

Case No. _____

In the Supreme Court of Nevada

JACUZZI, INC. doing business as JACUZZI
LUXURY BATH,

Petitioner,

vs.

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

Respondents,

and

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

Real Parties in Interest.

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**PETITIONER'S APPENDIX
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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

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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
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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
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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 THE COURT: You are correct, you have that right, even in the
2 middle of a pending question.

3 MR. ROBERTS: Correct.

4 THE COURT: Of course.

5 Okay. So let's bring Mr. Templer to the stand.

6 Thank you for those clarifications.

7 MR. ROBERTS: Thank you, Your Honor.

8 THE COURT: All right. Why don't you remain standing, sir?

9 THE CLERK: Raise your right hand.

10 RONALD TEMPLER, PLAINTIFFS' WITNESS, SWORN

11 THE CLERK: Okay. You may be seated.

12 THE WITNESS: Thank you.

13 THE CLERK: And then can you please state and spell your
14 first and last name for the record?

15 THE WITNESS: First name is Ronald, R-O-N-A-L-D; last
16 name, Templer, T-E-M-P-L-E-R.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. CLOWARD:

20 Q Good morning, Mr. Templer. How are you?

21 A Good morning. Okay.

22 Q Okay. So let's just -- let's start.

23 MR. CLOWARD: I guess, Brandon, if you want to pull that
24 Exhibit 172, please.

25 And, Mr. Roberts, my understanding is that Mr. Templer has

1 also a 30(b)(6).

2 MR. ROBERTS: Well, if we are required to produce a 30(b)(6),
3 he would be the 30(b)(6). It's our position that the title of Rule 30 is
4 depositions on oral examination. The 30(b)(6) deposition and the duty to
5 prepare someone for topics is a deposition tool. And an evidentiary
6 hearing is more akin to trial, and therefore the Rule 30(b)(6) would not
7 apply. But the witness has familiarized himself with the circumstances --

8 MR. CLOWARD: Yeah.

9 MR. ROBERTS: -- and he's --

10 THE COURT: All right. So he's not here --

11 MR. ROBERTS: -- not with witnesses --

12 THE COURT: -- speaking on behalf of Jacuzzi?

13 MR. ROBERTS: Correct, Your Honor.

14 THE COURT: All right.

15 MR. ROBERTS: That's our position.

16 THE COURT: He's speaking only on behalf of the matters in
17 which he had responsibility or direct control, I would assume?

18 MR. ROBERTS: Yes.

19 THE COURT: All right.

20 MR. ROBERTS: But he has attempted to inquire and --

21 THE COURT: Okay.

22 MR. ROBERTS: -- and find out what information the
23 company has. But I don't believe that the Rule 30(b)(6) would apply to
24 these proceedings. But we -- we've acted in good faith --

25 THE COURT: I agree.

1 MR. ROBERTS: -- in that regard.

2 THE COURT: All right.

3 MR. ROBERTS: Thank you, Your Honor.

4 THE COURT: Let's proceed.

5 MR. CLOWARD: Understood.

6 And, Brandon, if you want to go to 34.

7 BY MR. CLOWARD:

8 Q Okay. Mr. Templer, you agree that in this request for
9 production --

10 MR. CLOWARD: And this is Exhibit 172, for the Court's
11 reference. And, Your Honor, we're going to be spending the majority of
12 the time in 172 through 190 whatever.

13 THE COURT: Perfect. Thank you. I appreciate that.

14 MR. CLOWARD: You got it.

15 BY MR. CLOWARD:

16 Q And, Mr. Templer, just let me know when you're there.

17 A Yeah. I'm just going to --

18 Q Okay.

19 A -- clean up my space here.

20 Q You got it.

21 A I have it in front of me.

22 Q Okay. Now, you agree that request for production number
23 34 was to,

24 Produce all documentation, emails, memorandums, technical
25 data, internal documents of any and all discussion,

1 communication or otherwise, pertaining to safety
2 considerations regarding the inward opening door versus
3 outward opening door.

4 Do you see that?

5 A I can read that, yes.

6 Q Okay. And you agree that that was requested of Jacuzzi?

7 A That's the request.

8 Q Okay. And in response, Jacuzzi limited the scope to just prior
9 incidents, prior to February 27, 2014, correct?

10 A It's also limited in other manners, too, but, yes.

11 Q Okay.

12 MR. CLOWARD: And, Brandon, if you could show the rest of
13 the response. Oh, wait. I'm sorry, Brandon.

14 BY MR. CLOWARD:

15 Q You agree that Jacuzzi in that response indicated that it did
16 not have any responsive documents, true?

17 A That's what it says above the objections.

18 Q Okay.

19 MR. CLOWARD: Now, Brandon, if you can -- this -- there are
20 a couple exceptions, Your Honor, when I'm going to be referring to the
21 other binder. So I do apologize. But I'm going to go to tab --

22 THE COURT: That's fine. I can follow and -- back --

23 MR. CLOWARD: -- tab 10.

24 THE COURT: -- move back and forth. All right.

25 MR. CLOWARD: So, Brandon, tab 10. And we'll focus on

1 Jacuzzi 5717, Brandon.

2 MR. ROBERTS: Okay. And what binder are we in?

3 MR. CLOWARD: We're in binder 1, tab 10.

4 MR. ROBERTS: Okay.

5 MR. CLOWARD: And, in particular, it's going to be 5717.

6 Is that 5717? Yeah, that is, okay.

7 BY MR. CLOWARD:

8 Q And this -- in tab 10, this is some email correspondence
9 regarding three claimants, you agree, true?

10 A I have not looked through all the documents.

11 Q Okay. Direct your attention to 5623.

12 A I have it in front of me.

13 Q Okay. And do you recall covering this yesterday with
14 Mr. Bachmeyer?

15 A I didn't have the documents in front of me yesterday, so I
16 wasn't sure what you were going over exactly.

17 Q Okay. So, you don't have --

18 A I was -- I sat through Mr. Bachmeyer's testimony, but I didn't
19 have this document in front of me.

20 Q Do you remember the discussion of three individuals who
21 were stuck in the tub?

22 A I recall the discussion about three individuals.

23 Q You don't remember the part where they were stuck in the
24 tub?

25 A I don't recall that specifically, but I'm not disputing it.

1 Q You were sitting right there yesterday, right?

2 A I was.

3 Q Were you listening?

4 A I was.

5 Q Okay. Well, I'd like to point out these folks individually.

6 Mrs. Stoldt said she got stuck in the tub and had to crawl out of the door.

7 Do you see that?

8 A I do.

9 Q Mr. Greenwell, he mentioned he got -- he slipped in the tub,
10 he got stuck in the footwell, and then he had to call the fire department
11 to get out. Do you see that?

