Again, it's not really a stack of documents. Two of the

1 documents at least were spread sheets, not a stack of documents. And  
2 then there was another, I believe documents that had the incidents that  
3 were being disclosed.

4 Q Okay. And certainly you agree that Jacuzzi wouldn't want to  
5 withhold information from the Commissioner, right?

6 A No. We were providing what the -- what we -- what we had  
7 located.

8 Q Okay. And the final thing I want to focus on in this transcript  
9 is page 22, where again, Commissioner Bulla says, well, look, Mr.  
10 Cloward, I'm not going to let you take the depositions without prejudice.  
11 And then she says, let me review the camera spreadsheets. And then  
12 she goes on and she says, in particular --

13 MR. CLOWARD: Brandon, can you go to the next -- oh, wait,  
14 hold on, sorry.

15 BY MR. CLOWARD:

16 Q I would like to see what the additional computer searches  
17 yield from the computers, but take the intake information. I don't know if  
18 they're on the same set, I don't know if they're connected. So I don't  
19 know if in the prior search they should have shown up anyway. I don't  
20 know the answer to those questions, and I also want to make sure you  
21 double check to see if you had any written complaints that came in,  
22 where those are, because I think that's something you need to take a  
23 fresh, or a look at again with fresh eyes. You know, 2008 to present was  
24 there a physical injury involved or a wrongful death?

25 So your understanding after this hearing was the Commissioner

1 was saying, hey, look, I want a fresh set of eyes to go and look at this,  
2 right?

3 A I wasn't at the hearing, so I do not -- I don't recall knowing  
4 that.

5 Q Was it your understanding after this hearing that Jacuzzi  
6 needed to take another look with a fresh set of eyes, to look for injuries  
7 from 2008 to the present?

8 A As I sit here today I don't remember whether another look  
9 was taken at that time, or not.

10 Q My question was a little bit different than that. You  
11 answered, I guess what would be the follow-up question. The question  
12 was, did you have an understanding that after this hearing Jacuzzi was  
13 required to do another search with a fresh set of eyes, for injuries from  
14 2008 to the present?

15 A I think I already answered that. I wasn't at the hearing, I  
16 wasn't aware of that -- of the statement in the transcript, to the best of  
17 my recollection.

18 Q I wasn't asking if you were aware of the statement in the  
19 transcript. My question is a little bit different, Mr. Templer. My question  
20 is, after this hearing, obviously you have communications with counsel.  
21 I'm not going to broach those communications until the Court says that I  
22 can, but after this hearing did you have an understanding, that look we  
23 have to go, and we have to look again with a fresh set of eyes?

24 A I don't recall.

25 Q Okay. And you don't recall whether there was actually

1 another search or not?

2 A I don't recall. Now I remember multiple searches. I don't  
3 recall the exact timing of each search.

4 Q Okay. Now there were other very important things in this  
5 hearing that were addressed.

6 MR. CLOWARD: Specifically, Brandon, if you'll pull up  
7 Plaintiffs' 181, and interrogatory number 43. I'm sorry, request for  
8 production number 43.

9 BY MR. CLOWARD:

10 Q Okay. Now, Mr. Templer, you agree with me in written  
11 discovery Plaintiffs requested all documents relating to complaints made  
12 to you about your walk-in tubs from January to 2012 to the present, true?

13 A That's what it states.

14 Q All right. And the response that was given is, "We're limiting  
15 it to incidents involving personal injury or death in a walk-in tub, true?

16 A Yes.

17 Q You agree that we didn't use the word claim there. Jacuzzi  
18 didn't use the word claim, right?

19 A The word claim is not in that sentence.

20 Q Okay. And then at the bottom, on line 13 it says: Jacuzzi will  
21 supplement this response upon entry of a final order on Jacuzzi's motion  
22 for a protective order, correct?

23 A Correct.

24 Q So I'm going to get to the hearing where Commissioner Bulla  
25 says, I want you to answer those. And then, Jacuzzi, she signs the Court

004339

004339

1 recommendation, and it goes up to this Honorable Judge. In the  
2 meantime Jacuzzi is telling the parties, hey, you know what, we're going  
3 to supplement this, but we want to wait until the final order, correct?

4 A In general. I don't recall times of everything, but, yes.

5 Q Okay. Now you agree that's what Jacuzzi represented in  
6 written discovery to the parties?

7 A The statement said what it says, I don't dispute that.

8 Q You don't -- okay. Thank you.

9 Now at the September 19, 2018 hearing, you agree that this  
10 particular request for production was discussed, right?

11 A I don't know.

12 Q All right. Well, let's --

13 A I wasn't at the hearing.

14 Q Let's -- did you have an understanding that requests 24, 25,  
15 41, 42 and 43 were addressed by the Commissioner?

16 A I don't recall specifics, I recall that motion for a protective  
17 order was filed in regard to I believe the set of discovery.

18 Q Okay.

19 MR. CLOWARD: So, Brandon, let's go to page 24.

20 THE WITNESS: Which document are you referring to?

21 BY MR. CLOWARD:

22 Q This is Exhibit 180. The is the hearing where Commissioner  
23 Bulla talked about these. It's page -- I'm sorry, Exhibit 180, page 24.

24 A I have it.

25 Q Okay. On line 15, you see where the Commissioner says

1 now for number 24 --

2 MR. CLOWARD: I'll wait for Your Honor. Page 24, Your  
3 Honor. Line 15.

4 BY MR. CLOWARD:

5 Q Okay. Line 15, Commissioner Bulla says, for number 24, 25,  
6 41, 42 and 43, you need to answer those within the parameters of if there  
7 is not a date given in the request it's from 2008 to the present, and that's  
8 only if there was not a date. But we had a date, we said, January 1 to  
9 2000, or 2012 to the present.

10 Any of the requests that involve wrongful death or serious bodily  
11 and then she says, not serious, must bodily injury. So bodily injury  
12 wrongful death. Was it your understand that after that hearing is that  
13 what Jacuzzi was required to do?

14 A I don't recall the exact scope of my recollection of what we  
15 were -- the company was required to do. I recall that a supplemental  
16 response was served. And in conjunction with counsel it was to be in  
17 compliance with the Court's order.

18 Q Now I want to be -- I want to be fair to you, Mr. Templer,  
19 because at this time no response had been given. And I think --

20 MR. CLOWARD: If you go to the next page, Brandon?

21 THE WITNESS: I wouldn't dispute that, I think that's  
22 accurate.

23 BY MR. CLOWARD:

24 Q Okay. Yeah.

25 A So I think that's what the motion for a protective was

004341

004341

1 intended to do, was to get some direction on this.

2 Q Okay. So you agree that at the time of the hearing there was  
3 no response. After the hearing a response was given, correct?

4 A A response was given to some of them, and some of them I  
5 believe the Court ordered that no response was required.

6 Q It was protected?

7 A It was -- yeah. I don't recall how the Court phrased it. My  
8 understanding was, the company is not required to respond to some.  
9 Some I believe you were directed re-propound in a modified form, and  
10 some the company was to answer.

11 Q Okay. 43 was one of the ones the company was to answer,  
12 as evidenced by the answer for the response number 43, contained in  
13 Exhibit 181, that was electronically served on October 1st, 2018, correct?

14 A I don't recall, but I have no reason to dispute this document,  
15 and the answer is there.

16 Q Now earlier, I asked a question about email. Do you  
17 remember that?

18 A Been a lot of discussion of email, but yeah.

19 Q Remember I asked did Jacuzzi ever search these terms  
20 through email. Do you remember that?

21 A Yes.

22 Q And you said no.

23 A I said some email searches were done. It has not been run  
24 against the entire email database.

25 Q Okay. And was it your understanding, yes or no, that Jacuzzi



1 was required to search email?

2 A At this time?

3 Q Yeah.

4 A I don't think I had a specific understanding either way.

5 Q Okay. Well, do you agree here that Mr. Cools actually asked  
6 a clarifying question, this is on Line 8. Mr. Cools says,

7 My question is obviously -- or, excuse me, I'm sorry. It's on Line 2.  
8 He says,

9 Can I just clarify something in regards to something like 43? All  
10 documents relating to complaints made to you about your walk-in tubs  
11 from January 1, 2012 to the present?

12 Commissioner Bulla says, I don't have 43 on my list.

13 And Mr. Cools says, Okay, it's in the 24 through 25, and then 41  
14 through 43.

15 Commissioner Bulla says, okay, got it.

16 Mr. Cools says, my question is obviously, you know, that could  
17 also pertain to internal communications via email about that. Are you  
18 requiring us also to do an ESI search and Privilege Law for all privileged  
19 communications about those claims as well?

20 Her response, ordinary course of business is what I'm talking  
21 about.

22 You said you didn't have an understanding of whether or not email  
23 was in the scope of what Jacuzzi was required to do. You agree with me,  
24 however, though, that at this hearing, Commissioner Bulla specifically  
25 indicated that it was, true?

004343

004343

1 MR. ROBERTS: Objection. Mischaracterizes the transcript.

2 THE COURT: He can speak to his -- overruled, he can speak  
3 to his understanding of what was required, not what the transcript, itself,  
4 says.

5 THE WITNESS: Again, I wasn't there. I don't read this as  
6 saying what she was represented.

7 BY MR. CLOWARD:

8 Q Okay. So you don't -- when Commissioner Bulla says -- or  
9 Mr. Cools has asked the question,

10 Are you requiring us to also do an ESI search and Privileged Law  
11 for all privileged communications about those claims?

12 And he's talking about emails, via email, and she says,  
13 Ordinary course of business is what I'm talking about.

14 You don't see that as her saying hey, you need to search email?

15 A That's not the way I read this.

16 Q Okay. She goes on further to indicate, because Mr. Cools  
17 says, hey, that's just costly and burdensome to have to go to -- to have to  
18 go through and do.

19 And Commissioner Bulla says, Okay, but we're limiting it to  
20 timeframe, and this one is January 1st of 2012, and it deals with  
21 wrongful death and bodily injury, so wouldn't it involve any of the  
22 warranties. It wouldn't involve any -- anything where there's no injury.  
23 How many claims could you possibly have?

24 And Mr. Cools says, I'm not saying we even -- saying even doing  
25 the search based off of the ten --

004344

004344

1 MR. CLOWARD: Next page, Brandon.

2 BY MR. CLOWARD:

3 Q Or 11 subsequent claims that have been produced, but  
4 having to go through to find all these custodians that may have touched  
5 the claim, have counsel review, those are just very burdensome.

6 And the Discovery Commissioner says,

7 Look, I don't want this to be burdensome or costly, but you cannot  
8 hide behind a privilege not to produce documents that were in the  
9 ordinary course of business, and when you say something like that, it  
10 worries me.

11 Was it conveyed to you that hey, Commissioner Bulla is worried  
12 that -- about this search of our emails, and you know what, we need to  
13 search the emails for these 20 terms?

14 A I guess my problem with that is to give it -- that sounds like  
15 it's getting into a specific communication I would have had with counsel,  
16 so I just need some direction on privilege and waiver type issues --

17 Q Okay.

18 A -- before I answer.

19 Q I don't want to go into the -- into the communication itself,  
20 but is it your testimony that there was communication from Mr. Cools to  
21 Jacuzzi about emails, as discussed in this hearing? Yes or no?

22 MR. ROBERTS: Your Honor, I object. I think that he's getting  
23 into what he was told by counsel. I think -- I would have no objection if  
24 he wanted him to ask was he aware at this time that the Commissioner  
25 had said this or something similar regarding what he was aware of and

1 what his understanding was.

2 THE COURT: I'll allow him to answer with respect to whether  
3 there was discussion with outside counsel about the issue. The problem  
4 with the question was when you added the phrase as discussed in this  
5 hearing.

6 MR. CLOWARD: Okay. Fair enough.

7 THE COURT: All right. So --

8 MR. CLOWARD: Okay.

9 BY MR. CLOWARD:

10 Q Mr. Templer, was there communication from counsel to  
11 Jacuzzi about the issues, particularly with regard to email, after this  
12 hearing?

13 A I can't tell you when. I've had conversations with counsel  
14 about email. I can't tell you if it was specifically after this hearing or not.  
15 So, I'm sorry.

16 Q Well, Mr. Templer, two minutes ago, or, you know, 20  
17 seconds ago, you paused and said, well, hold on. I think that that evades  
18 some communication. It's almost as though you're thinking of a very  
19 specific communication and you're wanting to make sure that you were  
20 okay to answer that question.

21 A If that's the impression you got, maybe it's my fault in the  
22 way I said it, but I'm not intending to relay that. I'm just -- the way your  
23 question was asked, it asked for a specific, in my mind, it asked for a  
24 specific conversation on a specific topic that occurred with counsel, and  
25 that's what I got concerned about waiver issues.

1 THE COURT: So, question. So you have a general  
2 recollection of having a discussion with counsel, outside counsel,  
3 regarding the issue of emails.

4 THE WITNESS: Correct.

5 THE COURT: You're not sure when. Does that mean it could  
6 have been before or after -- before or after this October 18 hearing and  
7 you just don't know if it was before or after or both?

8 THE WITNESS: It was probably both. There's been a lot of  
9 discussions with email and just the difficulty in searching them, as I  
10 mentioned earlier, because of the nature of those terms, to search our  
11 entire email database. That's a subject that's been discussed with  
12 counsel multiple times --

13 THE COURT: Okay.

14 THE WITNESS: -- throughout this litigation.

15 THE COURT: All right.

16 BY MR. CLOWARD:

17 Q Okay. Was it Jacuzzi's understanding that emails were part  
18 of the search order with regard to 43?

19 A I don't recall that being specifically mentioned as being  
20 within the scope of 43.

21 Q Okay. Who, at Jacuzzi, would know that? If you don't recall  
22 whether or not 43 anticipated that, who at Jacuzzi would know that?

23 A You lost me on the question.

24 Q Well, I'm trying to get answers to questions about what  
25 Jacuzzi knew or didn't know. So the particular question is if you, Mr.

1 Templer, don't know, then who at Jacuzzi would know?

2 A In regard to responding to a discovery request?

3 Q Yes.

4 A Nobody, it should be me.

5 Q So you're the only guy?

6 A I was the one that dealt with outside counsel in responding  
7 to discovery, if that's what you're asking.

8 Q Okay.

9 THE COURT: So would it -- would it be -- I guess what you're  
10 saying is that presently you don't have a recollection of what your  
11 position was at the time about whether Number 43 included emails or  
12 not. At the time, would you have had an understanding, one way or  
13 another, about whether you should have searched emails?

14 THE WITNESS: I don't know. But again, it gets back to what  
15 I said earlier on the whole email situation was, we did some targeted  
16 searches at times, but we just -- we've never had the ability to search all  
17 emails for those terms, really any of the general terms, just to -- it comes  
18 up with so many hits.

19 THE COURT: We had the ability, just it was -- I guess, you  
20 said one example was when you used the term, I think, slip, it came up  
21 with a million hits?

22 THE WITNESS: Nearly a million hits a week.

23 THE COURT: Were you being literal there or just trying to  
24 explain that it was a very huge number?

25 THE WITNESS: No, my recollection is that term came up

1 with nine-hundred-and -- roughly, 960,000 hits, something like that. I've  
2 searched through some doctor's documents on emails, but the word slip  
3 just is used in a lot of different ways. We have -- one of our products are  
4 slip or tub. Something slipped through the cracks, slip, just --can be part  
5 of another word? That's how it just --

6 THE COURT: Okay.

7 THE WITNESS: -- spirals into a huge number.

8 THE COURT: So, even further the range, and I forget the  
9 dates, whatever the range was in the request, it was that many or was it  
10 that many for some, like for all emails in the whole system?

11 THE WITNESS: That, I couldn't answer, as I sit here.

12 THE COURT: Okay.

13 THE WITNESS: I don't recall if we have the ability to narrow  
14 the focus of the search within the dates or not. I don't recall that.

15 THE COURT: Okay. All right.

16 BY MR. CLOWARD:

17 Q And if you're unable to tell what Jacuzzi's, I guess,  
18 understanding of what was to take place, based on the Commissioner's  
19 ruling, what of the Defense lawyers, or what lawyer for Jacuzzi would  
20 know?

21 A Can you ask that once more?

22 Q Yeah. Jacuzzi's position in this hearing is that hey, I'm Mr.  
23 Templer. I'm Senior Corporate Counsel, I handled all of these discovery  
24 issues, but I don't know what we were supposed to do or what we  
25 weren't supposed to do because I don't remember, which that's fair, a lot

1 of information in the case.

2 So my question, though, is we need to have an answer to that. We  
3 need to have an answer as to what was communicated to Jacuzzi or  
4 what it's expectations were. So I would like to know, I guess, not the  
5 substance of the communication, but what lawyer would know what the  
6 Commissioner's expectations were at this hearing.

7 MR. ROBERTS: Objection. Calls for speculation. Only the  
8 Commissioner would know what her expectations were.

9 THE COURT: Overruled. The question is going to his  
10 understanding of whether email should be searched or not, and he's  
11 not -- Mr. Templer's understanding comes from what the Discovery  
12 Commissioner said, but Mr. Cloward is not asking Mr. Templer what he  
13 discussed with counsel about what the Commissioner said. He's only  
14 trying to find out which attorney would, either your firm or Snell &  
15 Wilmer, did he have discussions with about the issue whether emails  
16 should be produced or not.

17 So, setting aside what Commissioner actually said, can you  
18 answer a question that way?

19 THE WITNESS: I can answer to the extent that I had a  
20 conversation regarding this hearing would have been with Josh Cools.

21 THE COURT: Josh Cools, okay.

22 MR. CLOWARD: Okay. Fair enough.

23 BY MR. CLOWARD:

24 Q Now the additional thing that Commissioner Bulla requested,  
25 where she says on Line 20, that's Page 26 of Exhibit 180.



1           If at some point the claim goes to the Legal Department, you just  
2 need to identify the fact that any other documents are part of the Legal.  
3 It went to the Legal, and are covered by work product privilege, or  
4 whatever it is.

5           I mean I don't know how many we're talking about. I don't expect  
6 you to do this for every warranty claim, so was it your understanding  
7 that you were nevertheless to provide, I guess privilege log for the  
8 communications that might go to the Legal Department, was that your  
9 understanding?

10          A     I'm confused on this. I remember there was a privilege log  
11 produced at one point, but I believe that was in regard to  
12 communications regarding this action.

13          Q     Just this action, right?

14          A     That's my recollection.

15          Q     Okay.

16                MR. CLOWARD: Okay. Brandon, Page 2517.

17 BY MR. CLOWARD:

18          Q     And you see here, ordinary course of business is what I'm  
19 talking about.

20                Line 15, to the extent that the complaint gets passed on to the  
21 lawyer, and the lawyers making some opinions about it, I would say you  
22 need to do a privilege log.

23                Do you see that?

24          A     I see that.

25          Q     Was it your understanding after this hearing, that Jacuzzi

1 needed to provide a privilege log for communications regarding  
2 incidents from 2012 to the present?

3 A I don't recall that. I mean that's not exactly the way I'm  
4 understanding this, begins the first time. I believe this is referring to  
5 communications regarding the incidents that were produced at 10 or 11,  
6 but I may be wrong. I'm just telling you what my understanding is in  
7 reading this now for the first time.

8 Q Okay. You see Line 6, where he starts talking about 24  
9 through 25 and 41 through 43, and then there's a discussion about those  
10 specific requests, and he says, well, geez, you know, that's costly and  
11 burdensome.

12 She says, ordinary course of business. Okay, to the extent that the  
13 complaint gets passed on to the lawyer, and the lawyers making  
14 opinions about it, I would say you need to do a privilege log.

15 Does that refresh your recollection about what, what the  
16 Commissioner was talking to Cools about? Does that help clarify or not?

17 A No, there's nothing to reflect -- refresh because I wasn't at  
18 this hearing.

19 Q Okay. Do you disagree that Commissioner Bulla, and it's not  
20 what you know, this is do you disagree that Commissioner Bulla said  
21 look, I want you to search emails. I want you to produce a privilege log  
22 with regard to 24 through 25, 41 through 43? Do you disagree with that?

23 A I don't agree or disagree. I don't know enough. I haven't  
24 read this entire transcript, I don't know what she had said.

25 Q Okay. So you don't know what the expectations of

1 Commissioner Bulla were; is that fair?

2 A I knew some of it, from based on the order and the  
3 conversations with counsel. I don't know the details of which you're  
4 discussing.

5 Q Okay. Was one of the things that you understood was that  
6 Jacuzzi needed to provide a privilege law regarding communications  
7 with counsel?

8 A In what regard?

9 Q What?

10 A Communications with counsel in regard to other complaints,  
11 you mean?

12 Q Yeah.

13 A I don't recall that. I don't recall that as I sit here. Having said  
14 that, I also don't recall any -- I don't recall, as I sit here, any  
15 communications regarding those claims.

16 THE COURT: Was a privilege log ever done at that --

17 MR. CLOWARD: No, no.

18 THE COURT: Okay.

19 MR. CLOWARD: No privilege log was ever done.

20 THE COURT: All right.

21 MR. CLOWARD: -- on these things. And I'm --

22 THE COURT: Privilege -- there was no privilege log with  
23 respect to emails, with --

24 MR. CLOWARD: Anything.

25 THE COURT: -- with outside counsel relating to claims?

1 MR. CLOWARD: Correct.

2 THE COURT: Okay.

3 MR. CLOWARD: Now let's take a look at response -- pardon  
4 me, Exhibits 181, Brandon.

5 BY MR. CLOWARD:

6 Q We've already reviewed this, I just want to touch one quickly  
7 on this.

8 MR. CLOWARD: 181, and it's going to be Number 43 again,  
9 and then we'll go to 183 after that, Brandon.

10 BY MR. CLOWARD:

11 Q Okay. Mr. Templer, again, you agree that here, Jacuzzi  
12 represented Line 13 of Response Number 43, that Jacuzzi will  
13 supplement this response on entry of final order on Jacuzzi's motion for  
14 protective order, correct?

15 A That's what it states.

16 Q And Jacuzzi did, in fact, object to the report of  
17 recommendation; is that true?

18 A I remember there was an objection to a report. I don't recall  
19 if it was this one specifically.

20 Q Okay.

21 A It was around this timeframe there was an objection.

22 Q Okay.

23 MR. CLOWARD: Brandon, pull up 183, please.

24 BY MR. CLOWARD:

25 Q Now this I'll actually stand through. This is a notice of entry

1 of order.

2 MR. CLOWARD: Go to Page 2, Page 3, 4. Okay.

3 BY MR. CLOWARD:

4 Q Discovery Commissioner Report and Recommendations,  
5 September 19, 2018. So this is the Discovery Commissioner Report and  
6 Recommendation.

7 MR. CLOWARD: Now, if you would continue to go through  
8 the next page. Continue to go to the next page. Okay.

9 BY MR. CLOWARD:

10 Q Now, do you see on Page 3 of the R&R, Line 5, RFPD 24, 25,  
11 41, 42, 43.

12 The Discovery Commissioner finds that the scope of these requests  
13 is overbroad, therefore, Plaintiff shall serve supplementary requests  
14 within the following parameters. The scope shall be limited in time from  
15 2008 to present. The request shall also be limited to walk-in tubs. The  
16 scope of the request shall include all bodily injury, as opposed to serious  
17 bodily injury, and wrong death claims." And she says, "And don't redact  
18 the information.

19 Do you see that? Was that your understanding of these RFPDs,  
20 what Jacuzzi's responsibilities were?

21 A I believe so. It says that you are to preserve supplemental  
22 requests.

23 Q We'll get there.

24 A I mean I remember that part.

25 Q Okay, we'll get there.

004355

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1 MR. CLOWARD: Brandon, go to the last page.

2 BY MR. CLOWARD:

3 Q Do you see the signature down there at the bottom, District  
4 Court Judge? Do you see where the -- Judge Scotti is hereby ordered,  
5 the Discovery Commissioner's Report and Recommendations are  
6 affirmed and adopted. Do you see that?

7 A Yes.

8 Q Do you agree that was an order of the Court, correct?

9 A As far as I know.

10 Q Okay.

11 MR. CLOWARD: Brandon, please pull up Exhibit 184. And  
12 Brandon, I'm sorry. Oh, wait, that's --

13 BY MR. CLOWARD:

14 Q Just look really quick, Mr. Templer. That's dated November  
15 5th, 2018.

16 A Uh-huh.

17 Q So November 5, 2018 is when this Honorable Judge signed  
18 that.

19 MR. CLOWARD: Now Brandon, if you will go to 184 and pull  
20 up 43. Hold on before you go to 43. Okay.

21 BY MR. CLOWARD:

22 Q Now you see on November 29, 2018, Plaintiffs serve an  
23 amended second request for production. Do you remember getting that  
24 amended request for production?

25 A Yes.

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1 MR. CLOWARD: 43.

2 BY MR. CLOWARD:

3 Q Okay. Now you see the language here, how the language is  
4 actually amended. There's a strike through the first set of language, and  
5 then we say what the Commissioner directed us to do.

6 All documents relating to complaints involving bodily injury or  
7 death made to you, directly or indirectly, about your walk-in tubs. The  
8 scope of this request is limited to incidents which occurred, or were  
9 alleged to have occurred, in 2008 to the present.

10 Do you see that?

11 A I see where it says that.

12 Q Okay.

13 MR. CLOWARD: Brandon, please pull up 186.

14 BY MR. CLOWARD:

15 Q Now the date of this response, January 9, 2019. Defendant's  
16 second request for production.

17 MR. CLOWARD: If you will go to 43, Brandon?

18 BY MR. CLOWARD:

19 Q Let's take a look --

20 MR. CLOWARD: Actually, I'm sorry, Brandon, the response.

21 BY MR. CLOWARD:

22 Q Let's take a look at Jacuzzi's response. First off, Jacuzzi  
23 objects, even though it's been ordered by the Court and affirmed and  
24 adopted, claiming it's still overbroad and burdensome. It's not limited in  
25 scope. It seeks information protected from disclosure, it's rights of

1 privacy of third parties, and then it indicates, however, Plaintiff -- or  
2 Jacuzzi refers Plaintiffs, this is on Line 8, to the documents regarding  
3 other incidents of personal injury or death in walk-in tubs from 2008 to  
4 present, produced in compliance with Discovery Commissioner's  
5 direction at July 20, 2012 hearing. Produced to Plaintiffs on August 17th,  
6 2018, Bates Jacuzzi 2912 through 2991.

7 Before I get to my next question, you agree that these  
8 documents that Jacuzzi referred Plaintiff to were documents that had  
9 already been produced. They were the ten incidents that were produced  
10 pursuant to Commissioner Bulla's request, and they were the incidents  
11 that everybody already knew about, right?

12 A I don't know what those Bates numbers correlate to. I don't  
13 have a reason to dispute what you're saying, but I don't know that as I sit  
14 here.

15 Q We're going to go through them. I'll refresh your memory on  
16 that, but before I do that, you agree that Jacuzzi says, hey, Jacuzzi has  
17 provided redacted copies of the requested records, and has a writ  
18 pending regarding the personal information of third parties.

19 So Jacuzzi was taking the position, hey, we have a writ pending,  
20 right?

21 A I'm sorry. Yes.

22 Q They're telling that we -- Jacuzzi's got a writ pending, but  
23 we're going to provide you with redacted copies, right?

24 A Yes.

25 Q What was the purpose of the writ that you communicated to



1 Plaintiff's on this response?

2 A The purpose of the writ?

3 Q Yeah.

4 A I think the writ -- my reflection is the writ dealt with privacy  
5 rights of third parties.

6 Q Okay.

7 A That we were concerned with disclosing names and  
8 addresses of people that had never -- that we didn't think had consented  
9 or would be aware that their personal information will be provided to a  
10 third party.

11 Q Okay. Were there any other reasons that the writ was filed?

12 A My recollection, there was also a portion of the writ that dealt  
13 with the scope of the order in regard to substantially some more  
14 incidents.

15 Q And you agree that was actually Number 43, right?

16 A What was 43?

17 Q It was Plaintiff's Request Number 43, that we spent a lot of  
18 time talking about, it was contained in the writ, right?

19 A This specific discovery request? I don't recall that being in  
20 the writ. My recollection is the writ dealt with concepts, not specific  
21 discovery, but I may be wrong.

22 Q Okay. Fair enough.

23 A That's my recollection.

24 Q Fair enough.

25 MR. CLOWARD: So, Brandon --

1 BY MR. CLOWARD:

2 Q So, two things I want to do, because Jacuzzi, in this  
3 supplemental response, after the Judge ordered and affirmed  
4 Commissioner, Jacuzzi responded and said, hey, here are our documents  
5 responsive to this request. In addition to documents that are responsive  
6 to this request, we have a writ.

7 So first, we're going to do two things. One, let's look at  
8 these documents, and then 2, we're going to go look at the writ. So first,  
9 let's take a look at the documents.

10 MR. CLOWARD: Brandon, if you could pull those up.

11 BY MR. CLOWARD:

12 A Are those an exhibit here in the books.

13 Q It's Jacuzzi 2912.

14 A Do you have an exhibit number? I do better reading out of  
15 the hard paper, than off the screen.

16 Q One moment. Just one moment, Mr. Templer. I need to find  
17 out what -- if we included those or not. If not, we can get those.

18 [Pause]

19 MR. CLOWARD: Your Honor, may I have one moment?

20 THE COURT: Sure, yes.

21 These are the -- you're contending these are the documents  
22 relating to those 10 or 12 other incidents, and I use that term loosely, that  
23 were -- that you identified in that chart on your motion to strike, so I  
24 know what documents you're referring to.

25 You had said in your motion to strike that at one point you

1 were complaining that they had redacted the customer names and so  
2 you couldn't take just -- you couldn't go depose those people, right; isn't  
3 that -- you had a spreadsheet in your motion.

4 MR. CLOWARD: Well, we've had a couple of spreadsheets --

5 THE COURT: Okay.

6 MR. CLOWARD: -- so I hesitate to say yes or no on that  
7 because I don't know if we're on the same page of what chart.

8 THE COURT: Okay.

9 MR. CLOWARD: Because you are correct, I think that we did  
10 set those ten out. Those were the ten that were produced pursuant to  
11 one of Commissioner Bulla's rulings.

12 THE COURT: Is that what you're talking about here, this  
13 Jacuzzi 2912 to 2991?

14 MR. CLOWARD: Correct.

15 THE COURT: Okay. Yeah, I know what you're referring to

16 MR. CLOWARD: Okay.

17 THE COURT: And that spreadsheet generally referred to, you  
18 know, some people contacting Jacuzzi, talking about some slips and  
19 some falls and some -- a couple head injuries, I think, and some didn't  
20 have injuries.

21 MR. CLOWARD: Okay.

22 THE COURT: Yeah. I know what documents you're referring  
23 to.

24 MR. CLOWARD: Okay. Can you have Kat get those down  
25 here as an exhibit to attach?

1 UNIDENTIFIED SPEAKER: Yeah.

2 MR. CLOWARD: Okay. And we'll just, I guess, propose to  
3 move it into evidence. We don't have those, but I'm going to bring those  
4 down, Jacuzzi 2912 through 2991 as the next court exhibit.

5 THE COURT: Well, I guess they're business records that  
6 would go to the issue of Jacuzzi's knowledge of other issues, incidents,  
7 or claims. So they would come in for that limited purpose and not for --

8 MR. ROBERTS: No objection, Your Honor, for that purpose.

9 THE COURT: Not for -- sure. Not for proof of the truth of the  
10 matter asserted.

11 MR. CLOWARD: Sure, absolutely.

12 THE COURT: Okay. So those are admitted without objection,  
13 subject to the limitation that the Court made.

14 COURT OFFICER: [Indiscernible] exhibit?

15 THE COURT: Well, it's one exhibit, and it's -- we don't have a  
16 number unless you want to just call it next in order; what would that be?

17 MR. CLOWARD: I think it's 193 --

18 THE COURT: I guess 193.

19 MR. CLOWARD: -- is the next in order.

20 THE COURT: So this will be admitted as 193 and it's  
21 documents bate stamped Jacuzzi 002912 through 002991. Those are  
22 admitted without objection, subject to the Court's limitation.

23 COURT OFFICER: Okay.

24 [Plaintiff's Exhibit 193 admitted into evidence]

25 THE COURT: Okay.

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1 MR. CLOWARD: Thank you, Your Honor.

2 Brandon, if we could turn up exhibit 185 next, page 7.

3 BY MR. CLOWARD:

4 Q Okay. Now --

5 MR. ROBERTS: What's that exhibit number?

6 MR. CLOWARD: It's 186, Lee. 186, page --

7 THE WITNESS: You said 185?

8 THE COURT: No, 185, page 7. It's the --

9 MR. CLOWARD: Oh, I'm sorry.

10 THE COURT: It's a petition.

11 MR. CLOWARD: 185, correct, line -- or page 7.

12 BY MR. CLOWARD:

13 Q Okay. Mr. Templer, you agree that request number 43

14 Jacuzzi, requested the court, the Supreme Court of Nevada, to look at  
15 request number 43, true?

16 A The prior version of 43 was amended.

17 Q I'm sorry, say that again.

18 A I believe 43 we just walked through was amended. This is  
19 the version before the amendment.

20 Q Okay. But you agree that Jacuzzi is objecting to 43, right,  
21 wanting insight from the Supreme Court of Nevada?

22 A It was -- I don't recall specifically what it was, but 43, why it  
23 was included in here I'd have to read through this. If you want me to do  
24 that, I'd be happy to do that, but it was part of the writ.

25 Q Okay.

1 MR. CLOWARD: Brandon, start on page 1 of the writ now.

2 BY MR. CLOWARD:

3 Q And you agree that on the date of the writ being filed, which  
4 was I believe December 7, 2018, Jacuzzi is telling the Supreme Court, to  
5 date Jacuzzi has identified and produced to Plaintiffs all of the evidence  
6 in Jacuzzi's possession of other prior and subsequent incidents of  
7 alleged bodily injury or death related to the Jacuzzi walk-in -- or Jacuzzi  
8 tub in question. Notwithstanding that broad disclosure, Plaintiff sought  
9 and obtained an order compelling Jacuzzi to also produce all prior or  
10 subsequent incidents of any alleged bodily injury related to any Jacuzzi  
11 walk-in tub, regardless of how the incident occurred or the nature or  
12 severity of the injury.

13 Do you agree that's what Jacuzzi told the Supreme Court of  
14 Nevada?

15 A The document speaks for itself.

16 Q Okay.

17 A I would answer what the document says.

18 Q Okay. And then Jacuzzi even goes to kind of provide the  
19 Court with some assurance. It says, though Jacuzzi objected to that  
20 broad order, it nonetheless complied, producing evidence of all prior and  
21 subsequent incidents of injury, even if minor and even if they're similar.  
22 You agree with that, right?

23 A I agree that's what it --

24 Q Did Jacuzzi actually do that?

25 A Are you saying is that what the representation was or what

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1 happened?

2 Q No. Did Jacuzzi actually produce what it said it had produced  
3 to the Supreme Court? Did Jacuzzi produce incidents of any alleged  
4 bodily injury related to any Jacuzzi walk-in tub, regardless of how the  
5 incident occurred or the nature or severity of the injury?

6 A At the time the company thought it had. It has subsequently  
7 learned there was information that was not complete over that  
8 disclosure.

9 Q So there was a mistake?

10 A Yeah. I mean I don't know if they characterized it as a  
11 mistake, but there was -- that's a fair representation, I guess.

12 Q Okay. Well, why hasn't Jacuzzi ever told the Court and the  
13 parties like hey, you know what, we made a mistake? Why has Jacuzzi  
14 instead said hey, we've done everything, we've complied with all these  
15 orders. The Judge said to do x, we did x. The Judge said to do y, we did  
16 y.

17 A The company has disclosed stuff since that time.

18 Q My question wasn't what Jacuzzi has disclosed, my question  
19 is why didn't Jacuzzi ever inform the Court or the parties look, we, you  
20 know --

21 A I don't know all the disclosures that have been made to the  
22 Court. I don't know if the Court has been -- maybe has been advised that  
23 additional information was subsequently located.

24 Q Okay. Can you direct me to any pleading where that has  
25 been stated?

1 A Not as I sit here now.

2 Q What was the outcome of this writ?

3 A To my recollection it was denied.

4 MR. CLOWARD: Brandon, 187.

5 BY MR. CLOWARD:

6 Q You agree that on January 17, 2019, case number 77596,  
7 that's the Supreme Court case number, there's an order denying the  
8 petition. And the Nevada Supreme Court says, having considered the  
9 petition and supporting documents, we are not persuaded --

10 MR. CLOWARD: Next page.

11 BY MR. CLOWARD:

12 Q -- that our ordinary or extraordinary and discretionary  
13 intervention is warranted. And then the next line says, according, we  
14 order the petition denied. So it was denied, right, for the record?

15 A That's what I said a few minutes ago.

16 Q Signed by Justice Hardesty, Justice Stiglich, and Justice  
17 Silver, correct?

18 A That's the names here. I don't know those justices.

19 Q Okay.

20 MR. ROBERTS: And, Your Honor, I'm going to object to the  
21 extent the implication is it was denied on the merits. This is the  
22 standard --

23 THE COURT: Yes, so noted. The Supreme Court rarely gets  
24 involved in discovery matters pending the action, and sometimes it  
25 defers consideration of the merits until any potential appeal after a



1 judgment in the case. The Court understands that.

2 MR. ROBERTS: Thank you, Your Honor.

3 THE COURT: So who knows. It could still address the issue  
4 when we're done here.

5 MR. CLOWARD: Maybe.

6 BY MR. CLOWARD:

7 Q Now, going through the timeline, so you agree that the  
8 district court approved Commissioner Bulla's DCCR on November 11,  
9 2018, correct?

10 A I'm not familiar with the acronyms.

11 Q By the discovery commissioner, her report and  
12 recommendation?

13 A Yeah, the Court entered an order, my understanding is, on  
14 adopting the discovery commissioner's recommendations.

15 Q Let's see. And you agree that after the district court's  
16 adoption of those, Plaintiffs served their second set of RFP's on  
17 November 28, 2018, correct?

18 A I don't recall what set it was, but discovery was served after  
19 that time.

20 Q Okay. And Jacuzzi filed a writ and the writ was denied on  
21 January 17, 2019, correct? We just covered that.

22 A Yes, that's correct. I just couldn't -- I was just looking at that  
23 figure. I couldn't remember the date the Court adopted Commissioner  
24 Bulla's order. But I have no reason to dispute what you said, I just don't  
25 recall.

1 Q Okay.

2 MR. CLOWARD: Brandon --

3 THE COURT: Mr. Cloward, what do you want to do with  
4 Regina Reyes and Martinez? And Martinez's scheduled for 3. It's my  
5 understanding that's a hard time, pardon me, it's a fixed time.

6 MR. ROBERTS: The end of the day is the hard stop. In other  
7 words we don't have to start, but we do have to finish by the end of the  
8 day.

9 THE COURT: All right, all right, all right. So we want to keep  
10 going. Mr. Cloward, I'll give you the option if you want to keep going  
11 with Mr. Templer right now.

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

13 THE COURT: Okay.

14 MR. CLOWARD: I am very --

15 THE COURT: You may continue.

16 MR. CLOWARD: Thank you. Thank you.

17 THE COURT: Just you weren't looking at the clock, so I just  
18 wanted to let you know.

19 MR. CLOWARD: I appreciate the help. Thank you.

20 THE COURT: Okay.

21 MR. CLOWARD: I'll try and --

22 THE WITNESS: Could I just have one interjection? I need to  
23 use a bathroom at some point before too long. If we're going another  
24 ten or 15 minutes, that's fine, but if we're going another hour --

25 MR. CLOWARD: I think 10 or 15, sure.

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1 THE WITNESS: -- I'd be done, I could use the bathroom.

2 THE COURT: Okay. No problem.

3 MR. CLOWARD: 186, Brandon. 43. Well, hold on. Okay,  
4 now -- sorry. I just need the day that it was served.

5 BY MR. CLOWARD:

6 Q Okay. So the date of this document is January 9, 2019; you  
7 agree?

8 A That's the date that it says.

9 MR. CLOWARD: Now go to 43, Brandon.

10 BY MR. CLOWARD:

11 Q We covered this. You agree that the only thing that Jacuzzi  
12 produced were the documents that had already been provided in Jacuzzi  
13 2912 through 2991, correct?

14 A We already went through this. I don't know what those  
15 documents are, but that's what it says here.

16 Q Okay. And then the writ is denied. You agree with me that  
17 number 43 has never to date been supplemented?

18 A I don't know. I don't recall a supplement, but I couldn't state  
19 that sitting here.

20 Q Okay.

21 A If I had to guess, I would just to amend that, I don't recall the  
22 date that the unredacted documents were produced. I suspect those  
23 were after this date. I suspect those were produced after the writ was  
24 denied, but that is an assumption on my part, I guess.

25 Q We went over that and I believe those were produced in this

1 disclosure. So we can move on. Are you aware of any time when this  
2 number 43 was ever supplemented?

3 A Again, what I just said is that I believe some document  
4 production was done after, but written response as I sit here, I don't  
5 recall a supplemental written response.

6 Q Okay. And certainly after you objected to the Commissioner,  
7 had an objection that the discovery that Judge Scotti looked at and then  
8 you killed that by a writ, challenged that, I guess, is a better way, by a  
9 writ and the Supreme Court said no, we're not going to entertain that.  
10 After that order are you aware of whether Jacuzzi ever supplemented  
11 number 43?

12 A Again, I think the production was supplemented. The written  
13 response, I don't recall any supplementation.

14 THE COURT: So we know more documents were produced.  
15 That's one of the reasons why we're here and I think they were produced  
16 by documents that may have been called, you know, supplemental 16.1  
17 production. So I understood new documents were produced under  
18 different procedural vehicles, but perhaps number 43 itself wasn't  
19 amended.

20 MR. CLOWARD: Yeah. Well --

21 THE COURT: Either way there was additional production by  
22 Jacuzzi's counsel, right? RPT's aren't verified under oath, neither are,  
23 you know, supplemental 61 production. So it really doesn't matter what  
24 they call it, there was a supplement, right?

25 MR. CLOWARD: Well, I think it does matter what they call it.

1 THE COURT: Okay.

2 MR. CLOWARD: Because we specifically requested  
3 information and even the information that was provided, Your Honor,  
4 was only provided -- keep in mind that timeline, the Friday before the  
5 Wednesday forensic examination. So they were -- we're barking at the  
6 door, we're there, and all of a sudden --

7 THE COURT: Oh, absolutely. The timing of what was  
8 provided and what actually was provided is super important here.

9 MR. CLOWARD: Okay.

10 THE COURT: But whether it was done with a coversheet that  
11 says amended number 43 or a cover sheet that says supplemental 61,  
12 that doesn't matter in my mind.

13 MR. CLOWARD: I'll argue why it does, but --

14 THE COURT: All right.

15 MR. CLOWARD: -- in closing, in closing.

16 THE COURT: All right. That's fine.

17 MR. CLOWARD: Thank you, Your Honor. I don't want to  
18 belabor the point. Okay.

19 [Counsel confer]

20 MR. CLOWARD: Okay. And my co-counsel, standing  
21 co-counsel, Mr. Charles Allen --

22 THE COURT: He can jump in at any time it might be helpful  
23 to the Court, so go ahead.

24 MR. CLOWARD: I appreciate it.

25 BY MR. CLOWARD:

1 Q Well, he pointed out, you know, it'd probably be important  
2 for the Court to know what changed. What changed around January  
3 after this writ; was there any -- were there any major changes that took  
4 place in the handling of this case?

5 A I understand what you're trying to point out. That had  
6 nothing to do with this here. That's around the time that Mr. Roberts  
7 firm came in as co-counsel.

8 [Counsel confer]

9 Q And I guess in Jacuzzi's view -- so even though Mr. Roberts  
10 got involved, you know, maybe like a week and a half or two weeks  
11 before the writ, and even though Mr. Cools was, you know, he left Snell  
12 Wilmer at the exact same time, that didn't have anything to do with this  
13 issue?

14 A Correct. And my recollection is that Mr. Cools left Snell  
15 Wilmer in mid-December. I think I learned of his leaving in mid-  
16 December. I don't recall his last day at Snell & Wilmer. It had nothing to  
17 do with this discovery issue.

18 Q Okay. And what was it that changed, then, that all of a  
19 sudden in July, on July 26th, just, you know, two business hours before  
20 Kurt Bachmeyer's deposition was scheduled to commence, what was it  
21 that happened at that time period that all of a sudden Jacuzzi felt like you  
22 know what, we need to disclose these Bachmeyer emails?

23 A Mr. Bachmeyer was set to be deposed, for one. And there  
24 was -- my recollection is there was a hearing around February or March  
25 of 2019 where the Court had indicated some scope of a forensic search

1 and there was some -- my recollection is there was an order issued at  
2 that time that had some direction as to what would be allowable for the  
3 forensic search. I think that you and Mr. Roberts disagreed on some  
4 terminology in that order and there was multiple attempts to bring it to  
5 the Court's attention to try to get some direction and my understanding  
6 was he didn't want to bring it to the Court's attention.

7 It finally came to the Court's attention I think at that July 1st, 2019  
8 hearing. And then we had a better understanding of what was expected  
9 of the company and some additional searches were undertaken.

10 Q Okay.

11 A In addition to Mr. Bachmeyer's deposition being set.

12 Q Okay. So it didn't have anything to do with the fact that  
13 you'd been ordered by Commissioner Bulla back in 2018, that order was  
14 affirmed by this Court, and then the Supreme Court denied entertaining  
15 that, it didn't have anything to do with that?

16 A No. At the time those -- the prior production was made, the  
17 company was under the belief that was everything. When the  
18 subsequent searches were done in July, it was discovered that some  
19 stuff had been inadvertently omitted from that prior -- or it was not  
20 located by that prior search.

21 MR. CLOWARD: There was a mistake.

22 THE COURT: When was the depo?

23 MR. CLOWARD: July 26, I believe.

24 THE COURT: July 26.

25 MR. CLOWARD: Friday.

1 THE COURT: Any date -- Bachmeyer emails were produced  
2 like two hours before, is that what you said or two days before?

3 MR. CLOWARD: Two business hours before. So Friday, they  
4 came in Friday at I think that was July 26th at like 4:30, 4:00 p.m.

5 THE COURT: Okay.

6 MR. CLOWARD: And then his depo was set in California, so  
7 we had to travel to California. And I think it was -- so that would to be  
8 Saturday, the 27th, Sunday, the 28th, so the 29th, Monday the 29th, at  
9 either 8 or 9 p.m..

10 THE COURT: No, I get it. To me that sounds like, you know,  
11 they're getting ready for the Bachmeyer deposition and someone goes  
12 oh, shoot, we didn't produce these, we better at least get them to them,  
13 rather -- or, which I think would be your position, is that they were  
14 withheld intentionally to frustrate your deposition. I think that's your  
15 position, right? Or are you going to argue that at the end?

16 MR. CLOWARD: We'll reserve argument on that.

17 THE COURT: Okay.

18 MR. CLOWARD: Unless you want my position.

19 THE COURT: No. I'm just telling you -- I mean from what  
20 I've seen here now and just my litigation experience just suggests to me  
21 that it was an inadvertent thing right before the deposition and someone  
22 goes oh, my God, we should have looked, and we didn't produce them,  
23 and this is a mistake and at least let them -- let us get them to Mr.  
24 Cloward and he can decide what he wants to do with this. That's the  
25 way it seems to me.

004374

004374



1 MR. CLOWARD: I don't --

2 THE COURT: If it was worse than that, I'll let you argue that  
3 and try to convince me.

4 MR. CLOWARD: Yeah. I mean that's been the pattern and  
5 practice.

6 THE COURT: Okay.

7 MR. CLOWARD: So a pattern and practice can be  
8 established, but before the depositions of each person who now all of a  
9 sudden turn over the documents. And that's consistently been the  
10 pattern of practice, even though we've been requesting this stuff since  
11 January 2017.

12 THE COURT: Right. What I said is separate and apart from  
13 the issue of whether these emails should have been produced a lot  
14 sooner, you know, and maybe there was some decision, right or wrong,  
15 in the company and that the scope of the request didn't include the  
16 emails. I've heard his testimony on that. I've got my own thoughts on  
17 that.

18 But in terms of what Mr. Roberts did, what his firm did, it just  
19 -- it seems to me that counsel looked at this and goes oh, my God, these  
20 should have been produced. Anyway, I'll reserve judgment on that.

21 MR. CLOWARD: Thank you, Your Honor.

22 THE COURT: All right.

23 BY MR. CLOWARD:

24 Q And let me I guess just go through the entries that Jacuzzi  
25 did not turn over, had not turned over, pursuant to request 43. You

1 agree that in tab number 8 where Mr. Raidt slipped and fell, hurt his  
2 back, wants the tub removed, threatening to get a lawyer, that was not  
3 turned over, correct?

4 A I don't know. I don't know which incidents were included  
5 within the production back in the late summer, fall, of 2018 versus what  
6 was produced in July of this year. I don't dispute what you're saying, I  
7 just don't recall as I sit here which incidents were produced when.

8 Q Okay.

9 MR. CLOWARD: Your Honor, one moment to confer with  
10 counsel.

11 THE COURT: Yeah, sure, please.

12 [Counsel confer]

13 MR. CLOWARD: Your Honor, now would be a good time for  
14 a restroom break if that's okay.

15 THE COURT: Oh, right, right. Thank you for reminding us.  
16 All right. So let's take -- you guys want to take your 15 minute break  
17 now? All right. I'm going to give my staff the customary 15 minute  
18 afternoon break. Let's be back here at 3:05, all right?

19 Yes, sir? Hold on.

20 [Recess taken from 2:48 p.m. to 3:17 p.m.]

21 THE COURT: You may continue when you're ready, Mr.  
22 Cloward.

23 MR. CLOWARD: Thank you, Your Honor. And I think to  
24 accommodate Ms. Martinez, who flew in from out of state, I think we  
25 want to just call her now and then she can finish and travel back home, if

004376

004376

1 that's okay.