12 A I do.

13 Q And then this individual, Lashinsky, called to request that we
14 replace her door under warranty. Her partner slipped in the tub and they
15 actually had to remove the door to get her out. Do you see that?

16 A I see that's what it says.

17 Q Okay. And, Mr. Templer, you agree that these documents
18 were not turned over until less than two months ago, on July 26, 2019?

19 A I was not involved personally in the actual production, so I
20 don't know the dates documents were produced.

21 Q Okay.

22 MR. CLOWARD: Your Honor, I'll just ask that the Court take
23 judicial notice on the disclosure dates of the documents.

24 THE COURT: So when was Exhibit 10 produced or
25 disclosed? Is that --

1 MR. CLOWARD: Well, Exhibit --

2 THE COURT: -- when you wanted me to take notice of?

3 MR. CLOWARD: The documents contained in Exhibit 10, yes.
4 They were disclosed on July 26 --

5 THE COURT: Okay.

6 MR. CLOWARD: -- 2019.

7 THE COURT: Just FYI, I mean, I'm the one, of course, who
8 has to evaluate all of this at the end of the day --

9 MR. CLOWARD: Sure.

10 THE COURT: -- so I want to make sure I voice my thoughts,
11 as they may be appropriate as you guys present your evidence.

12 MR. CLOWARD: Certainly.

13 THE COURT: One thing I just observed here is 34 is asking
14 for documents that are comparing inward opening versus outward
15 opening, right? And so I don't know that a report of all safety issues
16 would be encompassed by this.

17 MR. CLOWARD: Okay.

18 THE COURT: I mean, do you -- do you see -- I mean, do you
19 disagree --

20 MR. CLOWARD: Well --

21 THE COURT: -- with that?

22 MR. CLOWARD: Yeah, I do, because obviously --

23 THE COURT: Okay.

24 MR. CLOWARD: -- if someone's not able to get out,
25 Your Honor, it's because the door opens in. And they're --

1 THE COURT: Well, getting stuck, is that the same thing as -- I
2 mean, I don't know why they're stuck. But anyway, I just -- something on
3 my mind.

4 MR. CLOWARD: Okay.

5 THE COURT: You can argue that at the end. I'm not saying I
6 agree or disagree with anybody's interpretation, just that's an issue I just
7 saw right now, sitting right here. Okay?

8 MR. CLOWARD: Okay.

9 BY MR. CLOWARD:

10 Q Mr. Templer, you're aware in this situation that Ms. Cunnison
11 had to have her door removed to get her out, correct?

12 A Yes.

13 Q You're aware. So it's essentially almost the identical
14 situation as Ms. Lashinsky, where Ms. Cunnison had to have her door
15 removed to get her out?

16 A I don't know enough about the Lashinsky matter to state. I
17 see that's what it says here.

18 Q And we haven't been able to discover the Lashinsky matter
19 because it was only produced in July of 20 -- July 26, 2019, correct?

20 A Again --

21 MR. ROBERTS: Objection. Argumentative.

22 THE WITNESS: Again, I don't know what --

23 THE COURT: No.

24 THE WITNESS: -- at this --

25 THE COURT: Overruled. It's an adverse witness, so I'm

1 going to allow that.

2 THE WITNESS: I don't know when Ms. Lashinsky was -- you
3 first learned of her.

4 BY MR. CLOWARD:

5 Q You don't know what?

6 A I don't know when you first learned of Ms. Lashinsky.

7 Q Okay.

8 A I don't know when that was -- that name was first produced
9 in discovery.

10 Q Okay. That was discovered -- it was produced in a packet
11 containing emails for Kurt Bachmeyer about two business hours before
12 his deposition was set to commence. So Friday afternoon about 4:30,
13 4:00. His deposition was scheduled, I believe, 8 or 9 a.m. the following
14 Monday.

15 Does that refresh your memory of --

16 A Again, I wasn't involved in the actual production, so I don't
17 know what stuff was produced.

18 Q Okay.

19 MR. CLOWARD: Brandon, will you pull up 173?

20 MR. ROBERTS: And, Your Honor, all the productions were
21 done in the 16.1 supplements. So I'm sure we'll be --

22 THE COURT: I --

23 MR. ROBERTS: -- able to confer with Mr. Cloward and
24 stipulate to the date that the various Bates ranges were produced for the
25 first time --

1 THE COURT: Very good.

2 MR. ROBERTS: -- about Jacuzzi.

3 THE COURT: Right. And I have seen some of the
4 supplements which have date ranges. But it would be great if --

5 MR. ROBERTS: We could --

6 THE COURT: -- I have --

7 MR. ROBERTS: -- come up with a chart perhaps --

8 THE COURT: Okay.

9 MR. CLOWARD: Yeah, Judge.

10 MR. ROBERTS: -- for the ease of the Court.

11 THE COURT: Yeah. There were numerous supplements,
12 so --

13 MR. ROBERTS: Yes, Your Honor, there were.

14 THE COURT: Okay. Go ahead.

15 MR. CLOWARD: Focus on 11.

16 BY MR. CLOWARD:

17 Q Mr. Templer, if you want to just focus on 11.

18 A My eyes aren't that great, so I'm going to be reading from
19 the book here.

20 Q You got it. Let me know when you're ready.

21 A I have it in front of me.

22 Q Just follow along with me. You agree that Defendant was
23 asked to state whether Jacuzzi has ever received notice, either verbal or
24 written, or on behalf of any person claiming injury or damage from his
25 use of the Jacuzzi walk-in tub, which is the subject of this litigation. You

1 agree that was requested back in 2017, true?

2 A I see request number 11, yes.

3 Q Okay.

4 A Excuse me. Interrogatory number 11.

5 MR. CLOWARD: And, Brandon, if we can look at the
6 response.

7 BY MR. CLOWARD:

8 Q And, again, Jacuzzi says, it is only aware of the claims of
9 injury brought by Plaintiffs' attorney, true?

10 A That's what it says, yes.

11 Q So essentially Jacuzzi is saying, hey, we only know of one
12 claim, which is the claim that Ms. Cunnison has brought? That's what
13 this response says, right?

14 A I think it would also the Smith claim. I don't recall the date of
15 that.

16 Q Does it say that on there?

17 A Well, it says claims of Plaintiffs' attorney, which is you, and
18 you represent both Plaintiffs.

19 Q Okay. So best case scenario, this response would only be
20 limited to the Smith case and the Cunnison case, which the Plaintiff's
21 attorney represented both clients for, true?

22 A Correct.

23 Q Okay.

24 THE COURT: So this gets into that difficult issue where I
25 have to decide if there's a difference between the word claiming and

1 claim.

2 MR. CLOWARD: I --

3 THE COURT: You know, you could say, were you claiming X,
4 Y, and Z? Is that the same thing as a claim? And --

5 MR. CLOWARD: Sure.

6 THE COURT: -- I'm -- as you --

7 MR. CLOWARD: It's --

8 THE COURT: As you heard me earlier, I tended to take the
9 more broader interpretation --

10 MR. CLOWARD: Sure.

11 THE COURT: -- of the claim.

12 MR. CLOWARD: I appreciate the --

13 THE COURT: Yeah. Okay.

14 MR. CLOWARD: -- the clarification, Your Honor. I'm actually
15 going to address some of those issues.

16 THE COURT: Perfect. Thank you.

17 MR. CLOWARD: Thank you, Your Honor.

18 THE COURT: Thank you.

19 BY MR. CLOWARD:

20 Q Now, a moment ago we talked about the Greenwell case. Do
21 you remember the individual that was stuck in the tub and the fire
22 department had to actually come and get him out?

23 A I remember looking at the email that I have in front of me.

24 Q I'm sorry?

25 A I have -- I remember looking at that email a few minutes --

1 the one I have in front of me.

2 Q Okay. So do you believe that somebody getting stuck in the
3 bottom of the tub and that -- and actually having to have the fire
4 department come and get them out, do you think that would be a claim
5 of injury?

6 MR. ROBERTS: I'm going to object, Your Honor, to -- I think
7 they're getting a little close to advice. They're his interpretation -- legal
8 interpretation of a document I think backs what Jacuzzi did when they
9 did it. But his personal interpretation of the word claim, I don't believe
10 that's appropriate --

11 THE COURT: Mr. Cloward?

12 MR. ROBERTS: -- for in-house counsel.

13 MR. CLOWARD: And I would like to respond.

14 THE COURT: You may respond, please.

15 MR. CLOWARD: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. CLOWARD: So the inquiry here is what was Jacuzzi's
18 understanding of its discovery obligations? And the evidence has borne
19 out that Mr. Templer was involved in the production and request of the
20 documentation. So his interpretation of the word claim --

21 THE COURT: Well, let's don't ask for his interpretation.
22 Rather, what were his instructions in terms of producing -- in terms of
23 collecting the documentation. All right? That's probably the better way
24 to approach this.

25 MR. CLOWARD: I -- okay. I don't want --

1 THE COURT: Right?

2 MR. CLOWARD: -- to violate what the Court said earlier
3 about getting into communications. That may dip into that. I don't -- I
4 want to just respect --

5 THE COURT: Well --

6 MR. CLOWARD: -- the Court's ruling on that.

7 THE COURT: Well, and I --

8 MR. CLOWARD: If you want me to, I'm --

9 THE COURT: I want to --

10 MR. CLOWARD: -- happy to.

11 THE COURT: -- make sure we get all of it together that I need
12 to.

13 MR. CLOWARD: Sure.

14 THE COURT: But his subjective interpretation is probably not
15 relevant. And then his communication with outside counsel about what
16 it means is probably not relevant. But his direction in furtherance of
17 collecting the documentation to produce, that would be relevant. So --

18 MR. CLOWARD: Okay.

19 THE COURT: -- it's kind of a fine line there.

20 MR. CLOWARD: May I posit that his interpretation as senior
21 general counsel would be relevant in this analysis? Because he's not a
22 lay witness. He's senior general counsel for Jacuzzi. And so I think that
23 his interpretation of claims -- he's a lawyer and he has experience --
24 would be relevant.

25 THE COURT: Well, I think that's calling for an expert opinion,

1 too. Yeah, I don't --

2 MR. CLOWARD: Okay. I'll --

3 THE COURT: I think that that --

4 MR. CLOWARD: -- move past that.

5 THE COURT: -- is too close to --

6 MR. CLOWARD: Understood.

7 THE COURT: -- violating attorney-client privilege. I

8 understand your position.

9 MR. CLOWARD: Got it.

10 THE COURT: It's just too close to the line. But let's find out if
11 he gave instructions for assimilation and production of documents that's
12 consisted with a broad interpretation of claims or a narrow interpretation
13 of claims --

14 MR. CLOWARD: Understood.

15 THE COURT: -- without asking what his particular advice was
16 or his subjective understanding was.

17 MR. CLOWARD: Understood.

18 THE COURT: That's probably the best way --

19 MR. CLOWARD: You got it.

20 THE COURT: -- to help get me the information I need.

21 MR. CLOWARD: You got it.

22 THE COURT: Thank you.

23 BY MR. CLOWARD:

24 Q Mr. Templer, what instructions did you give the folks that
25 you instructed to gather information responsive to this request?

1 A This one is very, very -- it's hard -- it's asking for my
2 communications with my client basically, which are the people that -- at
3 my company. I don't intend to waive -- intentionally waive the attorney-
4 client privilege. I -- but I want to be helpful here.