2 MR. CLOWARD: Is that okay?

3 MR. ROBERTS: That's fine, Your Honor.

4 MR. CLOWARD: Yeah. Then we could do Ms. Reyes as well.  
5 That way those folks can --

6 THE COURT: Perfect.

7 MR. CLOWARD: -- move along.

8 THE COURT: Perfect. Mr. Templer, you may step down, sir.  
9 You will because called back in due course.

10 THE WITNESS: I understand. Thank you.

11 THE COURT: Thank you. Why don't you take whatever  
12 materials you have up there, any of your personal materials. You can  
13 leave the binders.

14 THE WITNESS: We've discussed it during the break, so I've  
15 already done all that.

16 THE COURT: Perfect.

17 MR. CLOWARD: Your Honor, may we just invoke Coyote  
18 Springs that, you know, any discussions -- you know, Mr. Templer is not  
19 to discuss his testimony.

20 THE COURT: Oh, of course. So the Court admonishes you  
21 not to discuss your testimony with anybody until you retake the stand.

22 THE WITNESS: Understood.

23 THE COURT: Thank you, sir.

24 MR. POLSENBERG: Except for *Coyote Springs*.

25 THE COURT: Okay.

1 MR. POLSENBERG: There's a privilege issue.

2 THE COURT: Except for *Coyote Springs*, the thing -- if  
3 there's -- well, there shouldn't be any privilege issue pending, but if you  
4 wanted to discuss with counsel issues that may come up that might  
5 require an assertion of privilege, you can do that and limited in that  
6 scope.

7 MR. ROBERTS: And Your Honor, I think what Mr. Polsenberg  
8 is concerned about is I'm planning to meet with Mr. Templer this  
9 evening at my office, so that he can retrieve the emails, which we have  
10 agreed to produce in camera to the Court, which is going to necessarily  
11 entail some discussions about looking for things and what --

12 THE COURT: The Court will permit discussions regarding  
13 location and retrieval of the documents that we discussed today.

14 MR. ROBERTS: Thank you, Your Honor.

15 THE COURT: Okay. Whenever you're ready, Mr. Cloward.

16 MR. CLOWARD: You got it. We call Audrey Martinez.

17 [Pause]

18 THE MARSHAL: Watch your step.

19 THE COURT: All right. Go ahead and keep standing and she  
20 has an oath to administer to you, okay?

21 AUDREY MARTINEZ, PLAINTIFFS' WITNESS, SWORN

22 THE CLERK: Okay. You may be seated. And then can you  
23 please state and spell your first and last name for the record?

24 THE WITNESS: Audrey Martinez. A-U-D-R-E-Y M-A-R-T-I-N-  
25 E-Z.

1 THE CLERK: Thank you.

2 THE WITNESS: Uh-huh.

3 DIRECT EXAMINATION

4 BY MR. CLOWARD:

5 Q Hi, Ms. Martinez, how are you?

6 A Good, thank you.

7 Q Good. Thank you for your assistance in this matter. Thank  
8 you for coming in from California. I appreciate that.

9 A Sure.

10 Q And we're going to try and be very quick, so that you can be  
11 on your way and --

12 A Okay.

13 Q -- move along. We do appreciate your time, though.

14 A Sure.

15 Q I guess the first question that I have to ask is I wanted a  
16 specific question -- I wanted to refer you to Exhibit 161 and let me show  
17 you how the exhibits work.

18 MR. CLOWARD: Your Honor, may I approach the witness?

19 THE COURT: You may.

20 MR. CLOWARD: Okay.

21 THE COURT: Uh-huh.

22 MR. CLOWARD: Thank you.

23 THE WITNESS: In these books?

24 MR. CLOWARD: Yeah.

25 THE COURT: He'll help you.

1 BY MR. CLOWARD:

2 Q Okay, so there are some --

3 A Numbers?

4 Q -- numbers --

5 A Okay.

6 Q -- and then behind you, there's some on the ground there.

7 A Okay.

8 Q You're going to want to look --

9 A So 161?

10 Q Yeah.

11 A Okay.

12 Q And they should -- perfect. Right there.

13 A Okay.

14 Q Okay, the question that I have, I guess was -- this was an  
15 email from Ray Parnell talking about how his craftsmen were kind of --  
16 and you can take a moment to review that. Just let me know when  
17 you've had a chance to review that entire packet.

18 [Witness reviews document]

19 MR. ROBERTS: Which packet are you referring to, Ben?

20 MR. CLOWARD: It's Exhibit 161.

21 MR. ROBERTS: Okay.

22 [Witness reviews document]

23 THE WITNESS: I think I got the overview of the situation.

24 BY MR. CLOWARD:

25 Q Okay.

1           A     If there's any detailed answer I need, I may have to consult  
2 back to the --

3           Q     That's totally fine.

4           A     -- to the book.

5           Q     On either page 5311 or 5302, either one, it's a kind of a  
6 duplicate of an email that Ray Parnell sent. Do you agree with that?

7           A     Uh-huh. Yeah. It looks like there's two sets of email threads.

8           Q     Okay.

9           A     Kind of on either side of the -- but they're the same thread  
10 with just some different --

11          Q     And who would Ray Parnell be?

12          A     Ray Parnell was a dealer, I believe. Let me just look back at --  
13 I think he was actually an installer for a dealer -- an installer for a dealer  
14 of First Street.

15          Q     Okay. And his concern here is that customers are ripping  
16 them in the questionnaire and then they'd say things on a Guild survey  
17 that affects his craftsman's bonuses. Do you see that part?

18          A     Uh-huh.

19          Q     What was the Guild survey?

20          A     I don't -- I never referred to it as a Guild survey. I don't know  
21 if that's maybe language that contractors use. It would make sense to  
22 me. I don't know that for certain, but these surveys were administered  
23 or were given out by First Street when they would complete a job and  
24 then periodically, we would get -- at Jacuzzi, we would get sets, copied  
25 sets of these sent back to us just for reference, for feedback. You know,

1 every once in a while, something maybe like this, where they would  
2 write a letter to us and then it would bubble up to the top.

3 Q Okay.

4 A But as far -- the term Guild survey, I don't know. It would  
5 make sense that maybe the dealer incentivized an installer that if they  
6 got a certain rating or grade, they would compensate them some kind of  
7 bonus or payment or commission or something.

8 Q Okay.

9 MR. CLOWARD: Brandon, can you pull up the entire Guild  
10 survey? Do you have that ability?

11 THE COURT: Mr. Cloward, can we get in the record who --  
12 you know --

13 MR. CLOWARD: Oh, I'm -- yes.

14 THE COURT: -- what her position is or --

15 MR. CLOWARD: Yes.

16 THE COURT: -- when she was at Jacuzzi, when she left? Just  
17 the basic stuff.

18 MR. CLOWARD: Yes. I'm sorry. I totally overlooked that,  
19 Judge.

20 THE COURT: All right.

21 MR. CLOWARD: I'm sorry. I had the pleasure of deposing  
22 Ms. Martinez, so she's familiar to me and I forgot to make that  
23 introduction to the Court.

24 BY MR. CLOWARD:

25 Q Ms. Martinez, would you just take a moment and I guess



1 explain for the record and for the Court your position, what it was with  
2 Jacuzzi, how you started with Jacuzzi and how you came back --

3 A Sure.

4 Q -- and so forth?

5 A I worked for Jacuzzi approximately August 2011 through  
6 September 2015. I -- prior to that, I worked for a company called Home  
7 Living Solutions, who was a licensee of Jacuzzi to manufacture walk-in  
8 bathtubs -- manufacture and sell walk-in bathtubs with the Jacuzzi brand  
9 under a licensing agreement.

10 And then at some point, the company was absorbed by Jacuzzi  
11 brands and then I became an employee there. I was the marketing  
12 manager for Aging in Place Bathing and my primary responsibility was  
13 the liaison between the group at Jacuzzi and the group at First Street.

14 Q Okay. Thank you.

15 A Uh-huh.

16 Q In recent productions, there was a -- it's a about a 5,000 page  
17 document that was produced by First Street. It's obviously not attached  
18 to the record because of the length of the pages, but it -- the title was  
19 Guild surveys and it was an Excel spreadsheet and it had certain  
20 questions that were asked of the consumers, like their telephone  
21 number, their name and then comments and then suggestions. Are you  
22 familiar with that document?

23 A Well, I think it may just be the results of this. I think this was  
24 longer. I think there were more -- to my memory, and again, it's four  
25 years old so --

1 Q Sure.

2 A -- at this rate, it's not as good as it once was.

3 Q Uh-huh.

4 A I believe there were more questions to this and there were  
5 more opportunities for the customer to write in points of feedback. In  
6 addition to just rating how things went for them, they were able -- there  
7 was room for them to write in details of good and bad feedback. And  
8 that -- not this document.

9 So I would assume that that recap of Guild surveys would be kind  
10 of a scorecard of all those, I don't know -- this or that other document I'm  
11 thinking of. I'm sure it's in one of these books somewhere.

12 Q Okay. Do you -- if you want to take a look at Jacuzzi 005309.

13 A Okay. Where is that going to be?

14 Q It's on --

15 A Oh, on the bottom of the page. I'm sorry. I'm so sorry.

16 Q Oh, I'm --

17 A 5309. Okay. I'm sorry. I thought I was looking in books  
18 again.

19 Q It's okay.

20 A 5308 -- so 5-3 is the survey --

21 Q Yes.

22 A -- form. Uh-huh.

23 Q Can you tell us a little bit about this customer satisfaction  
24 survey? What are these documents?

25 A This was created by First Street.

004384

004384

1 Q Okay.

2 A So other than being on copy of results of the survey, I didn't  
3 have any -- I didn't write it or create it, nor did I have any input on what  
4 was on it or how it was used. It was more as a metric for measuring  
5 customer feedback, good or bad.

6 Q Okay.

7 A And like I said, there was another form that was much longer  
8 and had room for people to write, because I know people wrote great  
9 lengths of things.

10 Q Okay. And do you -- can you give us a description of what  
11 that document looked like? I don't know if I've seen that.

12 A It looked kind of like -- I mean, it was -- it has you know,  
13 rating of 1 to a scale -- I don't know. This is 1 to 5. I don't know what it  
14 was specifically, but it was more questions. It may have even been a  
15 postcard --

16 Q Okay.

17 A -- kind of thing that was left behind when they -- or that they  
18 either sent afterward. This may have been what they did -- this could  
19 have been -- I do know at one time they did some exit surveys before  
20 they left the house to make sure that the light worked and the jets  
21 worked and the people -- you know, they got the right color tub and the  
22 door was on the right side and all of those things. This could be what  
23 was given or this other thing I'm thinking of and then I think post sale,  
24 once everything was closed up, they sent another satisfaction survey.

25 Q Okay.

004385

004385

1           A     Which -- and I'm only assuming here that this shorter  
2 version -- since somebody signed it here, would have been given when  
3 the product was installed and then the postcard would have maybe  
4 come at a later time.

5           Q     Okay. So for instance, at the bottom of the page, additional  
6 comments --

7           A     Uh-huh. That's the attached letter.

8           Q     And let's just say that there was not a letter attached, but  
9 let's say that somebody wrote in like some actual comments, like hey,  
10 the buttons are too hard to push, or your tub is too slippery. Would  
11 those things be entered into a database that Jacuzzi received at some  
12 point?

13          A     Not so much in a data -- on the Jacuzzi end, not entered in a  
14 database. They would come over in chunks, not any set days or you  
15 know, there wasn't any real formal reporting time. As they would be  
16 gathered by First Street, they'd scan over a group and they'd be sent  
17 over to the team a Jacuzzi and then it would be monitored by the  
18 customer service group, engineering group.

19                Everyone was kind of on copy, but there wasn't -- at least within  
20 my scope of my job, I didn't log anything or keep track of any of that.

21          Q     Okay. But as far as what customer service did or the other  
22 departments, you're not aware --

23          A     I --

24          Q     -- of what they were doing?

25          A     I honestly don't remember how those things got handled.

1 Q Okay. That's fair. Now, was it your understanding, though,  
2 that Jacuzzi received all of the surveys that were filled out or was it -- is it  
3 your understanding that Jacuzzi would only receive just random ones?

4 A I don't really have any way of knowing for sure if we got  
5 them all or if they got -- you know -- like I said, it wasn't a formal  
6 reporting system. It was I'd get an email from Simona at First Street  
7 every month or so with a pdf of -- in fact, I think maybe one of these  
8 emails said, you know, survey or something attached and there would be  
9 just you know, scanned pages of the surveys, which then would be  
10 circulated within the different parties at Jacuzzi.

11 Q Okay.

12 MR. CLOWARD: If you want to go to, Brandon, 167.

13 BY MR. CLOWARD:

14 Q And Audrey, if you can turn to Exhibit 167.

15 A Uh-huh.

16 Q And not to replough the same field, but we covered this with  
17 Mr. Bachmeyer and if you start at the back of the document, 5392, 5991  
18 and then 5390, you can see that this is an email from Ray Parnell  
19 pointing out a couple of issues, service issues.

20 A Uh-huh. Yes.

21 Q Okay. Now, it looks like that Dave sent an email to you on  
22 5389 --

23 A Okay.

24 Q Let me know when you're there.

25 A Uh-huh.

1 Q And he says, looks like we're having a button issue. See  
2 below. Need to understand this before signing off.

3 And then Norm on 5388 says, we need to improve the button  
4 operation. Are you able to pull a history of service calls to see how  
5 many of them are button related?

6 Then do you see where you make that assignment on page 5387 to  
7 Kurt Bachmeyer on 5388?

8 A Forward it to them to ask if they can recap the button -- and I  
9 do remember the button issue.

10 Q Okay. And there was a spreadsheet that was sent from  
11 Regina to Kurt with those button issues --

12 A Back here.

13 Q -- on -- yeah, and that's at the end.

14 A Uh-huh.

15 Q So can you tell me a little bit about that process? Were you  
16 involved at all with gathering data?

17 A This reporting, this eye chart here --

18 Q Yes.

19 A -- would be the customer service database collection. So  
20 when someone would either call in -- a customer would call in or an  
21 installer would call in to Jacuzzi customer service with a problem, a  
22 complaint or issue, then they would be logged in the system that they  
23 used and then this would be a report generated by that system.

24 And there were a bunch of reason codes. Kind of the tub was  
25 broken down into components and you know, the door, the light, the

1 buttons, the faucet, the drain, the crack in the surf -- I mean, there were a  
2 variety of reasons. And then would the agent would take the call, they  
3 would select a rea -- and I -- this is -- I can't read this.

4 Q Yeah.

5 A But I'm sure one of these columns says, you know, reason  
6 for failure, reason for complaint. And this would have, I assume, be a  
7 recap of the button --

8 Q Issues.

9 A -- issues that were related to the buttons.

10 Q Okay. And in the questioning with Kurt Bachmeyer, he  
11 indicated that Jacuzzi, the system I guess that was used -- I think he  
12 referred it as kind of click view, that you could actually narrow down  
13 pretty specifically with what issues you wanted to look at and then by  
14 narrowing it down, you would collect just the issues with regard to that  
15 one particular issue. Agree with that?

16 A Yeah. And that's what, if I could read this, I'm assuming this  
17 is, would be they ran a query on button issues --

18 Q Yeah.

19 A -- and this is probably a recap of all of the button issues and  
20 then below that level, you could go and filter even more by saying there  
21 were various reasons, the button -- you know, it could be too hard to  
22 push, discolored, broken in transit. I mean there were -- so there -- they  
23 weren't -- it isn't necessarily all the same problem with the button.  
24 These were just all related to the button.

25 Q Yeah.

1 A And likewise, there would be another list, if it was the light.

2 Q Sure.

3 A Or the drain or something else.

4 Q And Mr. Bachmeyer also testified that you could even search  
5 with regard to slipperiness issues, with regard to grab bar issues. You  
6 could really narrow it down. Not just buttons, but you could look at  
7 other issues.

8 A Yes. Yes. I don't remember all off the top of my head, at all  
9 the buckets that were in there to choose, but they had gone through on  
10 the engineering side and kind of broken down every component of the  
11 tub, so that they could create basically a reason for the -- you know, to  
12 kind of try to diagnose the problem with what's wrong with the bathtub  
13 and attribute it to a component of the tub.

14 So yeah, that's where it could be the grab bar, or it could have  
15 been anything on the tub.

16 Q Okay. And at the time of your deposition, I didn't have some  
17 important emails that have since your deposition been turned over. We  
18 went over a lot of those with Mr. Bachmeyer, but in front of you, there  
19 are some binders that list specific issues of customer complaints with  
20 regard to people getting stuck in the tub, people slipping in the tub.  
21 Are -- is that something that you remember hearing about while you  
22 were with Jacuzzi?

23 A A handful of times.

24 Q Okay. And you say a handful of times with regard to what  
25 issue?



1 A The slipping or the perception that it was slippery.

2 Q Uh-huh.

3 A And you know, people that either were large and had issues  
4 getting out of the tub and shutting the door around them or people that  
5 were small and had issues with being able to stay put in the seat when  
6 the water was filled, and the jets were on. To my recollection, I don't  
7 know that there was a similar kind of breakdown of this, where the  
8 components are all noted.

9 Q If Kurt Bachmeyer testified to that, would you disagree with  
10 that testimony that Jacuzzi had that ability to do that?

11 A Would I disagree?

12 Q Yeah.

13 A No.

14 Q Okay. And was your focus more on the safety aspects of the  
15 tub or would that be more in Kurt's wheelhouse?

16 A It would have -- the reporting of it would have been in Kurt's  
17 wheelhouse. Would have been his group's responsibility to gather the  
18 data and report it.

19 Q Okay.

20 A And then it would have been the engineering group more so  
21 than the marketing group to make adjustments to the bathtub to correct  
22 those things.

23 Q Okay.

24 [Counsel confer]

25 MR. CLOWARD: Your Honor, this is an exhibit that we

1 received about three weeks ago from First Street.

2 THE COURT: Uh-huh.

3 MR. CLOWARD: We've not received this through Jacuzzi.

4 Brandon, click in the very top left hand corner and then do the fill -- the  
5 wrap text. Here, let me just do it. Sorry, Your Honor. Just one moment.  
6 Court's indulgence.

7 THE COURT: Uh-huh.

8 [Counsel confer]

9 BY MR. CLOWARD:

10 Q Okay. Have you ever seen a document --

11 MR. CLOWARD: And if you can just zoom it now, Brandon.

12 BY MR. CLOWARD:

13 Q Have you ever seen a document like this, Ms. Martinez,  
14 where these entries are entered in and for instance, customer is asked --  
15 we want you to take a look -- this customer from -- if you go a little bit to  
16 the right. Little bit more. Okay, good. Mr. Codgill [phonetic] --

17 MR. CLOWARD: Now go all the way to the left, Brandon.

18 BY MR. CLOWARD:

19 Q We want to ask you, you know, some questions here. And  
20 then these answers are entered into the database. Like this individual,  
21 he says, I cannot get the door shut on the tub.

22 Do you remember seeing a document like this?

23 A No.

24 Q Okay. So for instance, if --

25 MR. CLOWARD: Now Brandon, can you go to the specific --

1 the Guild selected surveys.

2 UNIDENTIFIED SPEAKER: It's Exhibit 192.

3 MR. CLOWARD: 192, Your Honor.

4 BY MR. CLOWARD:

5 Q Let me know when you're there, Ms. Martinez.

6 A I've got it.

7 Q Okay. So these are basically selected surveys. And because  
8 we've only had this document for a few weeks, we've only just begun  
9 narrowing the search on these. But do you remember having First Street  
10 tell Jacuzzi about people that -- like for instance, this individual, Mr.  
11 Phipps [phonetic], he says, my husband got in just fine and then we  
12 couldn't get him out. I had to have my nephew come to help him out. It  
13 took us two hours to get him out.

14 Do you ever remember --

15 A I don't recall that, no. I don't.

16 Q Okay. And someone like Mr. and Ms. Mohan [phonetic] that  
17 indicated, "The tub, it is supposed to be nonslip, but it's really not,  
18 especially when you have soap involved. It gets pretty slippery. When I  
19 first used it, I almost fell off the seat."

20 Do you remember calls like that?

21 A I don't remember this -- I -- this document doesn't look  
22 familiar to me at all.

23 Q Okay.

24 A I don't remember people reporting there was a perception  
25 that it was -- the seat was slippery, or the floor was slippery for a variety

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1 of reasons. I don't know if they were these. It could be.

2 Q Okay. Like for instance, the next in line is Mr. and Ms. Aderio  
3 [phonetic]. It says, I am talking to a lawyer about the tub. It doesn't have  
4 any traction on the bottom, because both my husband and I have fallen  
5 down in the tub. This whole thing with this company has been an  
6 ongoing struggle from the day we called them to now.

7 Remember something along those lines?

8 A I remember there being complaints about like I said,  
9 perception of slipping, slipping, larger people having a hard time getting  
10 in and out of the tub, particularly shutting the door, because of the way it  
11 was positioned, but I can't say that these specific people's complaints  
12 were ones that I rem -- I mean, that --

13 Q Okay.

14 A I remember there being complaints. I don't remember  
15 specific names or cities or anything and I'm quite certain that I haven't  
16 seen this information in this format --

17 Q Okay.

18 A -- before.

19 Q You remember, for instance, someone like Ms. Cantu  
20 [phonetic] at the bottom there calling where he says, my wife fell twice in  
21 the tub, because it is too slippery.

22 You recall calls of that nature, at least, coming?

23 A Yes.

24 Q Okay.

25 A Yes.

1 Q And we don't need to continue to go through the entirety of  
2 the exhibit. There's, I think about 20 some odd --

3 A More than that. Looks like more than that.

4 Q Okay. However many there are.

5 A I do recall those complaints being made. I -- and that  
6 feedback coming. Like I said, I don't -- these names aren't ringing bells  
7 to me. Usually name swill trigger something.

8 Q Trigger something. Okay.

9 A And certainly this format that it's in, I've not -- I have never  
10 seen before.

11 Q Okay. And Ms. Martinez, both the dealer -- or I guess the  
12 individual dealers, the individual installers as well as First Street, Aging  
13 in the Home, they would all send in information to Jacuzzi about issues  
14 that were happening in the field?

15 A We would get those survey copies and then there would be  
16 from time to time, as I'm sure is in lots of these books, a specific incident  
17 that was reported to a high level at First Street or report it someone  
18 either via a letter like that one or you know, sometimes people would call  
19 and you know, get put through to the president of the company or  
20 something.

21 Q Uh-huh.

22 A That would then get attention and would be addressed either  
23 by -- typically it would go through customer service to handle the  
24 correspondence and the course of action to -- if it was something that  
25 could be corrected -- get it corrected.

1 Q Okay.

2 MR. CLOWARD: One moment to confer with counsel, Your  
3 Honor.

4 [Counsel confer]

5 BY MR. CLOWARD:

6 Q Okay. Ms. Martinez, I guess the last question that I have is  
7 we've already -- we covered this in your deposition, and we covered this  
8 with Mr. Bachmeyer, but you agree that there was a weekly phone call  
9 between Jacuzzi, Aging in the Home and First Street?

10 A Yes.

11 Q Okay.

12 A Yes.

13 Q And in that phone call, I guess, if there were folks that had  
14 called in and said hey, you know, I'm having issues with the install or if  
15 there were folks that called in and said hey, I slipped and I got injured  
16 and I'm going to hire a lawyer, that would be discussed -- those types of  
17 things, I guess that range of things would be discussed at that meeting?

18 A The range of things. Not necessarily the specific issue.

19 Q Okay.

20 A The specific issues would typically be corresponded between  
21 either the customer service group or the senior management group as  
22 they were reported up to them. But the scope of the call was more of a  
23 kind of a 30,000 foot view of what was going on in the business from a  
24 shipping standpoint, from a backorder standpoint, from an open claims,  
25 which would be that recap of the -- you know, a running -- kind of a

1 running scorecard on those things that are broken, things that have, you  
2 know, failed or things that needed to be repaired out in the field. And  
3 then, you know, kind of sales plans and things like that.

4 Q Okay. Ms. Martinez, thank you. Thank you. We appreciated.

5 A That's it?

6 Q Mainly wanted to ask you about the Guild surveys.

7 A Okay, okay.

8 THE COURT: All right, Mr. Roberts, your turn, if you have  
9 any questions.

10 MR. ROBERTS: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. ROBERTS:

13 Q Good afternoon, Ms. Martinez.

14 A Hi, Lee.

15 Q Good to see you again.

16 A Nice to see you.

17 Q I'd ask you to turn to Exhibit 167, beginning at the second  
18 page from the end, which is Jacuzzi 5393.

19 A 5-3-9-3, yes.

20 Q Yes. And is that the spreadsheet that --

21 A Yes.

22 Q -- you spoke to --

23 A Uh-huh.

24 Q -- Mr. Cloward about?

25 A Yes.

1 Q You mentioned Quick View or Mr. Cloward asked you a  
2 question about Quick View.

3 A Uh-huh.

4 Q First of all, just for foundation, as part of your job when you  
5 were at Jacuzzi, did you personally perform searches in any of the  
6 databases?

7 A No. Not in Quick View. This was -- and I know when we met  
8 before, I was having a hard time remembering the names of programs,  
9 but that is correct. That would be the customer service management  
10 software that they were using at the time. And I did not use that. I didn't  
11 have access to that system.

12 Q Okay. Just so the Court understands, what type of  
13 information was accessed using Quick View. Do you recall?

14 A Well, it -- to my knowledge, it was a database of all of the  
15 inbound consumer complaints or claims. They were called claims.

16 Q Okay.

17 A Someone would have a problem, either an actual customer  
18 or an installer or maybe even a retail store. Hey, I have this product.  
19 You push the button and the light's supposed to come on and the light  
20 doesn't come on. What do I do?

21 Q Okay. Is your memory fair -- let me ask you a different  
22 question --

23 A Uh-huh.

24 Q -- just to try to refresh your memory. Do you recall what the  
25 salesforce system was used to store? What would go into salesforce?



1 A Jacuzzi did not use salesforce when I was employed there.

2 Q Okay. What about RNT or Right Now Technologies? Do you  
3 remember that system?

4 A The name is familiar. I believe -- and I'm not 100 percent  
5 certain, but I believe that was the tool used for keeping track of  
6 components and all of the build materials and part and parcel to actually  
7 manufacture the product and conversely break down what all those parts  
8 were, so that the customer service agent could identify what they needed  
9 to fix that light and then get an agent to go out and fix it. I believe that  
10 was -- am I right?

11 Q The Court's just looking for your understanding -- and --  
12 because --

13 A Well, that's a pretty good picture of it. I wasn't very involved  
14 with that --

15 Q Okay.

16 A -- piece of the business.

17 Q But you do recall that the use of Sales Force had not yet been  
18 implemented when you were there?

19 A When I was there, no. Jacuzzi did not use Sales Force. I  
20 have used Sales Force in a former capacity and I'm actually -- my  
21 company now is rolling into sales force, but my time at Jacuzzi, it -- we  
22 did not -- I did not use sales force at Jacuzzi.

23 Q So is it fair to say that you don't have any knowledge about  
24 what information was inputted into sales force after you left?

25 A I wouldn't know.

1 Q And do you know any knowledge as to what information --  
2 existing information was imported into the Sales Force system by  
3 Jacuzzi when they started using it?

4 A I would have no way of knowing that.

5 Q You mentioned the dropdown menu that was used for  
6 people to assist them in categorizing --

7 A Troubleshooting --

8 Q -- troubleshoot -- so if it's a button, you could maybe  
9 dropdown and pick button?

10 A Uh-huh.

11 Q Look at these 20 agreed upon search terms here on the  
12 board. Do you remember any of those terms being part of the dropdown  
13 menu, or do you not have enough recollection of what the terms were to  
14 talk about it?

15 A In the customer service reporting?

16 Q Yes.

17 A Tool -- I don't remember -- that doesn't look like terms that  
18 would have been in that system. That would have been parts, like  
19 physical parts, components of the bathtub.

20 Q Okay.

21 A So the elderly and I mean, over -- that should -- wouldn't  
22 have had anything to do with our audit or testing.

23 Q So maybe a grab bar?

24 A Grab bar, wood. That was a part of the tub. Water control  
25 technically would be part of the tub. The seat was part of the tub. The

1 door. I mean, handholds, handgrips, I don't know.

2 Q But you don't recall what the specific parts were at you sit  
3 there, that were on the dropdown menu at that time?

4 A I don't. I don't. I mean, I don't clearly remember. I could  
5 probably take a piece of paper and guess at about 80 percent of them,  
6 but I --

7 Q Well, we don't want you to guess.

8 A I don't know. No.

9 Q Okay. Thanks very much, Ms. Martinez.

10 A I've let that information go.

11 Q I appreciate it. Thanks.

12 A Sure.

13 THE COURT: Is there any redirect, Mr. Cloward?

14 MR. CLOWARD: No, Your Honor.

15 THE COURT: All right. Well that was easy. You're excused.

16 Thank you for your time.

17 THE WITNESS: Thank you.

18 THE COURT: Have safe travels back.

19 THE WITNESS: Sure.

20 THE COURT: What's next?

21 MR. CLOWARD: Oh, I'm sorry, Judge. Ms. Reyes.

22 THE COURT: All right. Ms. Reyes, Marshal.

23 THE MARSHAL: What's the name, Judge?

24 THE COURT: Ms. Reyes.

25 THE MARSHAL: Ms. Reyes.

1 MR. CLOWARD: Regina Reyes.

2 THE MARSHAL: Okay.

3 [Pause]

4 THE COURT: When will we receive Exhibit 193? My Clerk  
5 needs a copy.

6 UNIDENTIFIED SPEAKER: We have that.

7 [Counsel confer]

8 THE COURT: Let's go off the record.

9 [Recess at 4:00 p.m., recommencing at 4:02 p.m.]

10 THE COURT: All right. So Mr. Cloward has a multi-page  
11 document which was prepared by either himself or somebody in his  
12 office at his direction. He's indicating to us that this is a summary of  
13 information in the so-called OSI binder, which is Exhibits 1 through 75.

14 He wants to offer it as a demonstrative exhibit. Is that your  
15 request?

16 MR. CLOWARD: Yes, Your Honor.

17 THE COURT: All right. And can you represent to the Court  
18 that all of the information on that summary is derived from the  
19 information in the OSI binder and only the information in the OSI binder?

20 MR. CLOWARD: I want to make sure that I understand what  
21 I'm being asked.

22 THE COURT: Your summary, is it just based upon this OSI  
23 binder --

24 MR. CLOWARD: Yes.

25 THE COURT: -- or anything else?

004402

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1 MR. CLOWARD: Yes.

2 THE COURT: Nothing else?

3 MR. ROBERTS: Your Honor, I don't believe that's correct.

4 The record does not contain the date of our supplements and therefore  
5 it's not just based on the information in the binders.

6 THE COURT: A wreck.

7 MR. ROBERTS: I think we can view this as a proposed  
8 stipulation and then we could verify the Bates ranges and when they  
9 were produced from our record, and then notify the Court tomorrow  
10 whether we agree to the proposed stipulation.

11 I do think it's something that we need to do and there's no  
12 need to put all of our supplements in the record in order to establish  
13 that. I believe it's something we can stipulate to those dates and I'm --

14 THE COURT: All right.

15 MR. ROBERTS: -- sure they probably got it right.

16 THE COURT: So this -- okay, now I understand what Mr.  
17 Cloward has in his hands, which I haven't seen is a summary of all --  
18 supposedly a proposed summary of all of Jacuzzi's supplemental  
19 production of documents, which Mr. Cloward is contending are in this  
20 OSI binder.

21 MR. ROBERTS: Correct.

22 THE COURT: And you guys are going to verify that and let  
23 me know tomorrow if you can stipulate to that document?

24 MR. ROBERTS: Yes, Your Honor.

25 THE COURT: All right. Very good.

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1 MR. ROBERTS: So the Court can easily -- if the Court is  
2 looking at the document, you can just easily flip to it and see --

3 THE COURT: That'd be very helpful. Thank you.

4 MR. ROBERTS: -- when it was produced.

5 THE COURT: Mr. Cloward, thank you for putting that  
6 together.

7 MR. CLOWARD: Okay.

8 THE COURT: Yes, sir.

9 MR. ESTRADA: And it's not every document that has ever  
10 been supplemented. It's only the dates --

11 THE COURT: Go ahead and put your name on the record  
12 for --

13 MR. ESTRADA: Oh.

14 THE COURT: -- purposes of --

15 MR. ESTRADA: Sure. Ian Estrada.

16 THE COURT: Okay.

17 MR. ESTRADA: And so this document -- it doesn't document  
18 every single document that has ever been disclosed by Jacuzzi. It's only  
19 the ones that are in the binders.

20 THE COURT: Which are subsequent incidents, is what you're  
21 saying?

22 MR. CLOWARD: And prior.

23 THE COURT: Oh, and prior? Okay. All right. So it's a  
24 summary of what's in the binders, but not all disclosures by Jacuzzi. Got  
25 it. Thank you.

1 MR. CLOWARD: Yes.

2 MR. ESTRADA: Yes.

3 THE COURT: All right. You guys work it out, see if you can  
4 stipulate to this. We'll get it admitted tomorrow then. Not admitted  
5 now.

6 Right. So if this is demonstrative, we won't admit it, but if  
7 you want it introduced as a summary, you know, of the voluminous  
8 records, then move at that time to have it admitted. Okay?

9 MR. CLOWARD: You got it, Judge.

10 THE COURT: Very good. Thank you. All right.

11 MR. CLOWARD: I made you the promise, I think it was  
12 yesterday, that we would get you that list and I forgot --

13 THE COURT: You did.

14 MR. CLOWARD: -- to do that. So I wanted to make sure that  
15 I for sure got it to you today because I made that promise and I feel bad  
16 about not --

17 THE COURT: Thank you. Thank you for working hard to --

18 MR. CLOWARD: -- doing it.

19 THE COURT: -- get that done. I appreciate it.

20 MR. CLOWARD: Okay.

21 THE COURT: All right. Why don't you please stand. The  
22 clerk will administer your oath.

23 THE CLERK: Raise your right hand.

24 REGINA REYES, PLAINTIFFS' WITNESS, SWORN

25 THE CLERK: You may be seated. And will you please state

004405

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1 and spell your first and last name for the record?

2 THE WITNESS: Regina Reyes, R-E-G-I-N-A, R-E-Y-E-S.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. CLOWARD:

6 Q Ms. Reyes, how are you today?

7 A Good. How are you?

8 Q Good. Let's go to 167.

9 Ms. Reyes, would you just kind of tell the Court I guess and  
10 tell the parties a little bit about yourself and what your position with  
11 Jacuzzi is?

12 A Sure. I've been with Jacuzzi for 21 years. And I support and  
13 manage the call center there for both bath and spa division.

14 Q All right. Thank you. Would that -- would the walk-in tub be  
15 within one of those divisions?

16 A Yes.

17 Q Okay. And is that the same position that you had back in  
18 2012?

19 A Yes.

20 Q All right. Now, we've gone over some emails. In particular,  
21 there's an email that we covered with Mr. Bachmeyer yesterday about  
22 how an issue came up with one of the dealers. Contacted First Street,  
23 then First Street contacted Jacuzzi, and Kurt asked you to generate a list.  
24 And this email, as you can see, is your email on November 9, 2012 to  
25 Kurt Bachmeyer. And attached to that is cannot push button to start dot

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1 XLS.

2 First, do you remember that?

3 A No.

4 Q Okay. I wouldn't expect you to if you did. It'd be pretty cool  
5 if you did and have a great memory. But do you remember running  
6 reports like this if an issue comes in, I guess, that's identified somebody  
7 asked you to gather data for a particular issue and then you run a report  
8 and provide that to someone like Kurt?

9 A Yes.

10 Q Okay. And during Audrey's deposition, as well as Kurt's  
11 testimony, yesterday, we talked about some of the various issues that  
12 would come up where folks would ask to have a report. I guess, my  
13 question to you is just very specific, very basic how do you run a report  
14 like this?

15 MR. ROBERTS: Objection to form. Ambiguous.

16 THE COURT: So if he were to say how is this -- do you know  
17 how this report is generated, would that satisfy? I'm trying to  
18 understand exactly how it's vague?

19 MR. ROBERTS: Well, just if he mean this particular report, a  
20 report on the same system. I think there are different ways to run  
21 reports on --

22 THE COURT: All right. Okay. Why don't you --

23 MR. ROBERTS: -- sales force warranty.

24 MR. CLOWARD: Okay.

25 THE COURT: Sure, sustained. Very well. Why don't you be

1 a little more specific there?

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

3 So, Brandon, let's go to Jacuzzi 5391. Actually, 5390, and  
4 then we'll do 5391.

5 BY MR. CLOWARD:

6 Q I was trying to shave a little time, Ms. Reyes, but we can walk  
7 through this. So this initial email generated by Ray Parnell -- is started  
8 with Ray on November 8th at about 8:05 a.m. He sends First Street  
9 support some issues, some service requests with regard to button  
10 sticking. So you see there "button sticking". Do you see that there?

11 A Yes.

12 MR. CLOWARD: Next page Brandon.

13 BY MR. CLOWARD:

14 Q This individual button sticking and then the individual. And  
15 the next page also button sticking. So Mr. Parnell sends out the email --  
16 now, Brandon, let's go to 5388 -- 5387 and 5388. The emails are split  
17 between pages. So 5387.

18 So you see here, this is an email from Audrey Martinez to Kurt  
19 Bachmeyer -- and then now go to the next page, 5388. Audrey tells Kurt,  
20 "Kurt, can you please get a recap of button-related issues together?" Do  
21 you see where Audrey's asking Kurt to do that?

22 A Yes.

23 MR. CLOWARD: Now, Brandon, will you go to the first page  
24 -- excuse me, it's 5387?

25 BY MR. CLOWARD:

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1 Q Okay. This email was from Kurt to you and it says, can you  
2 provide me with this data, please?

3 MR. CLOWARD: Now, go to the first page.

4 BY MR. CLOWARD:

5 Q And a few hours later this -- his email was at 10:43 a.m. Your  
6 response is at 4:19 p.m. This was four years ago. Or, excuse me, in  
7 2012, and you generate the data, provide it to Kurt and say here you go.  
8 So in this particular instance, how would you have generated the Excel  
9 spreadsheet that you generated?

10 A Okay. So to the best of my recollection, I would be referring  
11 to data that would come through out call center.

12 Q Okay.

13 A And I would generate a report to capture information on  
14 buttons.

15 Q And I guess the data that's coming into the call center -- what  
16 data is that?

17 A The data would be information related to a call, whether it be  
18 a service request or something like that.

19 Q Okay. And do you know where the call center -- was that like  
20 sales force?

21 A During this time, it may have been RNT. I'm not really sure if  
22 we were actually using sales force during this time.

23 Q Okay. Now, this request began with Ray Parnell's email at  
24 8:05 and ended with your email at 4:19 p.m. So that's roughly eight  
25 hours or so. Is that how long it generally would take to gather this type

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1 of data or?

2 A Let's see. So it -- no, it may not take that long to gather that  
3 data. It may not. It's -- there's no information related to the priority of  
4 this request or this task. I could have prioritized it myself based upon my  
5 workload or there -- I'm sorry. Can you repeat that please in a question?

6 Q Yeah. It's okay. We know that the email started at 8:00 and  
7 your response was around 4:00, and so I didn't know if it took eight  
8 hours to gather the data or if you had other tasks --

9 A No, I --

10 Q -- in there.

11 A It wouldn't typically take me eight hours to gather -- to create  
12 a report -- to gather data, no.

13 Q Okay. So let's pretend for a moment that Bob Rowen, or  
14 who's the president of Jacuzzi right now?

15 A Chuck Hubler.

16 Q Okay. Let's say Mr. Hubler comes into your office and says,  
17 hey, I need this data as soon you can get it to me. How long would that  
18 take you? It's your number one task. You don't have to do anything else  
19 but that report.

20 A That may depend on how successful I am in with the report,  
21 in configuring the report and collecting data.

22 Q Okay. Can you explain a little bit more about that?

23 A Well, it may be if I'm running the data through sales force  
24 searching for information, it could take me five minutes, but in some  
25 instances it could take me a little bit longer, depending if there's

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1 interruptions, but it --

2 Q Okay. Well, no interruptions. You're in a conference room  
3 alone, Mr. Hubler comes in. You don't have to do anything else. No  
4 phones, no other emails, this is the only thing you have to do. How long  
5 would that usually take?

6 A It may take me about 15 to 20 minutes.

7 Q Okay. And you indicated that you searched through sales  
8 force database?

9 A Yes.

10 Q Okay. Can you search through like the comment field of this  
11 sales force database?

12 A Yes.

13 Q Okay. Is that pretty easy to do?

14 A It can be.

15 Q Okay. And how do you go about doing that?

16 A Using key words or phrases.

17 Q Do you have to preload some sort of -- I mean, I guess -- why  
18 don't you just walk us through? Let's say that again, Mr. Hubler comes  
19 in and he says, Ms. Reyes, I have an issue. I need you to search -- let's  
20 just say that these terms. I need you to search for these terms like slip,  
21 through the sales force database. I want you to pull up all comments  
22 that come up with that term. How would you do that?

23 A So I would use an autobox report. So I'm not really --

24 THE COURT: I'm sorry. A what?

25 THE WITNESS: Just a template report, an autobox --

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1 THE COURT: Template report. Okay.

2 THE WITNESS: -- type of report. So I'm not really doing  
3 much configuration to create the report. So therefore, that's why it  
4 might take me five minutes if I'm just searching a phrase. If I'm  
5 searching more phrases that may take me longer.

6 BY MR. CLOWARD:

7 Q Okay. Let's just say one phrase, like slip.

8 A That could probably take 10 minutes.

9 Q Okay. Ten minutes. All right. Now, do you know what a  
10 Boolean search is?

11 A Yes.

12 Q Okay. So that's where you put like something into Google,  
13 you could put slip within W slash five, so that would be within five words  
14 of fall, right?

15 A Yes.

16 THE COURT: Can you spell -- what type of search is that?

17 MR. CLOWARD: Boolean, B-O-O-L-E-A-N, Boolean.

18 THE COURT: Kind of like you do with Westlaw.

19 MR. CLOWARD: Exactly, Judge.

20 THE COURT: Okay.

21 MR. CLOWARD: Exactly.

22 THE COURT: Okay.

23 BY MR. CLOWARD:

24 Q And you're able to use Boolean searches with this database,  
25 right?

1 A Yes.

2 Q Okay. And that's pretty easy, right?

3 A At the time, my proficiency level, I would say I was a novice  
4 to the system, so it could take a little bit longer.

5 Q Now, you're a pro.

6 A I'm not sure I if I'd call myself a pro.

7 Q Well, 21 years, that's I'm sure you have a lot of experience  
8 doing searches, right?

9 A Well, in the -- with sales force it's been four or five years.

10 Q Sure.

11 A So yeah, to be honest, I very likely did not use the Boolean  
12 searches back then.

13 Q Okay. But certainly like maybe a month or two ago, if you  
14 wanted to do some searches using Boolean searches, you could dig  
15 down and search through the comment field pretty easily, right?

16 A I can.

17 Q Okay. Now, were you involved -- I guess, some point during  
18 this litigation -- were you involved with searches for these specific terms  
19 of the sales force database?

20 A What was the beginning part of that question though?

21 Q Sure. It was kind of long question. I'm sorry. Either earlier  
22 this year or last year in 2018, were you ever involved -- were you ever  
23 asked by Jacuzzi to assist with searches where you would look for  
24 particular search terms?

25 A So I've been asked to look for search terms. I cannot recall

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1 whether it was earlier this year or last year. It's part of a regular -- it's  
2 part of my regular job for all parts of our business.

3 Q Yeah. It be like -- an example would be -- well, I don't know  
4 of an example. It's getting late in the day. I'm having a hard time  
5 thinking, but you do this very regularly?

6 A Yes, all the time.

7 Q Okay. So when you're asked or how often you're asked,  
8 it's -- you do this so often that it's hard to kind of maybe put it in your  
9 mind when you did a certain search; is that fair?

10 A Yes.

11 Q Okay. Now, in particular, do you remember Mr. Templer  
12 getting involved with the searches and Mr. Allen getting involved with  
13 the searches?

14 A Well, I --

15 THE COURT: Which searches? Are you talking about any  
16 searches in any manner or any period of time or --

17 MR. CLOWARD: Good question, Judge.

18 THE COURT: -- are you referring to something more  
19 specific?

20 MR. CLOWARD: Good point. I will restate.

21 THE COURT: Okay.

22 BY MR. CLOWARD:

23 Q Okay. Was there ever a time that you remember Mr. Templer  
24 and Mark Allen, the Vice President of IT, coming to you and saying, hey,  
25 we have some pending litigation in Las Vegas, and we need your

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1 assistance to search these 20 search terms?

2 A No, I don't specifically remember the two of them coming to  
3 me to ask for that, to ask to search these search terms.

4 Q Okay. Do you ever remember anyone ever saying to you --  
5 and that could either Kurt Bachmeyer or that could be anyone at Jacuzzi  
6 saying Regina, Ms. Reyes, we need your help to do some searches for a  
7 lawsuit that has been filed against us in Las Vegas?

8 A So that's kind of -- that question's kind of lengthy and long  
9 because to be honest with you, I can -- I recall coworkers asking for  
10 searches, whether it's specifically related to a product or lawsuit, I can't --  
11 that part I can't say.

12 Q Okay. Fair enough. You just get requests and you do the  
13 requests and -- is that fair?

14 A Yeah, it's a task that is asked of me.

15 Q Okay. Fair enough.

16 MR. CLOWARD: Your Honor, one moment to confer with  
17 counsel.

18 BY MR. CLOWARD:

19 Q Ms. Reyes, sincerely on behalf of the Plaintiffs, we appreciate  
20 you coming in from California and assisting with this matter. Thank you.

21 A Thank you.

22 THE COURT: Don't get --

23 THE WITNESS: Oh.

24 THE COURT: Counsel for Jacuzzi might have some questions  
25 for you. Thank you.

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1 MR. ROBERTS: No questions, Your Honor.

2 THE COURT: Oh, that's easy then. All right. Well, now you  
3 can leave.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you, very much for your time.  
6 What would counsel like to do now?

7 MR. CLOWARD: Honestly, I'd like to go home, if -- I'm tired.

8 MR. ROBERTS: We've got tomorrow. I've no objection.  
9 Because we -- I've got homework to do.

10 THE COURT: You both do.

11 MR. ROBERTS: So I can't go home.

12 THE COURT: Let's talk about this trial date. Did you guys  
13 have a chance to look at the dates that I gave you and what -- because I'd  
14 like to know if I --

15 MR. ROBERTS: I currently have no conflicts --

16 THE COURT: -- over the next few days.

17 MR. ROBERTS: -- on any of the dates the Court provided. So  
18 we would be willing to agree to Mr. Cloward's choice.

19 MR. CLOWARD: I'm just hoping that the comment doesn't --

20 THE COURT: I mean, if we --

21 MR. CLOWARD: -- suggest --

22 THE COURT: I mean, I don't know how I'm going to rule --

23 MR. CLOWARD: Yeah.

24 THE COURT: -- you know, and I don't -- whatever my ruling  
25 is it may affect the duration of the trial, but I have four weeks to set

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1 aside. So at least I can reserve it and then free up the other weeks that I  
2 have set right now for this case.

3 MR. ROBERTS: Okay. Your Honor --

4 THE COURT: And it could be a date subject to change if  
5 there's very good cause upon noticed motion.

6 MR. CLOWARD: Understood, Your Honor, and thank you for  
7 the definition. I guess, our -- we're going to be setting forth in the final  
8 summary the entirety of what we're requesting.

9 THE COURT: Right.

10 MR. CLOWARD: And at very minimum, we believe that an  
11 additional year of discovery would be warranted based on the  
12 information.

13 THE COURT: Sheesh.

14 MR. CLOWARD: We received 5,000 pages three weeks ago  
15 from First Street with significant issues about this tub. If you look at the  
16 Guild survey, it's Exhibit 191, I believe --

17 MR. ROBERTS: Yes.

18 MR. CLOWARD: If the Court just thumbs through 191 and we  
19 would actually move to admit that into this proceeding, make that oral  
20 motion now, the Court can see -- we don't -- that's not even in the  
21 binders, the 1 through 157. We received these -- we're summarizing  
22 these as 5,000 pages of documents. So we believe there's a whole  
23 bunch of stuff.

24 The searches for the forensic search, those have not been  
25 completed. This witness just testified that something that we were told

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1 at the time of this -- of the hearing was not possible and then there was --  
2 you know, there were folks again, leave the conference room, come back  
3 in and say well, we just barely learned that you can actually search the  
4 comment field.

5 So we spent the entire day trying to search through the  
6 comment field, being told that it's not possible. Well, all of those  
7 comments are the most important stuff. We were told that you can't do  
8 that and late in the day we actually -- a search came up and comment  
9 comes up, and so they leave the room, come back in and say well, we  
10 just learned that you can actually search the comment field. So --

11 MR. ROBERTS: Your Honor?

12 THE COURT: One sec.

13 MR. ROBERTS: I disagree with that characterization.

14 THE COURT: Well, I -- can you please hold on?

15 MR. ROBERTS: Yes.

16 THE COURT: But I'll give you a chance. I just want to make  
17 sure he's finished.

18 MR. ROBERTS: You're right, Your Honor. I apologize.

19 THE COURT: No, that's okay. You're a very patient person.

20 MR. CLOWARD: I think --

21 THE COURT: Yes, why don't you finish.

22 MR. CLOWARD: I think the appropriate thing would be I  
23 guess -- we would like to set it out on the brief. At the very minimum,  
24 we would agree that the October date needs to be vacated. At a very  
25 minimum, I can tell you that now. We need to do the additional

1 discovery on these -- on some of these more relevant OSIs, but  
2 ultimately, if we can have until the morning and give Your Honor -- if  
3 Your Honor's requesting specifics, we could do that.