5 THE COURT: Well, I need you to answer --

6 THE WITNESS: So I'm a little -- I'm a little --

7 THE COURT: I need you to answer this one without waiving
8 the privilege. Okay?

9 THE WITNESS: I don't recall specific conversations I had
10 two-and-a-half years ago, but I -- in general, I recall reaching out to a
11 couple of people. On this specific request, I believe I sent the actual
12 request to the people and told them what I needed. And told them I
13 need documents for information. I think it was limited up to the date of
14 the incident at this point that would be responsive to their request.

15 BY MR. CLOWARD:

16 Q So you would have sent that by email?

17 A I believe so.

18 Q Okay.

19 MR. CLOWARD: So, Your Honor, I would just ask that that be
20 produced in camera without any -- you know, not to us, just to the Court
21 for review of what of communication would be. I think that --

22 THE COURT: Uh-huh.

23 MR. CLOWARD: -- would be helpful for Your Honor.

24 THE COURT: I think so. Mr. Roberts?

25 MR. ROBERTS: I -- if we can do that without waiving the

1 privilege, then we --

2 THE COURT: Of course. So --

3 MR. ROBERTS: -- we'll do that.

4 THE COURT: -- Mr. Templer, I'm going to direct you to
5 provide this Court for in-camera review your email communication to the
6 so-called people that you sent it to wherein you directed them to
7 respond.

8 THE WITNESS: If I could just ask somebody to make a note
9 to that?

10 MR. ROBERTS: Yes.

11 THE WITNESS: Thank you.

12 THE COURT: Thank you, sir. So if you can get that to me by
13 the end of the day, that would be important.

14 THE WITNESS: I don't have any peer here, so I wouldn't be
15 able to do it until after I get back to my hotel tonight.

16 THE COURT: All right.

17 THE WITNESS: Unless there -- unless there's a break --

18 THE COURT: Then --

19 THE WITNESS: -- I might be able to get back to my hotel. It's
20 walking distance from here.

21 THE COURT: I understand. Then I'll have to ask you to be
22 available to testify tomorrow in the event the need arises in connection
23 with that document.

24 THE WITNESS: Understood.

25 THE COURT: It may not be necessary, but I need you to be

1 available just in case.

2 THE WITNESS: I'm going to be here tomorrow anyway.

3 THE COURT: Oh, thank you very much.

4 All right. Let's continue.

5 MR. CLOWARD: Okay.

6 BY MR. CLOWARD:

7 Q Now, I want to just focus -- before we go to the next, I just
8 want to focus on -- Defendant is only aware of the claims of injury
9 brought by Plaintiffs. And, again, this was in response to Plaintiffs'
10 request for claims of injury, true?

11 A Yeah. But the response actually says, claims brought by
12 Plaintiffs' attorney, not Plaintiffs.

13 Q Okay. Plaintiffs. Sir, thanks for the clarification. If you would
14 turn to Tab 8.

15 MR. CLOWARD: And, Brandon, we would go to 5369.

16 BY MR. CLOWARD:

17 Q Mr. Templer, this was also covered during the deposition of
18 Mr. Bachmeyer. Do you agree that this individual, Mr. Raidt, he called,
19 and he says, he no longer wants the tub. And he told them he slipped
20 and fell, causing him to hurt his back. True?

21 A I don't know what the details of the call. That's what this
22 says.

23 Q And he also indicates on that -- the third line, he is willing to
24 get a lawyer if this is not taken out and he is refunded, correct?

25 A That's what it says.

1 Q Okay.

2 MR. CLOWARD: Brandon, if you'll go to Exhibit 190, page 51.

3 THE COURT: When was tab 8 produced, Mr. Cloward, if you
4 know? You could find that later, but it's important for me to know.

5 MR. CLOWARD: Understood.

6 THE COURT: Okay. Thank you.

7 MR. CLOWARD: Your Honor, I'll actually provide the Court
8 with an index. I'll have that done before the end of the day.

9 THE COURT: Perfect. Thank you.

10 MR. CLOWARD: Will you give Cal that?

11 MR. ROBERTS: July 26, 2019, Your Honor.

12 THE COURT: All right. That helps.

13 MR. CLOWARD: Thank you.

14 THE COURT: You guys have been dealing with these issues
15 a lot longer in more detail than I have, so I -- so --

16 MR. CLOWARD: Understood.

17 THE COURT: -- I want to make sure I can follow. Thank you.

18 BY MR. CLOWARD:

19 Q Now, Mr. Templer, this was a hearing I believe that you
20 actually were present, if I'm not mistaken. It was where Mr. Crawford
21 and Mr. Roberts came in here talking to the judge. This hearing was on
22 July 1st of 2019. Do you recall that?

23 A You are mistaken. I was not here.

24 Q You were not here. Okay. Well, the Honorable Judge asked
25 specifically, how do you interpret the word claim? Does the individual

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1 calling have to actually use the word claim or do they have to say, 'I
2 want money? And then Mr. Crawford says, Your Honor, I think a claim is
3 a demand for remediation of some sort, whether it's money, whether it's
4 for reimbursement, whether it's, "take my product back."

5 Do you see that?

6 A I see that.

7 Q And further he says, it's a demand that something be done.

8 Correct?

9 A That's what it says.

10 Q Okay. And you agree that with Mr. Raidt, he was demanding
11 not only that the tub be removed, but that he be -- get a refund, true?

12 A I don't know who that -- who's requesting, quite frankly, that
13 it would -- because we don't sell direct to the consumers. So we don't
14 generally deal with a claim for a refund. We didn't receive the money for
15 the sale, in the first place.

16 Q Okay.

17 A And by we, I mean Jacuzzi Inc.

18 Q If you'd take a look at 5369. In this situation, you agree that
19 Deborah Nuanes, she's an employee at Jacuzzi, right?

20 A Correct.

21 Q And then Kurt Bachmeyer, he's an employee of Jacuzzi,
22 right?

23 A No.

24 Q Kurt --

25 A He's an employee of Sundance Spas, which is a sister

1 company of Jacuzzi.