4 THE COURT: Mr. Roberts?

5 MR. ROBERTS: Yes, I just want to state for the record I  
6 disagree with the characterization, and it was my understanding of the  
7 forensic search is that they had experts who would actually know how to  
8 search sales force and not that we would have to show up to give them a  
9 tutorial on how to search our database. It's a common system. It is not  
10 a system unique to Jacuzzi. And they wanted to do it themselves, and  
11 it's not our fault that they didn't know how to do it.

12 We spent an entire day floundering around because they  
13 wanted to run searches which resulted in results so large that they  
14 wouldn't even export before they could leave. In fact, the system would  
15 bog down and lock up because there were so many results they were  
16 generating. But that's not an issue for today.

17 THE COURT: Exactly. Perhaps we can get --

18 MR. ROBERTS: I -- I'm --

19 THE COURT: -- affidavits on that and any future motion to  
20 continue trial.

21 MR. ROBERTS: Yes. And Jacuzzi is fine simply  
22 acknowledging that the October date will not go forward, which is  
23 helpful to me because I have to report to a court soon whether I'm  
24 available for a trial beginning October 21st.

25 MR. CLOWARD: Well, let's hold this off --

1 MR. ROBERTS: So that's helpful, but I don't know that a year  
2 of discovery would be appropriate or 85 depositions, as I mentioned  
3 before, but I think this is something that we can revisit after the Court's  
4 decision and we know how long the trial is going to be and what the  
5 scope of remaining discovery's going to be.

6 THE COURT: Once a trial date is set, I never leave it open  
7 ended. All right?

8 MR. ROBERTS: Okay.

9 THE COURT: So by the end of this week we're going to have  
10 a new date.

11 MR. CLOWARD: Fair enough.

12 THE COURT: All right. And so talk about it and let me know.  
13 I'm strongly inclined to set it down for say March 30th subject to an  
14 actual formal motion to continue. All right. So I have the information I  
15 need to actually determine with specificity how much more time you  
16 should be entitled to.

17 MR. CLOWARD: Sure.

18 THE COURT: That's what my inclination is right now.

19 MR. CLOWARD: Sure.

20 THE COURT: But I'm not going to leave it open ended.  
21 We're going to have a date.

22 MR. CLOWARD: Understood.

23 THE COURT: So I am -- let me state -- I am going to vacate --  
24 Mr. Roberts? I am going -- I give you my decision that I am going to  
25 vacate the trial that's set to begin in this case. I think it's October 28th.

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1 MR. ROBERTS: And Your Honor, I'm -- I appreciate that, but  
2 as I'm thinking through the March 30th and when the deadlines are  
3 going to naturally follow based on that date --

4 THE COURT: Uh-huh.

5 MR. ROBERTS: -- perhaps there would be less likelihood of  
6 the Court having to move it if we set it for the later date that you said  
7 was available. June?

8 THE COURT: Any time after mid -- middle of June.

9 MR. ROBERTS: And then that way we would be agreeing to  
10 additional discovery up front and we could see what could get done, that  
11 might be a date we're more likely to keep than March.

12 MR. ALLEN: And if we all could talk this week? And so we're  
13 thinking some date in June.

14 THE COURT: Uh-huh. So it looks like the parties are  
15 agreeing we're going to do this for some time after mid to late June. So  
16 talk amongst yourselves, come up with at least two possibilities, and  
17 then I'll run this by my JEA and we'll -- I'm sure we can find a three or  
18 four-week block for you. Let's get that done this week.

19 MR. CLOWARD: Okay.

20 MR. ROBERTS: Thank you.

21 THE COURT: All right. So the trial date set now for October  
22 is going to be vacated. I'm going to officially do it soon as you have the  
23 new date.

24 MR. CLOWARD: Thank you, Judge.

25 THE COURT: All right.

1 MR. ROBERTS: Thank you, Your Honor.

2 THE COURT: Hold on. One more thing. When Mr. Cloward  
3 began his discussion right now, he said he's orally moving to admit the  
4 Guild surveys.

5 MR. CLOWARD: Correct. 191 and --

6 THE COURT: All right. Response?

7 MR. ROBERTS: Yes, we would object, Your Honor. Ms.  
8 Martinez said that she had -- although she didn't use of the word Guild  
9 survey, she wasn't familiar with that, and the document, when it was put  
10 up on the board, she said I've never seen survey information in that  
11 format.

12 So there's no way for the Court to determine what  
13 information from that spreadsheet was actually possessed by Jacuzzi at  
14 any point during this relevant time. And if the purpose of this hearing is  
15 to find out what Jacuzzi knew and didn't produce, there's no foundation  
16 that Jacuzzi knew what was in that exhibit.

17 THE COURT: My recollection -- you're mostly correct there  
18 as far as I can recall. My recollection is she did recognize the form of the  
19 Guild surveys. Isn't that what she said?

20 MR. ROBERTS: Well --

21 MR. GOODHART: Your Honor, if I might. These are the First  
22 Street documents -- I work with First Street --

23 THE COURT: No, I understand. And she did say that she  
24 received them in batches. And she would receive them in batches  
25 sometimes, copies.

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1 MR. GOODHART: That was the customer survey, which I  
2 think has already been admitted. Several of them have already been  
3 admitted as exhibits because --

4 THE COURT: I thought that's -- we were talking about the  
5 Guild surveys.

6 MR. GOODHART: Now, the Guild survey is a spreadsheet,  
7 Your Honor. My client produced it in response to a request for  
8 production of documents that Mr. Cloward propounded on us in late  
9 June.

10 THE COURT: Can I look at that again? I keep interrupting  
11 you. I apologize.

12 MR. GOODHART: It's all right. Asking for all customer  
13 surveys regardless of what they talk about. So when Mr. Cloward says  
14 we produced 5,000 documents, it wasn't 5,000 documents, it was a  
15 single spreadsheet. The spreadsheet does have about 3,000 lines in it.  
16 However, one survey response in the Guild survey could cover five, six,  
17 seven, eight lines. And of the 3,000 lines they have to do with every  
18 single survey that my client had received in that format pursuant to Mr.  
19 Cloward's request for production of documents. I didn't argue with it. I  
20 just produced it.

21 So of the 3,000 lines or entries that may have something to  
22 deal with this litigation, I'm not sure. And quite honestly, I can't  
23 represent to this Court exactly how that document was generated. I  
24 cannot even lay a foundation that --

25 THE COURT: When was it produced?

1 MR. GOODHART: It was produced --

2 THE COURT: Just like three weeks ago or something?

3 MR. GOODHART: August 21st --

4 THE COURT: Yeah.

5 MR. GOODHART: -- that was produced in response to a  
6 request for production of documents from Mr. Cloward that was in late  
7 June, early July.

8 THE COURT: So is it, I guess, First Street's position that it  
9 didn't have an obligation to produce it sooner?

10 MR. GOODHART: Yes.

11 THE COURT: All right. And that would explain why you  
12 didn't produce it until just a few weeks ago.

13 MR. GOODHART: It was produced in response to a request  
14 for documents.

15 THE COURT: How can we find out if that document was  
16 provided to Jacuzzi? Someone's got to know that. I mean, are you  
17 saying that --

18 MR. GOODHART: There's nobody here to give any testimony  
19 about -- I can't give testimony about that.

20 THE COURT: It just seems -- doesn't seem a little -- I don't  
21 want to use the term unfair, but if I were Plaintiff, I would be concerned  
22 that I've not had an opportunity to question or depose or find out from  
23 the right people if that was provided to Jacuzzi. But I think that's an  
24 important issue in this proceeding because it does seem to have  
25 information that is probably response.

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1 MR. GOODHART: The one thing I do know about that  
2 document is -- and I think it's on the document itself -- it did not begin  
3 until June of 2015. So the Guild survey was not used until June of  
4 2015 --

5 THE COURT: All right.

6 MR. GOODHART: -- which is a year and a half after it was --

7 THE COURT: Perhaps would it -- it's still a subsequent -- it  
8 might have subsequent incidents in there. I haven't looked at it. So  
9 yeah, I'm not sure how to deal with that.

10 Mr. Cloward?

11 MR. CLOWARD: I think that --

12 THE COURT: It certainly hasn't been -- there's no evidence  
13 that it's been received by Jacuzzi.

14 MR. CLOWARD: Sure.

15 THE COURT: She didn't recognize it. So I don't see how at  
16 this point in time there's any foundation to admit it.

17 MR. CLOWARD: Yeah. And I guess the foundation that I  
18 would offer is in, I believe, tab 167. If I'm not mistaken.

19 THE COURT: Those were a few of them that -- right?

20 MR. CLOWARD: Well, --

21 THE COURT: Oh, wait, that's a few pages, rather.

22 MR. CLOWARD: They were -- in candor to the Court, I want  
23 to make sure because I agree with Mr. Goodhart and Mr. Roberts, the  
24 representations of counsel, that there are two separate issues we're  
25 talking about, Judge. There's the Guild survey and then there are

1 customer surveys. So there are two --

2 THE COURT: I understand that, yeah.

3 MR. CLOWARD: Okay. But the --

4 THE COURT: And I've admitted the customer surveys, right?

5 MR. CLOWARD: Right.

6 THE COURT: Okay.

7 MR. CLOWARD: The foundation, I guess, that I would offer  
8 on this is that in -- it's the Ray Parnell email that I talked about with both  
9 Ms. Martinez as well as Kurt Bachmeyer, where it's referenced back in  
10 2013, the Guild surveys.

11 THE COURT: Show me that again.

12 MR. CLOWARD: Sure. Can we find that? It's the Ray Parnell  
13 email. Your Honor, this Court's indulgence, one moment.

14 THE COURT: Yep.

15 MR. CLOWARD: I will find this.

16 THE COURT: You want to just deal with this tomorrow?

17 MR. CLOWARD: If the Court would like that -- and --

18 THE COURT: Unless you have it hand -- okay. That's 5390,  
19 Ray Parnell, First Street, I think and that's the email chain with -- looks  
20 like -- is that it?

21 MR. CLOWARD: I believe -- yes, that's the 53 --

22 THE COURT: And then 5393? Is that the Guild survey there?  
23 No?

24 MR. CLOWARD: Your Honor, I hate to waste the Court's  
25 time. We can --

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1 THE COURT: No, that's okay. I got time.

2 MR. GOODHART: Your Honor, I think what he's referring to  
3 is --

4 MR. CLOWARD: Okay. Here we go, 160 --

5 MR. GOODHART: -- Exhibit 161.

6 MR. CLOWARD: --161.

7 MR. GOODHART: Which is an email dated June 18, 2013,  
8 and the attached document referencing that Guild survey is a customer  
9 survey satisfaction form, which we've already admitted and which, I  
10 believe Ms. Reyes testified that she recalled seeing. There is no Guild  
11 survey.

12 So there could be a confusion as to what that customer  
13 survey document is being called by an installer or by a dealer --

14 MR. CLOWARD: Well --

15 MR. GOODHART: -- or by First Street or by Jacuzzi. I don't  
16 know. And even Ms. Reyes appeared in her testimony, in my opinion, to  
17 interchange the two between Guild and customer survey.

18 MR. CLOWARD: Judge --

19 THE COURT: It seems like -- yes, sir.

20 MR. CLOWARD: The term Guild survey is a very precise  
21 term. This is not a mistake. Okay? This is not him confusing the issue  
22 between oh well, maybe it's a customer service survey or maybe this is  
23 some other type. He says this is the --

24 THE COURT: Show me what the Guild survey looks like.

25 MR. CLOWARD: Okay.

1 THE COURT: Because I have 5309, which is the customer  
2 survey, right?

3 MR. CLOWARD: Yes. Your Honor, may I approach?

4 THE COURT: Yeah. Was it in -- do you have a page of it  
5 anywhere in here in these exhibits?

6 MR. CLOWARD: The reason that we don't is that the -- it's on  
7 a thumb drive and Mr. Goodhart says it's not 5,000 pages. If you click on  
8 print, it's 5500 pages long to print. So --

9 THE COURT: How can there be a disagreement on how  
10 many pages there are?

11 MR. ROBERTS: Well, it's an Excel spreadsheet. It's  
12 according to how you format it.

13 MR. GOODHART: It's on an Excel spreadsheet. I'm looking  
14 at this and it says 3,476 lines, but it doesn't mean that there's 3,476  
15 customer responses because some customers have five or six lines  
16 attributed to them in their response.

17 THE COURT: Okay.

18 MR. GOODHART: It's an electronic --

19 MR. CLOWARD: Can we approach? Show it to the Court.

20 THE COURT: All right.

21 MR. GOODHART: It's an electronic --

22 THE COURT: Well, let's take a look.

23 MR. GOODHART: -- compilation of the surveys that Mr.  
24 Cloward requested that we produce.

25 THE COURT: Right. So the surveys might be 5500 pages,

1 but the report is --

2 MR. GOODHART: Right.

3 THE COURT: -- 3 -- 33 --

4 MR. GOODHART: Right. If we printed out every single  
5 survey that has -- which encompasses maybe a thousand or 1200  
6 surveys from 2015 until today.

7 THE COURT: So you're referring to the customer survey. So  
8 the Guild survey document is based upon the customer surveys?

9 MR. GOODHART: Well, no -- I don't want to provide any  
10 testimony here, but it's my understanding that in June of 2015, rather  
11 than doing the customer surveys, which are the printed forms that have  
12 been produced and have been admitted, First Street went to the Guild  
13 survey system, which is an electronic system which they no longer  
14 managed. And that was now their customer survey system.

15 THE COURT: All right. Thank you. Appreciate that.  
16 What do you want to show me?

17 MR. CLOWARD: This is the Excel spreadsheet. You bet. And  
18 then if you -- this is the -- where there's no wrapped text. To wrap text  
19 you simply click on this. And to wrap text means it just expands it to  
20 read it. And then you click on that button right there.

21 THE COURT: Uh-huh.

22 MR. CLOWARD: So you can take a look at the document  
23 itself and then if you want to wrap text, just click there and then click  
24 there.

25 THE COURT: All right. Now, I get it.

1 MR. ROBERTS: What is the wrap text?

2 MR. GOODHART: That's what you click to make it readable,  
3 so the whole field will show in one line.

4 THE COURT: All right. But if we were to maintain the format  
5 as it's shown on your computer here, how many computer screens  
6 would there be, right?

7 MR. CLOWARD: How many pages?

8 THE COURT: Well, how many pages in the current format?

9 MR. CLOWARD: Let's just go --

10 MR. GOODHART: Can you print?

11 MR. CLOWARD: Yeah, easy. File --

12 THE COURT: It's less than 5500 pages.

13 MR. CLOWARD: -- print, and then it pops up. It'll give it a  
14 moment to think.

15 THE COURT: Okay.

16 MR. CLOWARD: So 497 pages. Now, if the Court goes like  
17 this so that you can actually read, because for instance, this entry here --

18 THE COURT: Uh-huh.

19 MR. CLOWARD: -- it's only going to print that. You don't  
20 know all of the information in there. So now if you do wrap text -- oops  
21 -- now, you have all of the information, not just the selected portion.

22 THE COURT: Yeah.

23 MR. CLOWARD: Now, you do file, print --

24 THE COURT: Uh-huh.

25 MR. CLOWARD: -- 5,782 pages.



1 THE COURT: All right. It's one -- is this one, so to speak,  
2 living document?

3 MR. CLOWARD: Yes.

4 THE COURT: As new information is received it's added to  
5 this --

6 MR. GOODHART: No.

7 THE COURT: -- to this document, this database?

8 MR. GOODHART: No, this was a document that I requested  
9 my clients provide to me in --

10 THE COURT: I see.

11 MR. GOODHART: -- in response to Mr. Cloward's request for  
12 production of documents of all customer surveys whether or not they  
13 reference a slip and a fall or whether it's because --

14 THE COURT: All right.

15 MR. GOODHART: -- they enjoy the tub, or it didn't matter.

16 THE COURT: So this a report run for --

17 MR. GOODHART: On a certain day.

18 THE COURT: -- purposes of litigation from a database  
19 maintained by First Street?

20 MR. GOODHART: No, it's not maintained by First Street. It's  
21 maintained by a third party. My understanding is that it's maintained by  
22 a third party.

23 THE COURT: By a third party, over which First Street has  
24 some control?

25 MR. GOODHART: Well, I'm assuming they have control

1 because --

2 THE COURT: Well, you did it. You had access, right?

3 MR. GOODHART: I asked my client to provide me with all  
4 customer surveys. They advised me there was the Guild customer  
5 surveys. I said I need everything.

6 THE COURT: All right. I understand --

7 MR. ROBERTS: And I received --

8 THE COURT: -- what it is.

9 MR. GOODHART: -- the spreadsheet --

10 THE COURT: Sure.

11 MR. GOODHART: -- which I produced in original format to  
12 Mr. Cloward that's why he has it there.

13 THE COURT: All right. So I understand. So when that term  
14 Guild survey then is used in this First Street email, 5302 --

15 MR. GOODHART: The attachment is the hard copy of a  
16 customer survey form, which is not --

17 THE COURT: Not the Guild survey?

18 MR. GOODHART: -- what that format is.

19 MR. CLOWARD: But you can see right here, Your Honor, --

20 THE COURT: Yeah.

21 MR. CLOWARD: -- on this Excel, the name of this document  
22 are the Guild surveys. So the term Guild survey is a very specific,  
23 unique description for a very specific survey, which is indicated right  
24 there. So we believe that provides the foundation to produce that  
25 because the folks at --

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1 THE COURT: I don't think that's enough because it's  
2 referenced in the email, but it's -- Mr. Cloward?

3 MR. CLOWARD: Oh, I'm sorry.

4 THE COURT: It doesn't -- there's no indication that it was  
5 attached. There's -- you know, there's this reference to it from Mr.  
6 Murdock, right? But there's no indication that it actually went to Mr.  
7 Bachmeyer. Now, I understand the predicament you're in because you  
8 haven't had a chance to inquire of anybody.

9 MR. CLOWARD: Sure.

10 THE COURT: Right now there's not foundation. You might  
11 be able to lay foundation. I don't know how you would do it in this  
12 proceeding unless you put --

13 MR. CLOWARD: Someone from First Street --

14 THE COURT: -- someone from First Street on or maybe even  
15 First Street wouldn't -- well, someone from First Street should know how  
16 this is generated, how it's maintained.

17 MR. CLOWARD: Okay.

18 THE COURT: You know, whether I would -- I'm wondering if  
19 we need to get someone from First Street here. And if we even have  
20 time to do it.

21 UNIDENTIFIED SPEAKER: But First Street is in Virginia.

22 MR. CLOWARD: We could do a phone call.

23 UNIDENTIFIED SPEAKER: And I don't know if they can be  
24 subpoenaed to appear.

25 MR. CLOWARD: We've got Wednesday of next week.

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1 THE COURT: Given -- Mr. Roberts? And I know that we're  
2 spending a lot of time on this, but it seems like a very important  
3 document. I'm wondering if I should allow in fairness the Plaintiff to  
4 have an opportunity to secure a witness whether it be live or by phone  
5 prior to the conclusion of this evidentiary hearing so he can get some  
6 basic information about this document to see if he can lay foundation for  
7 determination of whether it was received by Jacuzzi. He's entitled to  
8 know if Jacuzzi got this thing.

9 MR. ROBERTS: And I don't disagree with the Court and I'm  
10 not trying to do a got you. I don't want next month him to do a  
11 deposition and find out we got these and then file a renewed motion  
12 with the Court. I'm -- I don't know if I can do it by tomorrow, but we  
13 have the 25th scheduled.

14 Prior to the 25th I'll attempt to determine whether we can  
15 stipulate that we received that information and then I'll withdraw my  
16 objection to the admission of the exhibit.

17 THE COURT: Perfect.

18 MR. ROBERTS: And if I can't do that, then we'll try to find a  
19 witness who can appear by telephone on the 25th that he can cross-  
20 examine as to whether -- you know, who would know.

21 THE COURT: That's probably the best way --

22 MR. ROBERTS: Is that fair?

23 THE COURT: -- because I don't want to have the make the  
24 determination now whether First Street complied or didn't comply with  
25 prior discovery requests.

1 MR. ROBERTS: Sure.

2 THE COURT: All right.

3 MR. CLOWARD: Thank you, Your Honor.

4 THE COURT: All right. So let's do that. Let's follow that  
5 protocol.

6 MR. CLOWARD: You got it, Judge.

7 THE COURT: And we'll make sure we'll do our best to make  
8 sure that you are in receipt of the information that you should have by  
9 this point in time.

10 MR. CLOWARD: Your Honor, thank you. Appreciate it.

11 THE COURT: All right. See you all tomorrow. What -- I have  
12 a calendar tomorrow at -- Yes?

13 MS. LLEWELLYN: I'm sorry. It's pertaining to tomorrow  
14 because I have a court call set for 10 for the other witnesses --

15 THE COURT: I see.

16 MS. LLEWELLYN: -- but are we calling the --

17 THE COURT: Let me see how many matters I have on my 9  
18 o'clock calendar tomorrow. Seven? How many motions for summary  
19 judgment? Okay. All right. I'm going to endeavor to be done by 10. I  
20 think I can do that. So why don't you keep your phone conference  
21 scheduled.

22 MR. ROBERTS: Well, actually Ms. Llewellyn is flying out to  
23 Ontario airport so she can be present with the witnesses to ensure  
24 they're sworn properly and to coordinate it from the California end. So  
25 they're on the phone.

1 MR. ALLEN: Oh, okay.

2 MR. ROBERTS: Yeah, she's going to at the other end of the  
3 phone.

4 MR. ALLEN: Now, I've got you. I've got you. I didn't know  
5 that.

6 THE COURT: I see. So -- I think they're considering that  
7 they've gotten all the exhibits into evidence and he's considering  
8 whether he needs the exhibits -- the witnesses.

9 MR. ALLEN: I don't think -- we may not need these.

10 THE COURT: Tell you what, let's go off the record now. I'm  
11 sorry, you didn't think of that sooner. Thank you.

12 [Proceedings concluded at 4:47 p.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

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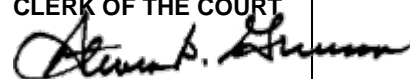
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DISTRICT COURT  
CLARK COUNTY, NEVADA

ROBERT ANSARA, ET AL.,

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS &  
BEYOND INC., ET AL.,

Defendants.

CASE#: A-16-731244-C

DEPT. II

BEFORE THE HONORABLE RICHARD F. SCOTTI  
DISTRICT COURT JUDGE  
WEDNESDAY, SEPTEMBER 18, 2019

**RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

APPEARANCES:

For the Plaintiffs:

BENJAMIN P. CLOWARD, ESQ.  
CHARLES H. ALLEN, ESQ.  
IAN C. ESTRADA, ESQ.

For Defendant First Street  
for Boomers & Beyond Inc:

DAN POLSENBERG, ESQ.  
MEGHAN M. GOODWIN, ESQ.  
PHILIP GOODHART, ESQ.

For Defendants:

D. LEE ROBERTS, JR., ESQ.  
BRITTANY M. LLEWELLYN, ESQ.  
JOEL HENRIOD, ESQ.

RECORDED BY: DALYNE EASLEY, COURT RECORDER



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23  
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25

INDEX

Testimony ..... 5

WITNESSES FOR THE PLAINTIFF

RONALD TEMPLER

Continued Direct Examination by Mr. Cloward ..... 5  
Cross-Examination by Mr. Roberts ..... 56  
Redirect Examination by Mr. Cloward ..... 117  
Recross Examination by Mr. Roberts..... 129  
Further Redirect Examination by Mr. Cloward..... 131

INDEX OF EXHIBITS

<u>FOR THE PLAINTIFF</u>	<u>MARKED</u>	<u>RECEIVED</u>
157 to 169, 172 to 190 .....	.....	.....144

<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		

004438

004438

1 Las Vegas, Nevada, Wednesday, September 18, 2019

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3 [Case called at 11:08 AM]

4 MR. CLOWARD: So last night, Plaintiffs met and decided that  
5 the witnesses today that were scheduled to be called, were not  
6 necessary. We feel like we got the information from Mr. Bachmeyer that  
7 the Court wanted as far as who touched upon that matter and so forth.

8 And so we wanted to expedite things and not waste Your  
9 Honor's time.

10 THE COURT: Thank you.

11 MR. CLOWARD: And we communicated that obviously with  
12 Mr. Roberts and his office last night so that Ms. Llewellyn could join us  
13 here today and wouldn't have to travel to California.

14 THE COURT: Very good.

15 MR. CLOWARD: So I think we're ready to proceed with Mr.  
16 Templer. We plan on commencing his examination, and then we have a  
17 matter we would like to raise with the Court after that examination.

18 THE COURT: Very well. Were you still on direct to examine  
19 with Mr. Templar?

20 MR. CLOWARD: Yes.

21 THE COURT: All right. Mr. Templer, would you please come  
22 take the stand?

23 MR. ROBERTS: And Your Honor, the Court requested that  
24 Jacuzzi bring some communications, some internal communications to  
25 submit to the Court in camera.

1 THE COURT: Correct.

2 MR. ROBERTS: I do have those. We can deal with them now  
3 or we can go ahead and complete Mr. Templer. It's at the Court's  
4 convenience. There is a little bit more to it than just handing them to  
5 you.