2 Q Okay. He was involved at this time with customer service
3 incidents, true?

4 A This is before I was with the company, so I don't know what
5 his position was at this time.

6 Q Okay. Well --

7 A I can only go off what he said yesterday.

8 Q Okay. And yesterday he said that he received this. Do you
9 remember that testimony?

10 A Again, I didn't have documents in front of me. So I don't
11 recall if this one was of the ones he received or not. But if he said he
12 received it, I wouldn't have a reason to dispute it.

13 Q He said he received it. Okay?

14 And so it says right here -- and we've got a stipulation from
15 counsel already -- the email says, I wanted to update you on this
16 incident, that I'm forwarding this over to Kurt Bachmeyer. So that plain
17 text there would indicate that it was forwarded to Kurt Bachmeyer, right?

18 A Again, I'm not disputing that it was; I just don't have any
19 personal knowledge of it.

20 Q Okay. Understood. In any case, you agree -- back to the
21 initial question -- when Mr. Crawford stood in open court and announced
22 to this Judge, this Honorable Judge, that a claim is a demand for
23 something, it's a demand for the remuneration, a demand that the
24 product be taken back, a demand for a refund -- you recall that, right?

25 A I read the portion of the transcript you highlighted.

1 Q Okay. And this person hurt his back, true?

2 A That's what this says.

3 Q And is willing to get a lawyer if the tub is not taken out and
4 he is refunded, correct?

5 A That's what it states.

6 Q Okay.

7 MR. CLOWARD: Brandon, if you'll go to tab 119.

8 THE COURT: I'm sorry. 1-1-9?

9 MR. CLOWARD: That's correct, Your Honor.

10 THE COURT: Okay. Thank you.

11 MR. CLOWARD: And particularly, 4710, Brandon. And if you
12 could put that off to the side, and then pull up the court transcript at
13 page 51 so that they're next to one another.

14 BY MR. CLOWARD:

15 Q Just one moment. I have having another exhibit pulled up so
16 that we can --

17 A Technical issues?

18 Q Technical issues. It's just taking a moment.

19 A Speed. What page of the transcript did you want me to refer
20 to?

21 Q 51.

22 A I have it in front of me.

23 MR. CLOWARD: There we go. Thank you. Now, if you can
24 highlight the highlighted portion, please.

25 BY MR. CLOWARD:

1 Q So, you agree, this is the Pullen incident? And, this
2 individual --

3 MR. CLOWARD: That's good, Brandon.

4 BY MR. CLOWARD:

5 Q -- wants to take legal action because he thinks the tub killed
6 his mom. Do you see that?

7 A I see that.

8 Q And Regina Reyes and Megan Davis are employees at
9 Jacuzzi, right?

10 A The only reason I'm hesitating is I don't know which
11 technical company they worked for, but they are employed within the
12 umbrella of the Jacuzzi companies.

13 Q Okay.

14 MR. CLOWARD: Now, Brandon, if you want to pull up on the
15 transcript. We're going to be looking at 20 through 23.

16 BY MR. CLOWARD:

17 Q This is Mr. Crawford telling the court, it's a demand that
18 something be done. Not merely, I'm unhappy with my tub because it
19 takes too long to fill up. I don't think that's a claim. That was Jerre
20 Chopper's matter.

21 So do you think that this individual is going to take legal action to
22 simply tell Jacuzzi that it's unhappy with the product?

23 MR. ROBERTS: Same objection, Your Honor, as before.

24 THE COURT: All right. Noted.

25 MR. ROBERTS: It's asking for his personal opinion.

1 THE COURT: Noted, but I'm going to allow it in this case.

2 THE WITNESS: Would you restate that, please?

3 MR. CLOWARD: Sure.

4 BY MR. CLOWARD:

5 Q Do you think that Mr. Pullen is going to take legal action to
6 have his legal representative that he hires call Jacuzzi to just let them
7 know that he's unhappy with the tub? Or do you think he's saying, I'm
8 going to take legal action because I'm going to request money or I'm
9 going to make a demand?

10 MR. ROBERTS: Objection. compound.

11 THE COURT: Overruled. If you can respond so we
12 understand to which portion you're directing your response --

13 THE WITNESS: Sure.

14 THE COURT: -- that would be helpful.

15 THE WITNESS: Sure.

16 I don't know if I can answer it exactly how you phrased it,
17 other than to state in totality how the Pullen matter was considered. And
18 it was not considered to be a claim.

19 BY MR. CLOWARD:

20 Q Okay. Mr. Templer --

21 A It wasn't based on just that one statement in the -- that you
22 highlighted; it was based on the -- everything that was reviewed.

23 Q Okay. Mr. Templer, you agree that in your experience in
24 working for Jacuzzi in the capacity as senior corporate counsel -- and, as
25 I understand it, you were a partner in a private law firm for several years

1 before that, too, right?

2 A Junior partner, yes.

3 Q Okay. Is it in your experience that when folks hire lawyers,
4 they hire lawyers to just tell companies that they're unhappy with the
5 product, or do they usually hire lawyers to get something?

6 A I mean, my personal experience is when somebody says that
7 they have a lawyer, the vast majority of the times it's not true. It's an
8 attempt to force some type of resolution or try to get some action or
9 reaction.

10 Q And my question, Mr. Templer, was not -- my question was,
11 when people hire a lawyer, generally you agree that they don't hire the
12 lawyer to just tell the company something like, hey, I'm unhappy with
13 the product?

14 A I thought you were referring to Mr. Pullen. In which we
15 didn't know he had -- if he had a lawyer or not. If somebody hires a
16 lawyer, I would agree, that -- I would agree with your statement.

17 Q Okay. Mr. Bachmeyer indicated yesterday that when he was
18 in the capacity of customer service manager, when he received a notice
19 like this, he would immediately send that to yourself or legal and Bill
20 Demeritt. You heard that testimony?

21 A I heard the testimony.

22 Q So you did hear that part of it? Okay.

23 A I heard all his testimony. I just don't remember --

24 Q Okay.

25 A -- all of it.

1 Q So when did you receive notice? Because no emails have
2 been produced with the salesforce documents, no emails from anybody
3 internally have been produced in this case. So when did you receive
4 notice that this individual thinks the tub killed his mom?