6 THE COURT: Sure. Let's deal with that at the next break or  
7 after Mr. Templer.

8 MR. ROBERTS: Very good. Thank, Your Honor.

9 MR. CLOWARD: Maybe that will be the same time, Your  
10 Honor.

11 THE COURT: Let's hope so. All right, Mr. Templer, you're  
12 still under oath. Do you understand that, sir?

13 THE WITNESS: I understand that.

14 THE COURT: All right. You may be seated and get  
15 comfortable. Mr. Cloward, you may proceed.

16 MR. CLOWARD: Thank you, Your Honor.

17 DIRECT EXAMINATION (CONTINUED)

18 BY MR. CLOWARD:

19 Q Good morning, Mr. Templer. How are you?

20 A Good.

21 Q You know, I forgot yesterday. I kept doing this with a couple  
22 of the witnesses. I forgot to ask you -- just to provide the Court with a  
23 little bit of basic foundation on, you know, what your position is and so  
24 forth.

25 A Sure. I'm currently senior corporate counsel for a variety of

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1 companies under the Jacuzzi brands umbrella. One of which would be a  
2 Jacuzzi Inc. doing business as Jacuzzi Luxury Bath, which is the  
3 company that is the bath arm of the Jacuzzi family and would sell The  
4 walk-in tubs.

5 Q Okay. And who was it specifically who hired you?

6 A You mean the entity or the person?

7 Q I guess both, maybe.

8 A I guess I don't know the person who made the final decision.

9 My boss would be Anthony Lovallo, general counsel. I'm sure he had a  
10 lot of input in it. My technical employer that pays me is JZ Corporate  
11 Services which is a shared services entity.

12 Q Understood. And I guess, who trained you to perform the  
13 obligations that you do?

14 A Really isn't the training at the company. I was hired to  
15 provide legal services and I'd been an attorney for 24 years at the time I  
16 joined Jacuzzi.

17 Q Okay. And is it Lovallo or Lovallo.

18 A Lovallo.

19 Q Lovallo.

20 A L-O-V-A-L-L-O.

21 Q Okay. I think I've seen this spelling using a B at one point, so  
22 I was a little confused. Thanks for the clarification. Would he, I guess, be  
23 considered your boss?

24 A Yes.

25 Q Okay. And in the last four years, I guess, was he your boss?

1 A Yes.

2 Q Okay. And what are some of the things, I guess, that you're  
3 hired to do on a day to day basis?

4 A We have a relatively small legal department, so I kind of --  
5 I'm a jack of all trades within the company. I deal with litigation matters,  
6 questions regarding marketing, contracts, employment issues. The  
7 company runs -- some of the entities run, do some sales by phone. I  
8 deal with those issues. There's just a lot.

9 So it's pretty much any legal question that comes up to any  
10 of the departments of any of the companies, it's a good chance it's going  
11 to get funneled my way.

12 Q Okay. And as I understood yesterday, you kind of mentioned  
13 that you would be the only person that would know regarding, I guess,  
14 litigation outcomes or hearings and things of that nature. Maybe I  
15 misunderstood, but it sounded like you would be the person that would  
16 have the information? I misunderstand?

17 A I think so.

18 Q Okay.

19 A I'm not sure what question you're referring to. You may  
20 have been talking about -- I can't think of what you were talking about. I  
21 think you're talking about something specific to this case where I would  
22 have been -- I think it was a contact with Snell Wilmer. It's coming back  
23 to me a little bit.

24 Q Okay.

25 A And I would've been that contact. But, no. Other people

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1 work on litigation matters. Some, I am primarily the litigation person in  
2 the firm.

3 Q Okay.

4 A Not the firm, but the company.

5 Q Understood. And for litigation decisions, is that something  
6 that you report to Mr. Lovallo, or is that something that you have the  
7 authority to kind of designate what takes place?

8 A Just depends on the situation. I try to keep him updated. Big  
9 picture. He doesn't want to be updated on a daily basis of what's  
10 happening in a case.

11 Q Sure. Certainly, like you would agree that like orders of the  
12 Court, that'd be something -- if you're being compelled to have a forensic  
13 examination or I'm sure that you made him aware of, say, for instance,  
14 this hearing with Honorable Judge Scotti?

15 A Yeah. And in the details my conversations with him, he  
16 knows big picture things. Every order that's issued by the Court, I don't  
17 know that I've relayed that to him.

18 Q Okay. And I guess how would we find that out if you did  
19 relay that or didn't relay that?

20 A It'd pretty much be my memory because most of my  
21 communications with him regarding something like that would just be a  
22 telephone call.

23 Q Okay. And you agree, though, that I guess part of your job is  
24 to keep him informed as to big picture things?

25 A Again, it depends on how you define big picture. Yeah.

1 Q Give me your definition, I guess, of big picture.

2 A Yeah. There really isn't a definition, but a lot of our -- the  
3 stuff that I deal with, the vast majority, frankly, of litigation are minor  
4 claims, small dollar value where a pipe on a tub leaked or something  
5 leaked and caused water damage and an insurance company is bringing  
6 in subrogation action. He doesn't care about most of those things unless  
7 it starts getting into the big dollar amounts.

8 So I probably -- he may know there's a claim, he may not. I  
9 don't know. Contract issues, unless it's a substantial contract, he  
10 probably -- he doesn't know details. So it's on a case-by-case basis,  
11 whether I think it's something he would want to know about or not.

12 Q Okay. So like a death case like either this or the Pullen  
13 matter, is that something that he cares about?

14 A Cares about?

15 Q Yeah.

16 A I'm sure he cares about it, yes.

17 Q And so because you know that he cares about those things,  
18 you would I guess advise him of status of those types of cases rather  
19 than the minor warranty type claims?

20 A Yeah. I mean, depending how you're using care, yes. But I  
21 was using care in a different sense of which I think you're using it. But  
22 certainly if the company was named in an action involving a death, he  
23 would know, he would be informed of that.

24 Q Okay. And with regard to substantial cases, I mean, I guess  
25 what would you consider a death case, a substantial case?

004444

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1           A     I don't think I'd use the word substantial, but it's definitely  
2 something that is -- I guess I'd use more significant --

3           Q     Okay.

4           A     -- is the word I would use, but it's something that again  
5 would be brought to Mr. Lovallo's attention.

6           Q     Okay. And in addition to Mr. Lovallo, what other decision  
7 makers would have, I guess, this raised to their attention?

8           A     Decision makers in what regard?

9           Q     Well, are there other folks under stream like Bob Rowan that  
10 would have been made aware of claims involving a death for instance?

11          A     Bob Rowan probably would have been made aware. I don't  
12 -- I didn't typically report to him. I reported to my boss, and he would  
13 report up the chain if he thought it was important enough or should be  
14 reported if he thought that something should be reported. On this one, I  
15 know Mr. Rowan was aware of this.

16          Q     He was aware?

17          A     Yes.

18          Q     Okay. And what about the other death cases that we've  
19 covered? The *Wharff* case and the *Smith* case in the *Pullen* case. What  
20 about those? Would he be made aware of those as well?

21          A     Pullen I'm not aware of being a case. Mr. Lovallo was  
22 aware --

23          Q     Claims or incidents, whatever you want to call them.

24          A     Are you talking about Mr. Rowan still? Who are you asking  
25 about?



1 Q Well, first, let's focus on Mr. Lovallo. Is that something? --  
2 those the types of things that they would be made aware of?

3 A Yeah, he's aware of all four of those.

4 Q And you update them regularly on those?

5 A Again, I've just report to Mr. Lovallo. It's not a regular basis.  
6 Again, it depends. It's based on event or change in status.

7 Q Sure. And, you know, let's see if counsel had a phone call  
8 with your outside -- if Plaintiff's counsel had a phone call with your  
9 outside counsel and outside counsel sent an email saying, hey, you  
10 know, got a phone call and Plaintiffs want to move the deposition.  
11 That's probably not something that you would convey, right?

12 A Frankly, it's not something I probably would even know  
13 about. But, no. I would not convey that.

14 Q Sure. But if there was an email that says, hey, Plaintiff's  
15 counsel just filed a motion to strike our answer and seeking significant  
16 sanctions, that'd be the type of thing that you would definitely want to  
17 update Mr. Lovallo about, right?

18 A Correct.

19 Q Okay. And that's something that he would update Bob  
20 Rowan and other folks about, right?

21 A Again, I don't know. Because he would report to them or he  
22 had -- probably at most that would be a phone call, or a conversation  
23 and I don't know what he updates his higher ups on.

24 Q Okay.

25 A I mean, I know some, but not all of his communications. So

004446

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1 I'd be guessing on that if he's notified them about all this stuff.

2 Q Well, are you obviously sometimes copied. And I'm not  
3 talking about a specific, I'm just talking generalities so that we avoid any  
4 potential privilege issue. But, you know, I'm sure that in your  
5 experience, you receive copies of emails that he may provide to Bob  
6 Rowan and another decision makers, right?

7 A Yes.

8 Q Okay. And have you seen on occasion, Mr. Lovallo inform  
9 Mr. Rowan and other directors of the firm or the company and other  
10 decision makers that, hey, you've got a big issue in Las Vegas or we've  
11 got a big issue in Philadelphia or we've got a big issue wherever it is,  
12 there's a mountain to strike our answer that was just filed.

13 A I mean, if you're asking specifically about a motion to strike, I  
14 don't recall if I've been on -- I don't recall if there's been emails I'm  
15 copied on or not.

16 Q Okay. Talking in generalities, have you been copied on  
17 emails from Anthony Lovallo to other directors like Bob Rowan and  
18 others regarding legal issues?

19 A Yes, with one clarification. I don't know that Mr. Rowan was  
20 a director. He may have been, I don't recall.

21 Q Okay. He was the CEO of the company, though, right?

22 A He was a CEO of Jacuzzi Brands, which is the holding  
23 company for the various entities.

24 Q Okay. And what about emails from Anthony to Joey Davis?

25 A Could you be -- what about the emails?

1 Q Same question with regard to Bob Rowan, but now with  
2 regard to --

3 A Are you talking about the motion to strike question?

4 Q No. Just have you been copied on emails from Mr. Lovallo  
5 to Joey Davis informing Mr. Davis of legal issues?

6 A Yes.

7 Q Okay. Have you been copied on emails from Mr. Lovallo to  
8 Bob Koos, Mr. Koos, is it Bob Koos?

9 A Tom Koos.

10 Q Tom Koos. Mr. Koos informing him of legal issues?

11 A I don't think so.

12 Q Okay. And why would that be?

13 MR. ROBERTS: Your Honor, I'm going to object to this line of  
14 questioning. This is not a discovery deposition. I'd ask that Mr. Cloward  
15 make a showing as to what relevance this could have to the motion.

16 MR. CLOWARD: Your Honor, I think, you know --

17 THE COURT: I understand the relevance. So I'm going to  
18 overrule the objection. All right.

19 MR. CLOWARD: Thank you.

20 THE COURT: Go ahead.

21 THE WITNESS: Because Mr. Koos hasn't worked for the  
22 company at the same time I've worked for the company.

23 BY MR. CLOWARD:

24 Q Okay. Was he before you?

25 A He was before me.

004448

004448

1 Q Okay.

2 A I've never met Mr. Koos.

3 Q Okay.

4 MR. CLOWARD: I'm going to just for the Court's, I guess,  
5 and I took home my easels not thinking I would need them again. But I  
6 just wanted to -- I prepared this to assist the Court.

7 THE WITNESS: If you set it front of the podium, I'd be fine.

8 THE COURT: Show counsel first.

9 MR. CLOWARD: It's just a demonstrative. This is just to  
10 assist the Court in understanding who the folks that we just referenced  
11 were.

12 THE COURT: Pictures and titles of people?

13 MR. CLOWARD: Correct.

14 BY MR. CLOWARD:

15 Q You agree that this would be Bob Rowan. I guess what is  
16 Bob Rowan's position? What was it around 2013 --

17 A It was --

18 Q -- '14?

19 A I'm sorry. It was CEO and he may have been president of  
20 some entities. I think he was, I don't recall which specific entities he was  
21 president of.

22 Q Okay. And then Tom Koos, he wasn't there at the time that  
23 you were there. But what was your understanding, his position within  
24 Jacuzzi?

25 A My understanding was he was the CEO. But again, I wasn't

1 there. So that's a little bit speculation on that.

2 Q Understood. And then Joseph Davis, what was his position  
3 around 2014, '15?

4 A President of Jacuzzi Luxury Bath, although from here, I don't  
5 think that picture is Joey Davis. I can't see that picture very well, but I  
6 am fairly confident from here, it's not Joey Davis. If you want to get it  
7 closer to me, I can give you a definite, but I just can't.

8 Q Sure. It was on his LinkedIn profile. So I'd presume it's  
9 accurate, but maybe not.

10 A No, that's not Joey.

11 Q Okay. But what was Joey's position for the Court?

12 A President of Jacuzzi Luxury Bath.

13 Q Okay. And then you agree that Mr. Bachmeyer testified, and  
14 it was your understanding that his position was director of customer  
15 service?

16 A At what time?

17 Q In 2013, 2014.

18 A Around there. I don't know exactly what years he changed  
19 out of that position.

20 Q Okay. And then Audrey Martinez, you agree that she was  
21 kind of the marketing manager liaison for First Street Jacuzzi  
22 Partnership?

23 A That wasn't her -- it wasn't -- I don't think -- it was marketing  
24 manager, I don't think it was Jacuzzi First Street Partnership, but I don't  
25 know the exact title.

1 Q Okay. You agree that Audrey spent the majority of her time  
2 working on issues with regard to First Street and aging in the home,  
3 correct?

4 A Yes.

5 Q Okay.

6 A I don't think that's my picture either.

7 Q I think it is. Take a look.

8 A I can't see from here.

9 Q I think it's an older one of you. That you?

10 A It's absolutely not me.

11 Q Are you sure?

12 A Yes, I know who that is and it's not me.

13 Q Well, it was on your LinkedIn profile.

14 A I don't have a picture on my LinkedIn profile. It's a friend of  
15 mine on LinkedIn.

16 Q Oh. Maybe he tagged you. Maybe that's where it came  
17 from. Who is this individual?

18 A Thomas Well [phonetic].

19 Q Okay. In any case, so let's pretend like your photograph is  
20 there. What is your position one more time for the record?

21 A That is my position that's stated there. Senior corporate  
22 counsel of Jacuzzi Group Worldwide as a DBA of Jacuzzi Brands.

23 Q Okay. And then who is this gentleman right here?

24 A Bill Demeritt.

25 Q And what is his position?

1           A     He holds officer titles of the few companies. I know one of  
2 which is Jacuzzi Inc., DBA Jacuzzi Luxury Bath. And he is vice president  
3 and I believe risk manager.

4           Q     Okay. Thank you.

5           A     The director of risk management I think it is.

6           Q     Okay, thank you. And you also mentioned advertising issues  
7 during the deposition of Audrey Martinez, this wasn't during her live  
8 testimony, but during her deposition testimony, she indicated that if  
9 there were specific claims that were going to be made that were outside  
10 of her wheelhouse, she would forward those to you and the legal team  
11 for approval; is that fair?

12          A     I did receive some. I don't know if she sent them to others  
13 on the legal department. But communicated a lot of me on those types  
14 of issues.

15          Q     Okay. So that was something I guess that was part of your  
16 responsibility, your role and responsibility?

17          A     Again, it's a jack of all trades and that was one of the things  
18 that people have come to me on occasion.

19          Q     Okay. All right. Now where we finished last time is we were  
20 just about to go through some of the incidents. But I guess to kind of  
21 refresh everyone's recollection of where we were at, my question was,  
22 you agree that until I believe the Court's order in March of 2019, Jacuzzi  
23 had only produced, I believe, 14 complaints of other similar incidents.  
24 And of those 14, one was the *Cunnison* case, which we're litigating. One  
25 was the *Smith* case, which I represent. One was the Chopper incident

004452

004452

1 that I believe I found an inadvertent disclosure of documents and one  
2 was a CPSC incident that Mr. Charles Allen found involving Ruth  
3 Curnutte. Is that your understanding?

4 MR. ROBERTS: Objection to form as to inadvertent  
5 disclosure of documents. Assumes facts not in evidence. And counsel --

6 THE COURT: I think there were some issues with that  
7 question. But setting aside the characterization of some of the events,  
8 bottom line is you're looking into whether the matters produced in  
9 March 2019 were those four matters, right?

10 MR. CLOWARD: Correct. In addition to the 10 that were  
11 produced pursuant to Commissioner Bullas' ruling.

12 THE COURT: Right. Okay. So granted in part, sustained in  
13 part. All right. Let's continue.

14 MR. CLOWARD: Thank you.

15 THE WITNESS: I don't recall numbers. I think it was around  
16 that number. I think I saw somewhere reference to 11 produced in  
17 response to Commissioner Bullas' order. But I don't recall specific  
18 names of people that made a complaint of personal injury or death at  
19 that time.

20 BY MR. CLOWARD:

21 Q Okay. Okay. You agree that at that time, Jacuzzi had not  
22 produced a single prior incident?

23 A Without having them in front of me, I don't remember.  
24 That's possible.

25 Q Okay, so let's just walk through. If you want to take the



1 binder there. We're going to look at Volume I of the binder. We're going  
2 to go to Tab 8. And before we go to that, can you just refresh our  
3 recollection again as to what you Jacuzzi's understanding of its  
4 discovery obligations pursuant to the commissioner's various rulings?

5 MR. ROBERTS: Objection. Compound.

6 BY MR. CLOWARD:

7 Q Let's say the first --

8 MR. CLOWARD: I'm sorry, Your Honor. I'm sorry.

9 THE COURT: Let's rephrase.

10 MR. CLOWARD: Thank you. That's what I was -- I'm sorry. I  
11 should have requested the Court's permission to do so.

12 BY MR. CLOWARD:

13 Q Let's focus on that first discovery commissioner report and  
14 recommendation, okay? In mid-2018, what was Jacuzzi's understanding  
15 of its discovery obligation at that time?

16 A If I recall the orders correctly and in the right order, that's the  
17 one that Jacuzzi was to disclose matters of serious personal injury or  
18 death involving a walk-in tub.

19 Q So serious injury or death?

20 A That's my recollection.

21 Q And then you agree that the scope of that expanded or  
22 broadened?

23 A Can you give me some -- because my recollection is  
24 Commissioner Bulla did not expand that.

25 Q Okay. I think we've gone over that in the hearings that it was

1 expanded to just injury or death. If you need me to pull the transcripts  
2 from yesterday --

3 A Again, I've never read the transcripts until you put them  
4 before me.

5 Q Okay. I guess --

6 A I'm way off what I remember reading in an order.

7 Q Okay. So when -- just so that we have a clear understanding  
8 of the Jacuzzi's understanding the timeline, when was it that Jacuzzi  
9 understood that the order of Commissioner Bulla was expanded to just  
10 injury or death?

11 A Again, I don't recall being informed of that. It's my  
12 recollection is the order did not -- it said significant personal injury or  
13 death is my recollection.

14 Q Okay. Does Jacuzzi have any recollection of that order ever  
15 at any point being expanded by any anyone?

16 A Just that portion of the order?

17 Q Yeah.

18 A I don't recall that order being changed. I recall subsequent  
19 orders by Judge -- by this Court.

20 Q Okay. Did you ever actually read the writ that Jacuzzi filed,  
21 or Jacuzzi's attorneys filed?

22 A I reviewed a draft of it. I don't recall if I reviewed the final  
23 version.

24 Q Okay.

25 MR. CLOWARD: Brandon, could we pull up the writ? Sorry, I

004455

004455

1 know that's a little out of order.

2 BY MR. CLOWARD:

3 Q I believe we want to start page 3. Maybe if you just thumb  
4 through the pages just one by one.

5 A I'm sorry, this is 185?

6 MR. CLOWARD: Is it 185? Exhibit 185, Ian, do you know?

7 MR. ESTRADA: Yes.

8 MR. CLOWARD: It is?

9 BY MR. CLOWARD:

10 Q Yes. 185.

11 A Thank you.

12 Q Okay. Now, if you'll follow with me, we're going to start on  
13 line 1. Excuse me. It's on line -- but the paragraph at the bottom. It  
14 says, to date, Jacuzzi has identified and produced to Plaintiffs all of the  
15 evidence in Jacuzzi's possession of other prior and subsequent incidents  
16 of alleged bodily injury or death related to the Jacuzzi tub in question.

17 Jacuzzi, when they told the Supreme Court that it turned over  
18 documents, you agree with me that Jacuzzi told the Supreme Court of  
19 Nevada that it had turned over all prior and subsequent incidents of  
20 alleged bodily injury, true?

21 A That's what this says, yes.

22 Q And that was not limited to serious bodily injury, true?

23 A Yeah. That does not appear.

24 Q Okay. And then the next line, Jacuzzi says, notwithstanding  
25 that broad disclosure, Plaintiff sought and obtained an order compelling

004456

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1 Jacuzzi to also produce all prior or subsequent incidents of any alleged  
2 bodily injury related to any Jacuzzi walk-in tub.

3 You agree that at that moment Jacuzzi is telling the Supreme Court  
4 of Nevada that the Plaintiffs had obtained an order compelling Jacuzzi to  
5 turn over incidents of any alleged bodily injury related to any Jacuzzi  
6 walk-in tub, true?

7 A That's what this says. Again, I don't -- it may have expanded  
8 to taking out the serious bodily injury at some point. I don't -- this is a  
9 year later. I don't recall that, but it certainly could have.

10 Q Understood. You agree that the writ was filed in December  
11 of 2018, right?

12 A That sounds about right. I don't recall the date it was filed.  
13 I'm looking for it in here, but that sounds about right.

14 Q Okay. And again, even though Jacuzzi objected to the  
15 broader order of any alleged injury and any walk-in tub, Jacuzzi is telling  
16 the Supreme Court it nonetheless complied, producing evidence of all  
17 prior and subsequent incidents, even if minor, true?

18 A Are you asking me if that's what it says, or what are you  
19 asking me?

20 Q Did I read that correctly?

21 A Yes.

22 Q Okay. All right. So let's go through some of the binder.  
23 Start with tab 8. And we're not going to go through the entirety of the  
24 binders, we're just going to focus on a few. So we won't belabor the  
25 point.

1 But on tab 8, page Jacuzzi 005369, you agree with me that this  
2 customer is indicating that he slipped and fell, he hurt his back, he wants  
3 the tub removed and he's threatening to get a lawyer, correct?

4 A That's what appears he told our customer service.

5 Q Okay. Now, if you'll go to the tab 10 Jacuzzi 6854. Bottom  
6 right hand corner.

7 MR. CLOWARD: And for the record, this is user Regina  
8 Reyes, an entry that she made.

9 BY MR. CLOWARD:

10 Q She indicates that, agent did mention that Mr. Greenwell said  
11 he slipped and fell in his tub and he had to call the fire department to get  
12 him out, correct?

13 A That's what it says, yes.

14 Q Okay. Now we go to tab 11. Jacuzzi 5320. This is an email  
15 from Andrea Dorman that was forwarded along Mr. Bachmeyer, who  
16 indicated he would have forwarded this type of thing to you.

17 And Ms. Dorman says that Mr. Flashberger has slipped. His  
18 friend has slipped. We get this complaint a lot. We have two customers  
19 right now that have injured themselves seriously and are threatening  
20 lawsuits, true? Did I read that correctly?

21 A I'm sorry. I was trying to find the portion to read as you were  
22 talking. It sounded about right. It may have been off one or two words,  
23 but the subject matter what you said was correct.

24 Q Okay. And then she also indicates that she has sent out  
25 bathmats to put in the tub to three other customers because they slipped

1 and were afraid to use the tub, true?

2 A You're referring to Andrea Dorman of Home Safety Baths?

3 Q Yes.

4 A Yes. That's what the email says.

5 Q Next, if you'll go to 35. Jacuzzi 005315. Ms. Barrows  
6 [phonetic] slipped in her tub and hit her arm on the grab bar. Oh, I'm  
7 sorry, Mr. Templer. I didn't know you weren't there yet.

8 A I'm there.

9 Q Okay. You agree that this individual expressed that she  
10 slipped in her tub and hit her arm on the grab bar, true?

11 A That's what the email says --

12 Q Okay.

13 A -- from Asley Davidson.

14 Q And she was requesting that something be done. She was  
15 requesting a mat to be put in the bottom of the tub so that it's not so  
16 slippery, correct?

17 A That's what the email states.

18 Q Tab 41. This is an email from Regina Reyes to Audrey  
19 Martinez and Kurt Bachmeyer. And the third sentence, she says, there is  
20 another email trail going around that Megan is going to be adding you to  
21 the distribution list. We have a big issue and we are only pointing finger  
22 per se. But due to the circumstances involved with timeline and slip  
23 injuries, plural, this needs to be settled. So I'm keeping you in the loop.  
24 Did I read that correctly?

25 A That's what the document states.

1 Q Okay. Do you know what this big issue that Ms. Reyes was  
2 referring about?

3 A I don't.

4 Q Do you know what these injuries, these slip injuries that Ms.  
5 Reyes was talking about?

6 A It'd be speculation on my part.

7 Q Okay. And do you know about the timeline with regard to  
8 these slip injuries that she's talking about?

9 A Be speculation on my part.

10 Q Tab 45. You agree that this Salesforce document indicates  
11 that the customer fell in the tub, got stuck and hurt her back, true?

12 A It's confusing. It also refers to a slipper getting stuck. So I'm  
13 not sure exactly what it's saying here. But it does appear that somehow  
14 the customer fell and hurt her back. Got stuck and hurt her back.

15 Q Okay. If you go to 49-B, page Jacuzzi 005489. My sight must  
16 be wrong because that's --

17 A I don't have that page.

18 Q Yeah. I'm sorry. I must have -- let's go to 005345. I  
19 apologize. You agree here that the voice message that was received  
20 indicated that this is a man who has been injured in his tub, true?

21 A No. It says it's a lady.

22 Q Well, actually, if you follow along with me, I think the  
23 voicemail was from a lady named Shannon talking about a man. So she  
24 says, hey, --

25 A Oh, I see what you're saying. Okay. I understand.

004460

004460

1 Q Okay. So you agree that this call is about a man who has  
2 been injured in his tub, true?

3 A That's what it states.

4 Q And then if you flip toward the front at 5342, you see that the  
5 person referenced as Mr. Kinser and he slips off the seat when in the tub  
6 and slips on the floor when getting out, true?

7 A I see what -- that's in this email. I don't know if this email  
8 and that prior one we were just talking about are the same person or not.

9 Q Okay.

10 A I haven't looked at these documents thoroughly.

11 Q Well, why don't you take one moment, Mr. Templer, and just  
12 confirm that? If you look at 5345 and then 5344 and 5343 and then 5342  
13 and then 5341, we actually show the chain from where the call came in  
14 and how it made its way to First Street Aging in the Home. And then  
15 how it made its way to Jacuzzi.

16 A In looking through these, that seems to be the case. I'm not  
17 having firsthand knowledge of this. I'm just going off what's in the  
18 documents.

19 Q Okay. And then tab 52-B. Are you there?

20 A Yes. I'm here.

21 Q And in particular on page Jacuzzi 005732. Are you there?

22 A Yes.

23 Q Okay. You agree that this caller's wife was going to stand.  
24 She used the bar to brace herself, but her feet slid out, causing her to  
25 fall, correct?

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004461



1           A     That's what this report states.

2           Q     And that on the fourth line, she sustained minor injuries  
3 including left foot and left knee bruising and then back and tailbone  
4 bruising and pain, true?

5           A     Again, that's what -- I don't have any firsthand information.  
6 That's what this states.

7           Q     And is it your understanding that this document is a  
8 Consumer Product Safety Commission document?

9           A     It appears to be a document, the type of document that is  
10 sent out by the, I guess would be the CPSC. The only reason I'm  
11 hesitating, they have a website called SaferProducts.gov. But I think that  
12 is still the CPSC's website.

13          Q     Okay. And you agree that Mr. Demeritt testified, you were  
14 there at his deposition that he receives emails anytime somebody makes  
15 a CPSC complaint, true?

16          A     I don't recall what he testified.

17          Q     Okay.

18          A     I recall there was discussion about CPSC issues at his  
19 deposition, but I don't recall the specifics.

20          Q     Okay. One moment.

21          A     I don't know if it'll help. I will say that I am aware that he  
22 does receive some CPSC notifications on some companies and he  
23 doesn't on others. I don't recall which he receives them on.

24          Q     Okay. You wouldn't disagree, though, if he testified at the  
25 deposition in his capacity as the Rule 30(b)(6) designee, if he said, yeah, I

004462

004462

1 receive CPSC emails for the walk-in, tub. You wouldn't disagree with  
2 that, would you?

3 MR. ROBERTS: Objection to that. This is beyond the scope  
4 of the 30(b)(6) notice, just to preserve the record, Your Honor.

5 THE COURT: Overruled. If you know. Don't speculate. I  
6 mean, if -- he's asking you if you have any reason to dispute it. If you  
7 don't know one way or another, you can say --

8 THE WITNESS: Yeah, that's what I would say. I don't know  
9 one way or another. As I said, he does receive notices on some  
10 companies. He may be on the bath notices, I just don't recall as I sit  
11 here.

12 BY MR. CLOWARD:

13 Q Okay. Now those are entries where specifically the  
14 individuals told Jacuzzi that they were harmed and hurt and had specific,  
15 very specific injuries. Do you recall the marketing literature that we  
16 covered with Mr. Bachmeyer about how many people slip and fall in the  
17 bathroom that's used in the marketing literature?

18 A Are you talking about at his deposition or here in court?

19 Q Here in court.

20 A I remember a document he put up, but I don't remember if  
21 that was the marketing. I remember a document that had the Jacuzzi  
22 logo up in the left hand corner. I didn't have it in front of me, so I was  
23 just trying to read at a pretty steep angle to the screen right here. So I  
24 didn't -- I couldn't read it in any detail.

25 Q Okay.

004463

004463

1           A     But I remember you talking about something like that.

2           Q     Okay. And you agreed that the reason that Jacuzzi marketed  
3 and created this tub and it's called designed for seniors, is to market and  
4 sell to the elderly, right?

5           A     I think that question assumes some stuff that's not accurate.  
6 Designed for seniors is not a Jacuzzi name, one, and that document you  
7 showed is not a Jacuzzi document.

8           Q     Sir, you agree that the trademark that was obtained by First  
9 Street to market this tub was, designed for seniors?

10          A     That's my understanding.

11               MR. ROBERTS: Objection, Your Honor. Foundation.

12               THE COURT: Sustained. Got to lay some foundation that he  
13 would have reason to know about the trademark, and why, and how it  
14 was designed and if it was designed for seniors.

15               MR. CLOWARD: Okay.

16 BY MR. CLOWARD:

17          Q     Mr. Templer, as part of your position, you mentioned that  
18 you review marketing claims, true? And what the parties are telling  
19 folks.

20          A     Some, yes.

21          Q     Okay. And if First Street obtained a trademark, designed for  
22 seniors, you would have been involved in the decision making as to  
23 whether that joint marketing of a Jacuzzi product could, in fact, take  
24 place, right?

25          A     No, because I wasn't with the company when that decision

1 was made.

2 Q Okay. Did you know that this product was called the design  
3 for seniors?

4 A I don't think the product was called design for seniors. I'm  
5 aware that it has either in the marketing or the tub itself, I don't recall  
6 which or both, does have that that trademark.

7 Q Okay, so you're aware of that. How are you aware that?

8 A Just in dealing with the First Street documents and First  
9 Street and just generally dealing with the walk-in tubs.

10 Q Okay. And Mr. Templer, isn't it true that the manufacturing  
11 agreement between the parties actually contains design for seniors in  
12 the manufacturing agreement itself?

13 A I can't say 100 percent certainty --

14 MR. ROBERTS: Objection, Your Honor. Relevance. And not  
15 discovery hearing. This is in-house counsel who's been ordered to  
16 appear for a very limited purpose, who would not normally be subject to  
17 deposition, and who the discovery commissioner previously protected  
18 from deposition. I don't understand the relevance with any of this to the  
19 issue before the Court.

20 THE COURT: do you join?

21 MR. GOODHART: I join that. If I might add, Your Honor. The  
22 whole design for seniors tagline was discussed during the deposition or  
23 First Street's 30(b)(6) was Dave Bodine [phonetic]. And quite frankly  
24 what Mr. Cloward is doing it is misrepresenting to this Court the  
25 meaning of that tagline and the purpose of the tagline.

004465

004465

1 MR. CLOWARD: Woah. Woah. Woah.

2 THE COURT: Can't be misrepresenting. He's asking  
3 questions. So let's --

4 MR. GOODHART: He's inferring that this tagline was  
5 developed and designed specifically for this tub, which it was not.

6 THE COURT: All right. I mean, you're not here testifying.

7 MR. CLOWARD: Yeah.

8 MR. GOODHART: I understand that. And he went through  
9 this or Mr. Allen went through this as well --

10 THE COURT: Okay.

11 MR. GOODHART: -- during Mr. Bodine's deposition.

12 THE COURT: All right. Anything else?

13 MR. GOODHART: No, Your Honor.

14 THE COURT: Your objection is noted as relevance, counsel.

15 MR. CLOWARD: Relevance I was just trying to lay the  
16 foundation. I mean, he's already testified he knows what it was. I was  
17 just laying additional foundation. But I can withdraw the question. I  
18 think I laid the foundation. He says that he knows about the trademark  
19 and how he knows about it.

20 THE COURT: Right. He knows about the trademark.

21 MR. CLOWARD: Correct.

22 THE COURT: And he knows that it's in some document that  
23 he's seen. He doesn't know if it was the marketing material or some  
24 other document, but he's aware of the trademark.

25 If there's any further questioning about the marketing

1 material, then he is testifying based in his individual capacity and not as  
2 a representative of the company.

3 MR. CLOWARD: Understood, Your Honor.

4 THE COURT: All right. All right.

5 MR. CLOWARD: Okay.

6 THE COURT: Let's go forward.

7 MR. CLOWARD: You got it, Judge. And I'll move very  
8 quickly forward with this.

9 BY MR. CLOWARD:

10 Q Mr. Templer, the whole purpose of that discussion was to  
11 just point out that Jacuzzi was aware of the potential of injury if  
12 somebody fell in the bathroom?

13 A I guess I'm not connecting the question with what you're  
14 asking. If you're just asking me if the company is aware that people can  
15 be injured in a bathroom? Yes.

16 Q From a fall?

17 A Yes.

18 Q Okay. So let's turn to tab 47. In particular, 5722. Okay. Y

19 A I have it in front of me.

20 Q Okay. You agree at the top here it indicates that the  
21 customer slipped and fell in the tub, true?

22 A It says RP customer. So I'm just not sure what the RP is. If  
23 that should be a space there. If it's reporting customer. I don't know.  
24 Other than that, yes. I would agree with your statement.

25 Q Okay. Did you Jacuzzi take any steps to determine whether

1 when this individual who indicates that she has neuropathy and didn't  
2 have the hand strength to push the buttons or turn the knob to drain the  
3 tub, did Jacuzzi take any steps to ascertain whether this person was  
4 injured when she said she slipped and fell in the tub?

5 A I'm sorry. I'm going to have to read the rest of --

6 MR. ROBERTS: Objection. Foundation.

7 THE WITNESS: I wouldn't know anything --

8 THE COURT: Sustained. All he can speak to is what's written  
9 here unless you establish that he has some other --

10 MR. CLOWARD: Okay.

11 THE COURT: -- independent recollection of this event and  
12 communication.

13 MR. CLOWARD: Okay.

14 BY MR. CLOWARD:

15 Q Mr. Templer, as I understand, all of the searches that were  
16 performed and obtained were reviewed by yourself and Mr. Cools, true?

17 A As far as I know, that'd be accurate.

18 Q Okay. So when you and Mr. Cools were reviewing all  
19 documents that you represented to the Supreme Court of Nevada that  
20 had been turned over, when you came to this document and you saw  
21 that this customer slipped and fell in the tub, what steps, if any, did  
22 Jacuzzi take to ascertain whether this individual was injured?

23 MR. ROBERTS: Objection to form. Compound. Assumes he  
24 reviewed the documents with Mr. Cools at the same and is inquiring into  
25 what Mr. Cools did and what review he did.

1 THE COURT: So that's sustained in part. Break your  
2 question up so we can deal first with what he independently did when he  
3 received -- when he reviewed this document. Right. Not what Jacuzzi, in  
4 a broad sense did and not was Mr. Cools did and not whether they did it  
5 together.

6 MR. CLOWARD: Okay.

7 THE COURT: So break it up.

8 MR. CLOWARD: You got it, Judge.

9 THE COURT: Thanks.

10 BY MR. CLOWARD:

11 Q When you reviewed documents, was that together with Mr.  
12 Cools at the same time?

13 A You mean sitting in the same room together?

14 Q Yes.

15 A No.

16 Q Okay. How was the review performed?

17 A And there's a lot of different reviews, so I don't know if  
18 there's one specific way it was done, but in general I would get the  
19 results and try to filter through them to weed out stuff that was clearly  
20 not related to this case. Didn't involve a walk-in tub or whatever the  
21 criteria would be. It just was clearly not related.

22 And then there is I try to -- some of the results that popped up  
23 needed more investigations. Frankly, we couldn't tell whether they  
24 involved a walk-in tub and other details regarding the report. And then  
25 some stuff was forwarded to counsel for review and input.



1 Q So you did the first review and then outside counsel did a  
2 second review?

3 A On some, not all. Some of them I -- some of the stuff was  
4 forwarded in bulk to outside counsel and I did not review it.

5 Q Okay.

6 A So that's why I say, there wasn't one specific way it was  
7 done in all situations.

8 Q Okay. Well, were there occasions when Jacuzzi or outside  
9 counsel to your to your knowledge that was communicated? Not getting  
10 into the substance, but were there times where there was follow up on a  
11 particular incident?

12 A We follow up by --

13 Q Follow up by you or follow up by them asking for more  
14 information, whatever the case may be, follow up that, hey, this person  
15 fell. We need to find out if she was injured.

16 A If you're asking on that type of follow up -- I guess it depends  
17 how you call follow up. If I got something that I couldn't tell if the person  
18 that reported have any pain or being injured, I would follow up with  
19 people in the company or do my own research to figure out if we had  
20 that information in the company.

21 If you're asking if we'd reached out to this individual to ask, that  
22 was not done.

23 Q Okay. So did you --

24 A Or not this individual, but any individual.

25 Q So who did you follow up with on this incident to determine

004470

004470

1 whether this person was or was not hurt when they fell in the tub?

2 A I don't know that there was follow up on this. This was not --  
3 by the bottom of this, this wasn't printed until July of 2019, which was  
4 seven months after the writ was filed. I don't know if there was follow  
5 up on this.

6 Q Okay. Go to tab 49-A.

7 A Let me back up. I don't know the date it was produced.  
8 That's the date it was printed.

9 Q Can you go to tab 49-A?

10 A I have it in front of me.

11 Q This indicates that Mr. Horn fell in the tub. Did you do any  
12 follow up on this to determine whether Mr. Horn received injuries when  
13 he fell in the tub?

14 A Again, I don't know when this -- two things, I don't know  
15 when this was located, one. And two, if you asked me if I -- there would  
16 have in my knowledge, no contact with Mr. Horn.

17 Whether there was follow up in other areas of the company, to see  
18 if we had additional information on Mr. Horn, which I suspect it looks like  
19 you have some other salesforce documents here regarding Mr. Horn.  
20 Those would have been reviewed to see if we had more detail probably.

21 But again, I don't recall specifically what was done with Mr. Horn.

22 Q And on page 5878, the third line down.

23 A And under which section?

24 Q In the -- it just says Charles Horn. It's Jacuzzi 005878.

25 A End of the activity history?

1 Q Yeah.

2 A Okay.

3 Q Was there any follow up to determine whether he actually  
4 was going to take Jacuzzi to court?

5 A I don't know.

6 Q Now, Tab 93 will be next. You agree that this individual  
7 indicated he slipped in the tub and broke the hand-held sprayer, true?

8 A That appears to be what he reported.

9 Q Did Jacuzzi or did you do anything to determine whether he  
10 broke that with an actual body part or how that was -- the tub handle was  
11 broken?

12 A I don't recall specifically what was done in regard to this,  
13 other than I suspect all the Salesforce documents regarding Mr. Bear  
14 [phonetic] would have been looked through. And I don't know if that's  
15 somewhere else in these documents or not.

16 Q Okay. tab 94.

17 A I have it in front of me.

18 Q Mr. Thwaites [phonetic] indicates that the tub is slippery, and  
19 he falls. Was there any follow up by you as to whether he received  
20 injury when he falls?

21 A Follow-up you mean with Mr. Thwaites or follow-up in  
22 regard to reviewing additional information?

23 A Any follow up at all? So that would be including -- when I  
24 say follow up, I mean talking to a consumer or customer. However,  
25 Jacuzzi defines that. Or following up with somebody else within Jacuzzi.

004472

004472

1 Q I don't think I ever had any contact with Mr. Thwaites. And  
2 again, the reviewing the salesforce documents that probably did occur,  
3 and I don't recall whether the information is in here.

4 Q Okay, tab 101. Ms. Lugo [phonetic], individual is calling and  
5 says, my parents bought one of your beautiful walk-in tubs and they love  
6 it. However, my mom slipped and got her foot stuck, her foot and leg so  
7 lodged into the corner of the tub that she couldn't pull herself out. My  
8 parents are in their 80s so they couldn't get my mom out and had to call  
9 the paramedics. It took two paramedics/men to dislodge my mom from  
10 this slip. That's Jacuzzi 006028. Did I read that correctly?

11 A Yes and no. I think you tried to correct yourself in the middle  
12 of it and I don't think it would become clear on the record. There's no  
13 reference to being stuck here. But I think you went back and tried to  
14 correct yourself.

15 Q Okay. Let me let me try again and you can --

16 A Other than the word, stuck, I think you read it correctly.

17 Q Okay. She indicated that my mom slipped and got her foot  
18 and leg so lodged into the corner of the tub that she couldn't pull herself  
19 out. My parents are in their 80s, so they couldn't get my mom out and  
20 had to call the paramedics. It took two paramedics, slash, men, to  
21 dislodge my mom from this slip, end quote. Did I read that correctly?

22 A I believe you read that portion correctly, yes.

23 Q Okay. What did you do to determine whether this elderly  
24 individual, in her 80s, when she got her foot and leg so lodged into the  
25 corner of the tub that it required two paramedics to get her out, what did

004473

004473

1 you do to determine whether she was, in fact, injured from that?

2 A I don't know if I did anything. It would depend, in part, on  
3 when this was produced, but, ultimately, I would have looked through  
4 these records to see if there was anything in there. I did not reach out to  
5 Ms. Lugo.

6 Q Okay. Now, Jacuzzi 006046, it's tab 102.

7 A I'm sorry, which was the last two digits, 4-6? It's the first  
8 page?

9 Q Yes.

10 A Okay.

11 Q This is an individual that's 90 years old, true?

12 A I don't have the information, but that's what it states here.

13 Q Okay. And she says that she doesn't like -- does not like the  
14 door opening inward, correct?

15 A That's what it states.

16 Q And she indicated that she slipped and fell inbound, and she  
17 fell, and it took 45 minutes for her to get up and out of the bath, correct?

18 A That's what it states, correct.

19 Q What steps, if any, did you take to determine whether this  
20 90-year-old who slipped and fell in the bath, and it took 45 minutes for  
21 her to get up and out of the bath, was actually injured or not?

22 A Same answer I've been giving to all of these. It's -- I would  
23 have looked at the documents, but I did not, to my recollection, reach out  
24 to Ms. Dolan [phonetic].

25 Q Okay. You agree that the documents that we've been going

004474

004474

1 through, the last few anyway, are Salesforce documents, right?

2 A Yeah. I did not look at every page within those exhibits, but  
3 the pages you were directing me to were Salesforce.

4 Q Okay. So that --

5 A And just to be clear, the Salesforce doesn't have documents,  
6 it's a database, but these are documents created from that database.

7 Q Yeah. But, I guess, the point is that they're not emails;  
8 they're documents housed in the Salesforce database, true?

9 A The Salesforce database captures emails, so I'm not quite  
10 sure how to answer that. It's information within the Salesforce database.  
11 That database does have information such as part description, serial  
12 numbers, customer numbers, comments, descriptions, emails.  
13 Depending on the entry, it could have a number of different items.

14 Q Okay. Now, on page 5 -- Jacuzzi 005838 --

15 A I'm sorry, which exhibit are we on?

16 Q It's tab 126, Jacuzzi 005838.

17 A Okay.

18 Q You agree on the description that she slipped when trying to  
19 get out and almost drowned, true?

20 A I agree that's what it says.

21 Q Did you take any steps to follow up whether, when she  
22 slipped and almost drowned, she had injuries from that?

23 A Again, same answer. I would have looked through the  
24 Salesforce documents, but to my recollection, I have not spoken with  
25 Ms. Roehl.

004475

004475

1 Q Okay. tab 142, Ms. Gatewood, in this customer survey that  
2 Mr. Bachmeyer indicated would have been forwarded to Jacuzzi in the  
3 ordinary course, indicate the first time I got in and shower, I fell flat to  
4 the floor. Did I read that correctly?

5 A You read it correctly. I don't know what your characterization  
6 of what Mr. Bachmeyer said was accurate.

7 Q Okay. Well, we can rely on what Mr. Bachmeyer said on the  
8 stand and provide that transcript. But did you take any steps whether  
9 this individual, Ms. Gatewood, was injured when she fell flat to the floor?

10 A I don't recall. I don't recall ever speaking with Ms. Gatewood  
11 or have any contact with her.

12 Q Did you do any other type of follow up?

13 A I don't recall. The name doesn't sound familiar, but I've dealt  
14 with a lot of names over my almost six years with the company. I don't  
15 recall if this was one of them.

16 Q Okay. And then tab 149. This one is a little hard to read.

17 MR. CLOWARD: Brandon, if you'll pull it up. Thanks.

18 BY MR. CLOWARD:

19 Q I believe she says I have fallen off of the seat and ended up in  
20 tub, something. I had to call for help to get out. I have fallen twice. Do  
21 you see that?

22 A I see where you're pointing to. Frankly, I can't read this. I  
23 can catch bits and pieces of words. There's some -- there would be  
24 some speculation on my part whether some of those words he said were  
25 accurate. I can't say that they're not, but I just can't read this well

004476

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1 enough.

2 Q Okay. Did you take any steps to determine -- do you recall  
3 ever taking steps to determine whether someone that fell off the seat  
4 twice and had to call to get help was injured?

5 A I don't even have a name for a customer here, so did I -- at  
6 least I don't see. So I don't recall.

7 Q It's at the top, left-hand corner. It's -- her name is Mary King.  
8 Do you remember ever following up with -- on an individual by the name  
9 of Mary King?

10 A I'm sorry, where does it say -- oh. I don't think Mary King is  
11 the consumer. That appears to be somebody with a -- the seller. It looks  
12 to be somebody with Community Builders.

13 Q Are you sure about that?

14 A I am not sure at all about that. I'm just going off of what I  
15 read here.

16 Q Okay. And it's --

17 A But I'm fairly confident that Community Builders is in  
18 Arkansas.

19 Q Sure. It's my understanding that Mary King would be the  
20 customer. Community Builders would be the dealer.

21 A It just doesn't make sense to me that the customer's name  
22 would be typed on this when the rest of it is in handwriting. It's --

23 Q Okay.

24 A -- somewhat speculation on my part.

25 Q Okay. And I -- let's clear this up so there's no confusion,

004477

004477



1 okay? Turn to 147, please.

2 A Sure.

3 MR. CLOWARD: You don't need to pull it up, Brandon.

4 BY MR. CLOWARD:

5 Q Look at the bottom. This 81-year-old woman. What does her  
6 hand signature say?

7 A It appears to say Dorothy A. -- best guess is Kostro,  
8 K-O-S-T-R-O.

9 Q Okay. Now, take a look at the typed name on the top,  
10 left-hand corner, what does that say?

11 A It says Dorothy Kostro.

12 Q Okay.

13 A Kostro.

14 Q Okay. So you agree with my characterization that it looks like  
15 the name on these documents, the first name is the customer, followed  
16 by the dealer or installer of the tub?

17 A Again, I really don't know. I mean, I --

18 Q Okay.

19 A I would think -- I have an idea of how to check this, but it  
20 would be as I sit here, I don't know if that's right.

21 Q Well, let's go to the next page. Let's go to 148. Do you see  
22 that handwritten signature?

23 A I see that the names up in the top are corresponding with at  
24 least some of the signatures. Again, I just don't know these customers,  
25 and I don't know who signed them or --

004478

004478

1 Q Okay.

2 A I would -- it's just speculation on my part.

3 Q Okay.

4 A I'm not saying you're wrong. Just I don't know.

5 Q Understood. Now, we covered this earlier, so I'm going to  
6 just briefly touch on it. You agree that the DDCR that was approved --  
7 the District Discovery Commission Report and Recommendation that  
8 was approved by the District Court judge that Jacuzzi would be required  
9 to disclose incidents pursuant to that request, right, number 43 that we  
10 talked about in detail yesterday?

11 A That sounds correct.

12 Q Okay. And you agree that other than the ten subsequent  
13 incidents that were produced pursuant to Commissioner Bulla's oral  
14 ruling at one of the hearings, Jacuzzi has never supplemented RFPD 43  
15 to include any other incidents, true?

16 A I don't know what RFPD 43 is, but we -- there has been  
17 supplemental disclosures.

18 Q Okay.

19 A I don't know if there's -- I don't recall what RFPD 43 is, and I  
20 don't recall if there's been a supplemental written response to that  
21 request.

22 Q Do you remember like probably two hours yesterday when  
23 we talked about requests for production at document number 43? I  
24 showed it to you in the writ. I showed it to you in the motions. I showed  
25 it to you in the responses. You don't remember that?