5 A The Pullen incident specific?

6 Q Yeah.

7 A October 30, 2018.

8 Q Okay. So Mr. Bachmeyer's testimony that this would be sent
9 to the lawyers immediately was accurate?

10 A No, because Mr. Bachmeyer was not involved in this. I did
11 not speak with Mr. Bachmeyer at all about this incident or have any
12 contact with him about this incident.

13 Q Okay. Let me re-ask the question very slowly, okay, so that
14 you understand the question. My question was, Mr. Bachmeyer testified
15 that when he was customer service manager, when a call like this came
16 in, he would immediately send it to legal and risk management. You
17 heard that testimony, right?

18 A I heard him say that he would send it, yes.

19 Q Okay. And then I said, as I recall, what was your
20 understanding of what risk management -- or I mean -- the manager -- so
21 basically your successor -- would do? And his -- I can't remember if he
22 said that or not, so I'm going to withdraw that question. I don't want to
23 misstate anything to the Court.

24 I don't know if I actually asked that --

25 THE COURT: Well, he said Templer and Demeritt --

1 MR. CLOWARD: Correct.

2 THE COURT: -- is who he would send it to.

3 MR. CLOWARD: Correct.

4 THE COURT: Okay.

5 MR. CLOWARD: But I then asked the question, I thought, of
6 what Connie Dentz, what he thought she would do, and I don't
7 remember --

8 THE COURT: Well, go --

9 MR. CLOWARD: -- if he asked [sic] that.

10 THE COURT: -- ahead and see if he knows.

11 MR. CLOWARD: Yeah.

12 BY MR. CLOWARD:

13 Q You received this from Connie Dentz?

14 A No.

15 Q Who did you receive it from?

16 A Again, I just -- we're talking about a specific communication
17 with a client. So I just want to make sure I'm not waiving any privilege
18 by answering this question; is that --

19 THE COURT: You're not waiving privilege.

20 THE WITNESS: Okay. I received notice of this -- it wasn't an
21 email, it was a phone call from Regina Reyes.

22 BY MR. CLOWARD:

23 Q Okay. And that was the same day?

24 A It was October 30.

25 Q Okay. And when did you notify Snell & Wilmer of this?

1 A Again --

2 THE COURT: Well, it's not asking that -- I don't believe there
3 is any privilege there, but to the extent there is, you're not waiving it.

4 THE WITNESS: Okay.

5 THE COURT: All right?

6 THE WITNESS: The same date. October 30.

7 BY MR. CLOWARD:

8 Q Okay. And who in particular at Snell & Wilmer did you
9 notify? Josh Cools and Vaughn Crawford?

10 A I know Josh Cools. I don't remember if Vaughn was involved
11 or not.

12 Q And that was via email?

13 A I think it was a -- probably a phone call and an email.

14 Q Okay. And this may require speculation, but do you know
15 when and if Snell & Wilmer sent that communication to Mr. --

16 Mr. Roberts, Weinberg Wheeler?

17 A I would have no knowledge of that.

18 Q Okay. Did you ever notify Mr. Roberts of this incident that
19 you can recall?

20 A I know it was discussed.

21 Q Okay. And I don't want to go into the discussions. When
22 were those discussions?

23 A That might be speculating somewhat. I think his firm started
24 in the case around December 2018 or January 2019. So it probably was
25 around there or a little after.

1 Q Okay.

2 MR. CLOWARD: Brandon, if you'll go to page --

3 BY MR. CLOWARD:

4 Q Who made the decision to withhold this information until the
5 judge made his ruling that all death incidents be turned over?

6 A Can you step aside so I can look at Mr. Roberts. I just don't
7 know if this is something I can testify to that or not.

8 MR. ROBERTS: If the Court allows you to answer without
9 waiving the privilege, then I'm okay with it.

10 THE COURT: Right. So go ahead and answer that. I'm
11 assuming, based upon your willingness to let him answer, Mr. Roberts,
12 that it wasn't outside counsel that made the decision? Or you want --
13 just let's --

14 MR. ROBERTS: That --

15 THE COURT: -- see what he says?

16 MR. ROBERTS: It was my understanding outside counsel
17 made the final decision --

18 THE COURT: Oh. All right.

19 MR. ROBERTS: -- to withhold it. I think --

20 THE COURT: Well, let's see --

21 MR. ROBERTS: -- the fact of --

22 THE COURT: -- if he confirms.

23 MR. ROBERTS: -- who made the decision is probably not
24 privileged, but the reasoning or the reason they may have made is
25 privileged.

1 THE COURT: Correct.

2 MR. ROBERTS: So the --

3 THE COURT: So let's go ahead and --

4 MR. ROBERTS: -- the fact of who made it --

5 THE COURT: -- the reasoning --

6 MR. ROBERTS: -- his understanding.

7 THE COURT: -- conveyed with discussions with outside
8 counsel obviously are privileged, but let's find out the facts behind it.

9 MR. CLOWARD: OKAY.

10 BY MR. CLOWARD:

11 Q Let me just simplify the question. Was it Snell & Wilmer that
12 made the decision to withhold this information?

13 A I think it was a collective decision. Ultimately Snell & Wilmer
14 is the one responding to Commissioner Bulla's order. I mean, I guess
15 they would have the final say.

16 Q Okay. But Mr. --

17 A But just to be --

18 Q -- Weinberg Wheeler was also involved in the conversation?

19 A I'm sorry?

20 Q You said it was a --

21 A Let me --

22 Q -- collective discussion.

23 A -- back up -- right. Let me back up for a second. Which -- are
24 you talking about in the time I learned of this or when it was ultimately
25 disclosed? I maybe have misunderstood your question.

1 Q My question was, whose decision was it to withhold this
2 document until the judge specifically ruled that anything involving a
3 death needed to be turned over?

4 A The decision around the time that I learned of it, Mr. Roberts'
5 firm was not involved in the case at that point. So that decision was a
6 collective decision made by outside counsel and Jacuzzi.

7 Q So that was to confirm, because Mr. Roberts had not yet
8 gotten involved in the case, that decision would have been made
9 collectively with Jacuzzi and Snell & Wilmer?