1           A     I remember talking RFPs. I don't recall numbers or the  
2 specific wording of it in RFP as I sit here.

3           Q     Okay. Fair enough. Well, I don't want to waste the Court's  
4 time, so I'm going to move -- I'm going to move on. But, certainly, if  
5 counsel, Mr. Robertson and I, agree to a stipulation on the timing, the  
6 Court can rely on that, you agree, as to when things were done?

7           A     Yes.

8           Q     Okay.

9           A     And, again, I'm not disputing anything you're just saying.  
10 I'm just saying, I don't recall it as I sit here.

11          Q     Okay. Fair enough.

12          A     Is RFPD 43 the one that mentioned the -- it would be  
13 supplemented -- or there would be supplemental correction after the writ  
14 was decided?

15          Q     Well, the first response that Jacuzzi provided was that it was  
16 pending the District Court's final order. Then the supplemental response  
17 indicated that there was a writ pending. And then I believe there was  
18 another supplement that indicated and referred Plaintiffs back to the  
19 previously disclosed documents. And I might be getting those mixed up,  
20 but that's my understanding of the timeline.

21          A     I may be getting it mixed up a little bit, too. I thought that  
22 was the one that -- or one of the ones that Plaintiffs amended pursuant to  
23 Commissioner Bulla's order, and there was a response to the amended  
24 RFP.

25          Q     Okay.

1 A But I just don't recall specifics as I sit here.

2 Q Ultimately, without getting into the -- I guess the substance  
3 of any communication, who had the decision as to what documents to  
4 turnover or not to turnover? Was that Jacuzzi's decision or was that  
5 Snell Wilmer and outside counsel's decision?

6 A All productions and discovery in the case has been in  
7 conjunction with outside counsel, both Snell Wilmer and Weinberg  
8 Wheeler, depending on the timing.

9 Q Okay. So as I understand your response, the decision  
10 regarding the production of documents was a jointing made decision  
11 between Jacuzzi and its retained counsel, true?

12 MR. ROBERTS: Objection. Overbroad.

13 THE COURT: Well, overruled. If -- answer it to the best you  
14 can.

15 THE WITNESS: Yeah.

16 THE COURT: And if you can't, let the counsel know that you  
17 need clarification.

18 THE WITNESS: Sure.

19 THE COURT: All right?

20 THE WITNESS: I can't answer any more than I said it a  
21 minute ago, is that all discovery responses were done in conjunction  
22 with outside counsel.

23 BY MR. CLOWARD:

24 Q Okay. Was there ever, to your knowledge, a discovery  
25 response or -- and that could be interrogatories, that could be -- that

1 could be requests for production, that could be requests for admissions,  
2 so any of the discovery responses, was there ever a time that you recall  
3 where it was not a collective decision?

4 A No. I mean, I didn't -- or, I mean, the company, exclusively,  
5 did not serve any discovery responses. All of them were served through  
6 counsel.

7 Q Okay.

8 A And to my knowledge and recollection, all discovery  
9 responses were discussed with the company before being served.

10 Q Okay.

11 MR. CLOWARD: Now, Brandon, 182.

12 And, Your Honor, I am just about finished.

13 BY MR. CLOWARD:

14 Q Just let me know when you're there, Mr. Templer.

15 A I have it in front of me.

16 Q You have it?

17 A Yes.

18 Q Okay. And I think this was the hearing that you attended.

19 A My name is on the front page, so I would think that you're  
20 right on that assumption.

21 Q Okay.

22 MR. CLOWARD: Brandon, if you'll go to page --

23 BY MR. CLOWARD:

24 Q Well, I guess, before we go to a specific page, Mr. Templer,  
25 what was the reason for your personal appearance at this hearing?

1           A     I don't know I had a specific reason. I wanted to -- I hadn't  
2 been to any of the court hearings and I wanted to see the court and,  
3 obviously, it was a significant hearing and I wanted to be -- see what  
4 happened.

5           Q     Okay. Is this, I guess, the type of hearing that you would  
6 communicate with Anthony Lovallo?

7           A     As I sit here, I don't recall exactly what happened at this  
8 hearing, but, I mean, he kind -- I was communicating with him and -- I  
9 would communicate with him in general with stuff such as -- excuse me.  
10 I don't recall if this hearing had dealt with the motion to strike. That type  
11 of thing, I certainly would communicate. If it -- if the hearing was in  
12 regard to the forensic search scope or the motion for protective order, I  
13 may have communicated with him. I just don't recall.

14          Q     Okay. And in this hearing, do you remember Mr. Cools  
15 saying to Commissioner Bulla, hey, Mr. Templer's here; he came here if  
16 you had any questions, wanted to answer any questions? Do you  
17 remember that?

18          A     It does sound vaguely familiar.

19          Q     Okay. Is that another reason that you were there, was to  
20 answer any questions regarding the spreadsheets we'll get to in a  
21 moment?

22          A     Possibly. I just don't remember.

23          Q     Okay.

24          A     That may have been.

25          Q     And you do remember that there were some spreadsheets

1 that were turned over for in-camera review, right?

2 A I remember there were some spreadsheets turned -- my  
3 recollection, there were some spreadsheets turned over in electronic  
4 form, I believe. I think they were on a thumb drive, if my recollection is  
5 correct. But, I mean, I may be off.

6 Q Okay.

7 A I didn't see the actual submission to the Court is my  
8 recollection.

9 Q You didn't see it?

10 A Hum?

11 Q You did not see --

12 A The actual -- I knew it was being produced. I don't recall  
13 seeing the actual package being submitted.

14 Q Okay. And I wanted to just make sure that I understand  
15 correctly. You don't have a recollection of Mr. Cools or somebody  
16 handing that to the marshal and then handing that -- having the marshal  
17 hand that to the commissioner?

18 A I don't recall. I'm not disputing that happen -- that could  
19 have happened. I don't recall that.

20 Q But you're not saying -- you're not testifying today that you  
21 did not review the production before it was given to commissioner,  
22 correct?

23 A Well, my recollection is the production was the search done a  
24 few months early that Commissioner Bulla wanted to review. I had  
25 looked at it at that time when I originally got the results.

1 Q Okay. Are you sure about that?

2 A Which part?

3 Q That that was the search that was performed. Before we get  
4 into the language of the transcript, are you sure that the search was the  
5 one that was done a few months before or a couple months before?

6 A I'm not a hundred percent certain. That was my recollection.

7 Q Okay. Let's go through the hand -- the transcript and we'll  
8 see if -- we'll see --

9 MR. CLOWARD: Go to page 5, Brandon. And on line 15  
10 through 22 -- actually, Brandon, if you'll -- I'm sorry, if you'll just go on  
11 13.

12 BY MR. CLOWARD:

13 Q Do you remember when Commissioner Bulla said, now I  
14 have Defendants' motion for protective order, and I think I have a better  
15 understanding, at least, of the mechanism of the injury in the case. But I  
16 really -- I think really the question is what Jacuzzi knew or should have  
17 known for the negligence part of the claim, and then the strict liability is  
18 a different issue? Do you remember her saying that?

19 A I don't recall. I recall in general the hearing. I don't recall  
20 specific statements made at the hearing.

21 Q Okay. Do you remember her saying, and I quote, "But if I  
22 look at the negligence part of the claim, it's what Jacuzzi knew about the  
23 tub, and if some of the complaints are coming through its retailers, for  
24 lack of a better term, then that concerns me; and presumably they were  
25 passed along to Jacuzzi, but I also need to know, you know, what you all



1 knew about this particular tub"? Do you recall her saying that to you?

2 A I don't think she was talking to me at this hearing. I was  
3 sitting back in the audience. I wasn't at counsel table.

4 Q Okay. Do you remember being invited up to counsel table?

5 A I think she told me I could come in front of the bar, and I  
6 could sit -- I sat behind counsel table at some point, but I don't recall  
7 sitting at counsel table.

8 Q Okay. But you came up from the -- I guess, the audience part  
9 and came across the bar and sat behind counsel, right?

10 A I didn't remember it until you brought it up, yes. That's what  
11 I just testified about.

12 Q Okay.

13 A I do -- I believe that is what happened.

14 Q Okay.

15 MR. CLOWARD: Now on page 6, Brandon.

16 BY MR. CLOWARD:

17 Q Mr. Cools, do you agree, on line 6 of page 6 is explaining  
18 kind of what the Jacuzzi Salesforce database is and how it stores the  
19 information? Do you agree with that description so far of 6 through 10?

20 A In general.

21 Q Do you remember that discussion.

22 A I remember there was a -- this refreshes my recollection that  
23 there was discussion regarding a subpoena you had issued to  
24 Salesforce.

25 Q Okay. And you remember, here, where Mr. Cools, he says --

1 on line 10 he says, that's the -- those are part of the searches that Jacuzzi  
2 performed. That second spreadsheet that was performed to you, that's  
3 what that is, is using those search terms on the Salesforce database. Do  
4 you recall that?

5 A I don't recall this specific reference Mr. Cools made, but I -- in  
6 reading it, I think it's accurate.

7 Q Okay. And, certainly, those search terms were the 20 that  
8 we've been talking about over and over, right?

9 A I believe that's correct.

10 Q And you agree that, that database was, in fact, provided to  
11 Commissioner Bulla, true?

12 A The database wasn't provided.

13 Q The results from the searches of those --

14 A That --

15 Q -- of those terms, true?

16 A That was provided.

17 MR. CLOWARD: Brandon, if you can pull up the master OSI  
18 list, Excel spreadsheet.

19 THE WITNESS: Is there an exhibit I should be going to?

20 BY MR. CLOWARD:

21 Q No, this is a court -- this is going to be provided -- I think it's  
22 provided to counsel and to the Honorable Judge as a demonstrative aide  
23 pursuant to the Rules of Evidence to allow the parties to summarize  
24 information.

25 A I understand. I was just wondering if I should pull it up on

1 my -- in the books here.

2 Q Understood.

3 MR. CLOWARD: Just at the right-hand portion of the  
4 spreadsheet are the search terms that would have been triggered in all  
5 of the exhibits, Your Honor, in document binder 1 and 2, basically 1  
6 through 157. These show all of the search terms, it shows 20 search  
7 terms, that would have been triggered.

8 BY MR. CLOWARD:

9 Q Okay. Now, Mr. Templer, you indicated that at some point  
10 Jacuzzi searched emails, and it came back with like a million hits or  
11 something. Do you remember that?

12 A Yeah. I --

13 Q Remember telling the -- telling everybody that yesterday?

14 A There was a search done for a term and I -- like I say, my  
15 recollection is the word slip came back with something like that. Correct.

16 Q Okay. And --

17 THE COURT: One second. It just occurred to me that  
18 demonstrative document, the spreadsheet, the far-right column, you said  
19 it's the search terms that would have -- would have yielded that  
20 document.

21 MR. CLOWARD: Yes.

22 THE COURT: If you want me to consider that as part of this  
23 hearing, I guess I would need an affidavit attesting to how you can make  
24 that determination.

25 MR. CLOWARD: Absolutely.

1 THE COURT: What you based it on, what you did, to make  
2 sure that what you just told me is accurate.

3 MR. CLOWARD: You can count on that. We actually took a  
4 very technical --

5 THE COURT: All right.

6 MR. CLOWARD: It wasn't just eyeballing it. We -- so I will  
7 get Your Honor an affidavit, certainly.

8 THE COURT: All right. Thank you.

9 MR. CLOWARD: Thank you.

10 BY MR. CLOWARD:

11 Q And, Mr. Templer, back to the search of the emails that you  
12 talked about coming up with nearly a million hits, you agree that that --  
13 that was done within the last 30 to 45 days, correct?

14 A I don't recall timing. Maybe a little longer than that, but I  
15 would say within the July to present timeframe.

16 Q Okay. And so, in fairness, that means that it was not done  
17 prior to July, during the pendency of this litigation, right?

18 A There's been searches run. That search resulted -- I'm  
19 speaking about, my best recollection, is that was done in regard to the  
20 discovery plans that were propounded in July of 2019.

21 Q Okay.

22 MR. CLOWARD: Mr. Templer, I appreciate your time today.  
23 I don't have any other questions. Well, hold on.

24 MR. ALLEN: Well, can we have five minutes? Can I talk to  
25 him?

1 THE COURT: Yeah. Well, why don't --

2 MR. ALLEN: Can I --

3 THE COURT: Why don't we take our lunch break and give  
4 you time to determine if you're done with this witness.

5 MR. CLOWARD: Thank you.

6 THE COURT: And -- rather than taking a five-minute now and  
7 then coming back. Is that --

8 MR. CLOWARD: Thank you, Judge.

9 MR. ROBERTS: And I have direct testimony after lunch, Your  
10 Honor.

11 THE COURT: Of course.

12 MR. ROBERTS: So the witness will be back.

13 THE COURT: Are you okay with that, then --

14 MR. ROBERTS: Yes, of course.

15 THE COURT: -- Mr. Roberts?

16 THE COURT: Mr. Goodhart, take our lunch break now?

17 MR. GOODHART: That's fine, Your Honor.

18 THE COURT: Okay. Very good. Thank you. All right. Let's  
19 come back -- Marshal, did -- off the record.

20 [Recess at 12:36 p.m., recommencing at 1:54 p.m.]

21 THE COURT: All right. Let's begin with the cross-  
22 examination of Mr. Templer.

23 MR. ROBERTS: Thank you, Your Honor.

24 Well, Mr. Cloward --

25 THE COURT: Oh.

1 MR. ROBERTS: -- did you announce that you're done?

2 MR. CLOWARD: I'm sorry, Your Honor. Yes, we're finished.

3 Thank you for the opportunity to reflect over the lunch hour. At this  
4 time, we would pass.

5 THE COURT: All right. Very good.

6 MR. CLOWARD: Thank you. All right.

7 MR. ROBERTS: Thank you, Your Honor.

8 THE COURT: You may proceed.

9 CROSS-EXAMINATION

10 BY MR. ROBERTS:

11 Q So let's -- Mr. Templer, let's go back toward the beginning of  
12 today's testimony. You gave the Court a little bit of background  
13 information about your title and job duties with Jacuzzi. In the time that  
14 you've been with Jacuzzi -- which is how many years now?

15 A It will be six years next month.

16 Q Prior to this litigation, did you manage any other litigation  
17 that required you to do ESI searches for terms?

18 A No.

19 Q It -- what about after this litigation?

20 A No.

21 Q Well --

22 A To the extent -- actually, no.

23 Q Okay. And to the extent that you need to do ESI searches for  
24 litigation, do you have any staff in the legal department that can handle  
25 those tasks for you?

1           A     There's no dedicated staff for that. It's -- if somebody would  
2 have some time available, I could reach out to them, but there wasn't  
3 anybody.

4           Q     So is it fair to say that everyone you asked to help you with  
5 litigation searches had a full-time job unrelated to litigation they were  
6 also doing?

7           A     Correct.

8           Q     Let's talk about the Pullen matter. Do you have a recollection  
9 of the documents that you reviewed with Mr. Cloward on the Pullen  
10 matter?

11          A     I don't recall which pages he pointed me to, but I do have a  
12 general recollection of the documents.

13          Q     One of the questions he asked you about is if someone hires  
14 a lawyer, someone retains a lawyer, did you have any actual knowledge  
15 of whether Mr. Pullen had retained a lawyer at the time you received  
16 those communications back around October 30th of 2018?

17          A     No, we had -- I had no information that Mr. Pullen had a  
18 lawyer.

19          Q     Did you receive any contact from any lawyer claiming to  
20 represent Mr. Pullen?

21          A     No.

22          Q     Internally, did you treat that communication as if a claim for  
23 wrongful death had been filed against Jacuzzi?

24          A     No.

25          Q     Did you -- let me go back and ask another question. Let me

004492

004492

1 rephrase it. Did you provide notice of Mr. Pullen's communication to  
2 Jacuzzi to Bill Demeritt?

3 A No.

4 Q Do you have any knowledge as to whether anyone else  
5 communicated the Pullen communications to Mr. Demeritt?

6 A To my knowledge, he was not involved in that at all.

7 Q Do you have the foundation and background to know  
8 whether the general liability insurance maintained by Jacuzzi requires  
9 Jacuzzi to put the insurance company on notice when you receive a  
10 claim for wrongful death?

11 A I have a general understanding.

12 Q Okay. And who would submit those notices to the insurance  
13 company?

14 A Bill Demeritt.

15 Q And let me go back. You answered my question correctly,  
16 but I don't think I got to the question. Does the policy require you to put  
17 the insurance company on notice upon receiving a claim for wrongful  
18 death?

19 A Yes.

20 Q And can you lose your coverage if you fail to do that?

21 A Yes.

22 Q Did you put the insurance carrier on notice when you  
23 received the October 30th communications?

24 A No. It was not viewed as a claim.

25 Q As long as we're talking about Mr. Demeritt, could you

004493

004493



1 explain to the Court his job duties as you understand them?

2 A He also is a little bit of a Jack of all trades. He handles the  
3 lease issues, Legacy issues, insurance program, does some risk  
4 management in regard to -- handles subrogation claims, prelitigation.  
5 And there's a number of other, like I say, Legacy companies that he  
6 handles, continuing liabilities. Although the companies no longer sell  
7 product, there's still some Legacy liabilities.

8 Q What is your understanding of when Mr. Demeritt would  
9 typically get involved in a communication from a customer regarding a  
10 safety concern with the tub?

11 A My understanding is he wouldn't get involved -- are you  
12 asking in regard to communications with the customer?

13 Q No, in communications internally.

14 A Oh.

15 Q When should someone in customer service, or technical, or  
16 the legal department, when would they typically notify Mr. Demeritt of a  
17 communication from a customer?

18 A I don't think there's any hard and fast rules, but I think it goes  
19 case-by-case basis, and dependent on what the customer service agent  
20 thought the -- about the communication, whether it was -- how  
21 legitimate it was and whether somebody in his department or the legal  
22 department should be involved.

23 Q Are you aware of any written guidance for employees as to  
24 when they should notify Mr. Demeritt of something?

25 A There's no written communications -- or no written policy to

1 my knowledge.

2 Q So in your view, is there a standard custom and practice in  
3 Jacuzzi that's invariably followed as to when Mr. Demeritt is provided  
4 notices of customer communications?

5 A No, again, it's case-by-case basis.

6 Q Let's talk about you and your role. Is there any written  
7 guidance anywhere in the company that's distributed to employees as to  
8 when they should notify you of communications from customers?

9 A No.

10 Q All right. What is your understanding of when you're  
11 supposed to be contacted about a customer communication?

12 A I think it's somewhat like Mr. Demeritt's. If the customer  
13 service person is concerned about a call, wants to discuss a call, or  
14 discuss how to respond a call, they can reach out to me.

15 Q Okay. Do you have a recollection of how the Pullen inquiries  
16 were elevated within the management structure at Jacuzzi?

17 A Within the management structure --

18 Q Yes.

19 A -- above me?

20 Q No, below you. When the call first came in -- how do people  
21 get calls? Do people look up a phone number of an individual, or how  
22 does that first call -- who decides how that first call gets taken?

23 A My understanding is the customer call center is, like a lot of  
24 companies that have customer call centers, where I think you can find an  
25 800 number, probably, on the website or in the documentation that

004495

004495

1 comes with the product. It goes into the call center, and then it's  
2 directed to a customer service agent. And then depending on what the  
3 call is about or whether they need to speak -- some people have  
4 particularized knowledge of certain products or issues, and it can be  
5 escalated that way.

6 Q And it's in the record, does it sound right, that it came into an  
7 entry-level person who was routed the call, it was elevated to Megan  
8 Davis, who then elevated it to Regina Reyes, who then elevated to you; is  
9 that fair?

10 A That's fair accurate -- fair assessment.

11 Q When you are put on notice of inquiries from customers, do  
12 you ever get notice directly from the person who fields the call, the  
13 lower-level person, or does it come from a supervisor?

14 A Occasionally, I've probably gotten calls from some  
15 lower-level people that know me. I don't have a lot of contact with the  
16 lower-level -- phone agents. So normally the -- a person that would  
17 contact me would be more of a Regina, Megan, or Kurt. Kurt's not in the  
18 customer service department, but he does reach out to me on issues at  
19 times from customers.

20 Q Thank you. You were shown a number of exhibits of other  
21 incidents yesterday and today.

22 A Uh-huh.

23 Q In your view, is there a routine, habit of Jacuzzi, as a  
24 company, that all of those types of incident would have been sent to you  
25 in the normal course of business?

1 A No, they would not have been.

2 Q Yesterday you were shown a transcript where Commissioner  
3 Bulla -- Justice Bulla referred to the ordinary course of business is what  
4 I'm talking about. Do you recall that?

5 A I don't recall the exact context, but I do remember that  
6 ordinary course of business.

7 Q And you said that you didn't review that transcript, right?

8 A Correct.

9 Q So I'm not going to ask you your interpretation of it but let  
10 me ask you this.

11 In the ordinary course of business, at the time you were  
12 responding to discovery requests in this matter, did you expect that, in  
13 the normal course of business, emails referring to personal injury caused  
14 by a Jacuzzi walk-in-tub product would be contained in the Salesforce  
15 database?

16 A Yes.

17 Q Did you expect that there would be emails about alleged  
18 injuries in a walk-in tub that were not also -- that were in emails that  
19 were not also contained in the Salesforce database?

20 A I guess it --

21 THE COURT: I'm sorry, I didn't under --

22 MR. ROBERTS: So I'll rephrase.

23 THE COURT: -- understand all the parts.

24 MR. ROBERTS: I'll rephrase.

25 THE COURT: Thank you.

1 BY MR. ROBERTS:

2 Q Did you expect that there would be incidents referred to in  
3 email communications --

4 A Uh-huh.

5 Q -- that were also not contained in the Salesforce database?

6 A My understanding of what's within the Salesforce database  
7 has evolved over time, and it would depend on the context, I guess, of  
8 the email and when it came in as to what my understanding is, whether  
9 it would be in Salesforce or not.

10 Q So in 2018, so before 2019, what was your understanding of  
11 whether emails would be captured by Salesforce?

12 A My understanding those -- Salesforce was capturing emails.

13 Q And would these have to be manually entered or what was  
14 your understanding how they got into the Salesforce database?

15 A That I couldn't answer. I don't know that I had a specific  
16 understanding as to how they got in there. I have learned -- I -- as I sit  
17 here today, I believe some -- at least some are captured automatically. I  
18 don't know whether it's all of them as I sit here today.

19 Q Have you seen email spam that's been captured by the  
20 Salesforce database?

21 A Quite a bit of it.

22 Q Let's talk briefly about the -- some of the incidents in the  
23 Salesforce printouts that have been introduced into evidence. Okay.  
24 The first think I'm going to ask you to do is turn to volume 1, tab 32, and  
25 this is a Salesforce entry from Catherine Reynolds, case number 304436.

004498

004498

1 A I'm sorry, you said tab 32?

2 Q Tab 32, yes. And this is the first page, 5689, Jacuzzi 5689.

3 A First page is 5284, it's an email, of that exhibit.

4 Q Oh, okay.

5 A What's the Bates number. I can look for it.

6 Q Actually -- okay. 5689, which is the first page I have tabbed.

7 A I have it in front of me. It's not tabbed in mine.

8 THE COURT: 50 --

9 BY MR. ROBERTS:

10 Q All right. First of all, so the Court -- make sure the Court  
11 understands, the case number, does that refer to all contact with that  
12 customer?

13 A My understanding is every time a -- yeah, it is a unique case  
14 number that is generated when a customer service agent opens a new  
15 report within Salesforce.

16 Q Okay. Does a customer service agent have the option of not  
17 opening a new case number when a call comes in as that system now  
18 operates?

19 A I believe it depends on when the call would come in and --  
20 yeah, they can add to an older case number, I believe, as the  
21 communications progress.

22 Q Okay. So the same customer could have multiple case  
23 numbers or one case number with multiple dates of entry; is that fair?

24 A Correct.

25 Q So let's look here in the left-hand column under brand. Do

004499

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1 you see that JB under brand?

2 A Yes.

3 Q Could you explain what that means to you?

4 A I don't know -- I think it stands for Jacuzzi bath, but the JB  
5 would indicate it's within the bath division -- the bath company.

6 Q Okay. And you mentioned that at times when you were  
7 doing searches in the litigation that you were dealing with a lot of  
8 volume that was hard for you to review feasibly, correct?

9 A Correct.

10 Q Explain --

11 MR. CLOWARD: I'm going to object as to time and scope --  
12 vague as to time and scope, Your Honor.

13 THE COURT: Yeah, sustained. Put a time on that. I don't  
14 remember what he said in his testimony as to that.

15 MR. ROBERTS: And I don't believe he gave a time reference  
16 when he originally testified to that.

17 THE COURT: All right. Well, I'll leave that open-ended in my  
18 notes, then.

19 MR. ROBERTS: I don't think it's important to this inquiry, but  
20 I can try to bring that out after I lay some foundation here.

21 THE COURT: Very well.

22 MR. ROBERTS: Okay.

23 BY MR. ROBERTS:

24 Q So is that a manual entry or is it a dropdown?

25 A I personally have never entered anything in Salesforce, so I