10 A Yeah. There was another attorney that had been -- I
11 discussed this with.

12 Q And who was that?

13 A It's an attorney that's not -- he's not representing anything in
14 this case; he's just an attorney that Jacuzzi has used on other matters.

15 Q May we have the name?

16 A Yeah. I'm trying to think of it.

17 Q Did you seek a formal legal opinion on this issue?

18 A No.

19 Q Okay.

20 A It was in the context of another legal issue that I was
21 consulting with him that it came up. Tim Mullin.

22 Q Tim Mullin?

23 A Yes.

24 Q How do you spell his name?

25 A M-U-L-L-I-N.

1 Q Okay. And then around the time that Mr. Roberts got
2 involved in December, he became made -- aware of this incident and the
3 decision that Snell & Wilmer had made?

4 A Again, I don't know when he went into the specific incident.
5 It was a large file he took over, so I don't know when he learned of this
6 one in particular.

7 Q Okay. Now, I want to be fair to everybody involved. Earlier
8 you testified that it was your understanding that he became aware of this
9 in December -- at the end of December when he got involved or shortly
10 thereafter. And so are you retreating from that position?

11 A No. I don't think I said. I said his firm came into the case
12 around December or January, and he learned of it sometime after that.
13 And I don't recall -- I don't know when he learned of this. I don't recall.

14 Q Okay.

15 A I don't know if he learned of it before I discussed it with him
16 looking through his file material he had obtained, or he learned of it in
17 the discussion with me. I would have no idea.

18 Q Do you have, as you sit here, any specific independent
19 recollection of informing Mr. Roberts and his firm about this particular
20 incident?

21 A Without getting into details of the conversation, I recall
22 discussions around the time of the court's order in February or March of
23 2019.

24 Q Okay. Other than that, are there any other specific
25 discussions that you recall about this particular incident?

1 A Well, leading up to the spring, I remember some
2 conversations. But back in that time frame, no.

3 Q Okay. Now I want to --

4 MR. ROBERTS: And, Your Honor, I don't know if you
5 consider that this is a relevant point of inquiry, but I would also be
6 willing to make available to the Court for in camera inspection the email
7 where Weinberg Wheeler was first alerted to the existence of the Pullen
8 incident.

9 MR. CLOWARD: I think that makes -- that makes sense. We
10 mise well do that --

11 THE COURT: Well, so --

12 MR. CLOWARD: -- just to --

13 THE COURT: -- what do the parties want me to do when I see
14 that document in camera? Do the parties want me to rely upon in it
15 deciding the issues before me or to use it for some other purpose?

16 MR. ROBERTS: Your Honor, the -- I believe the only reason
17 we would provide it is if the Court found it relevant to the issues before
18 you. So if Mr. Cloward is making a claim that my firm willfully withheld
19 in document after gaining knowledge of it, then I can and should address
20 that issue because --

21 MR. CLOWARD: And --

22 THE COURT: So why don't I --

23 MR. ROBERTS: -- because we --

24 THE COURT: Why don't I look at it with that in mind, and if I
25 believe that the opinions of your firm and any issue as to whether your

1 firm acted in bad faith, if I believe that that's an issue in my mind, I'll let
2 you know so you can properly address it.

3 MR. ROBERTS: And for. --

4 MR. CLOWARD: For --

5 MR. ROBERTS: And for the Court and counsel, just the fact,
6 the transmission came on March 6th of 2019.

7 THE COURT: Very good.

8 MR. CLOWARD: Yeah. And, Your Honor --

9 THE COURT: And the -- my minute order is like the 4th,
10 right?

11 MR. ROBERTS: Correct, Your Honor.

12 THE COURT: Yeah. March 4th. I got it. All right.

13 MR. CLOWARD: And we -- the reason I wanted that is that
14 that's what I suspected. Mr. Roberts has been very helpful in getting
15 information and getting us back to track. So I suspected that that was
16 the case. And with the testimony of the -- potentially December or
17 thereafter, I wanted to make sure that was -- that there was a fact
18 supporting that.

19 MR. ROBERTS: I understand.

20 THE COURT: All right. I just want to put on the record, too,
21 that -- from what's before me, I have no reason to believe that Mr.
22 Roberts --

23 MR. CLOWARD: Correct.

24 THE COURT: -- engaged in any bad faith or willful violation
25 of any court order. So that's my position at this point in time.

1 MR. CLOWARD: Understood.

2 THE COURT: All right. Thank you.

3 MR. CLOWARD: Okay. Brandon, if you'll go to Exhibit 188,
4 the declaration of Josh Cools.

5 BY MR. CLOWARD:

6 Q I'm going to shift focus now, Mr. Templer, and we're going to
7 focus on the evolution of the issues with regard to the incidents.

8 MR. BRANDON: 28? 28?

9 MR. CLOWARD: What.

10 MR. BRANDON: Is it 28?

11 MR. CLOWARD: Yeah. Now if you'll scroll down to the
12 declaration of Josh Cools.

13 MR. BRANDON: Okay.

14 MR. CLOWARD: It's page 89, Brandon.

15 THE COURT: All right. That's Exhibit 4 to the document, to
16 the opposition.

17 MR. CLOWARD: Oh. Thank you, Your Honor.

18 MR. CLOWARD: It's Exhibit 4 of the --

19 THE COURT: It's kind of about in the middle of this big, long,
20 document. A little bit past the middle --

21 THE WITNESS: I was going to say, that --

22 THE COURT: -- if that helps.

23 THE WITNESS: -- but there's also another declaration that is
24 Exhibit 28.

25 MR. CLOWARD: Okay. Now if you'll just go to the next page.

005035

005035

1 THE COURT: All right. I see what you're saying. There's two
2 declarations of Mr. -- Mr. Cools.

3 BY MR. CLOWARD:

4 Q Okay. Mr. Templer, you agree that this is a declaration -- a
5 sworn declaration by Jacuzzi's counsel, true?

6 A That's what it appears to be.

7 Q And it indicates that, Jacuzzi has repeatedly told Plaintiffs
8 that it is aware of no personal injury incidents involving the subject
9 bathtub, true?

10 A Yes.

11 Q And it says, this includes conversations with Plaintiffs'
12 counsel as well as written discovery requests on June 19, 2017 and
13 December 8, 2017, correct?

14 A That's what it says.

15 Q All right. Now, you're aware that what spawned the
16 supplement on December 8 was my several conversations with
17 Mr. Cools where we met and conferred and I expressed my disbelief that
18 there were no incidents, and so Jacuzzi agreed to relook, research, and
19 would supplement the discovery?

20 A I don't recall the December -- excuse me -- the December 8,
21 2017 supplement. I'm not disputing what you say; I just don't recall
22 the --

23 Q Okay.

24 MR. CLOWARD: If you'll pull up 176, Brandon, page 624. So
25 if you'll highlight 17 through 27. Can you just move it up just a touch?

1 Thank you.

2 BY MR. CLOWARD:

3 Q Okay. Here, in moving papers, Jacuzzi cites for this Court the
4 first set of interrogatories. And then the next page, he says,

5 Second, after several meet and confer conferences, Jacuzzi's
6 counsel agreed to search for other prior incidents using
7 Plaintiffs' proposed search terms. Plaintiffs were specifically
8 informed that Jacuzzi searched for prior incidents related to
9 the claims asserted in this case, and still had nothing to
10 disclose.

11 Does that refresh your recollection?

12 A By this July 2018, where this opposition that you just referred
13 to was filed, I recall that time frame. I don't recall the December '17 time
14 frame.

15 Q Okay.

16 A I don't recall what happened during that time frame.

17 Q Okay. Well, you agree that in moving papers, Jacuzzi
18 indicated that after the first set of interrogatories, Jacuzzi went back and
19 agreed to search for other prior incidents, right?

20 A Yes.

21 Q Okay.

22 THE COURT: Mr. Cloward, one second. I'm looking at
23 page 6 of the opposition under tab 12. Is that where I'm -- or tab 188. Is
24 that what we're looking at?

25 THE WITNESS: 176 I believe is the --

1 THE COURT: Oh, you moved to 176.

2 MR. CLOWARD: I'm sorry, Judge. Yeah, I moved to 176.

3 THE COURT: I'm trying -- it's just -- it was weird because
4 the -- page 6 of the document under Tab 188 has that same language.
5 So I -- that's why -- where I thought you were. But, anyway --

6 MR. CLOWARD: Understood.

7 THE COURT: All right. Thank you.

8 MR. CLOWARD: You got it.

9 MR. ROBERTS: And, Ben, is this July 12th, 2018? Is that the
10 date of the declarations, since it's not up there?

11 MR. CLOWARD: You can -- yeah.

12 Brandon, if you can pull up the date. But before you do that,
13 hold on though, what I want to establish first --

14 THE COURT: Go ahead.

15 MR. CLOWARD: -- because I don't think you've answered the
16 question, Mr. Templer.

17 BY MR. CLOWARD:

18 Q You agree that in moving papers, Jacuzzi's counsel agreed
19 after several meet and confer conferences, to search for other prior
20 incidents using Plaintiffs' proposed search terms, true?

21 A I can see that's what it says, yes.

22 Q Okay.

23 MR. CLOWARD: Now, Brandon, if you want to go to the
24 declaration. In 176.

25 MR. BRANDON: Where in 176 is it?

1 UNIDENTIFIED SPEAKER: Yes. Correction.

2 MR. CLOWARD: I believe it's page 85. And if you can just
3 scroll down to where we have a date.

4 BY MR. CLOWARD:

5 Q Okay. You see that the date is July 12th, 2018, correct?

6 A Correct.

7 Q All right. And the supplement that Mr. Cools was referring to
8 is Exhibit 174, which were Jacuzzi's amended, raw responses.

9 MR. CLOWARD: So if you'll go to Exhibit 174. Now right
10 there. Stop.

11 BY MR. CLOWARD:

12 Q You mentioned you weren't aware of the December 2017
13 amended responses. You see the top of the document says,
14 electronically served December 8, 2017? Do you see that there?

15 A Yeah. And I didn't say I wasn't aware. I don't recall it.

16 Q Oh.

17 A I'm not disputing that.

18 Q Understood. And you see it says, Defendant Jacuzzi's
19 amended response to Plaintiffs' first set of interrogatories, right?

20 A Correct.

21 Q So as I understand the sequence, Plaintiffs sent
22 interrogatory -- interrogatories. Jacuzzi says, we don't have anything. I
23 have several meet and confer conferences with Mr. Cools. He says, well,
24 we'll go back and look. He goes back and looks, and then he amends the
25 complaint -- amends the interrogatories and again says, we don't have

1 any. Is that your understanding of how that went?

2 A The only -- the reason I'm hesitating is at some time I -- I
3 recall Plaintiffs' claims changing. I don't recall when it was in this time
4 sequence. But I think what you characterize -- and, again, I don't know
5 the conversations you had with Mr. Cools, but I don't have any reason to
6 dispute that those conversations took place.

7 Q Okay. The point that I'm trying to make is, is that Jacuzzi told
8 the Plaintiff that it had looked twice for this information, true?

9 A As I sit here, I don't recall if there was a second search at that
10 time frame. I don't have a reason to dispute there was, but I don't recall
11 that. I recall most of the searches. I don't recall one in late 2017, but
12 there may have been one.

13 Q You certainly wouldn't -- you wouldn't supplement discovery
14 in good faith pursuant to the Rules of Civil Procedure without actually
15 conducting a good faith search, right? You wouldn't just supplement
16 discovery to appease Plaintiffs, get them off your --

17 A Well, if you'll notice, interrogatory number 11 was not
18 supplemented, the response. There's a supplemented response to
19 number 15. And I think the ones that are -- that are supplemented or
20 amended specifically state amended, I believe.

21 Q Again --

22 MR. ROBERTS: Your Honor, I'm going to object to -- I think
23 he's mischaracterized the witness' testimony. He said he didn't
24 remember the first search, and the question implied that he didn't
25 remember the second search done to appease Plaintiff. He does

1 remember --

2 THE COURT: All right.

3 MR. ROBERTS: -- the search done in 2018.

4 THE COURT: This is all before 2018, this -- this -- the
5 amended response is December 8, 2017. So I think -- I think --

6 MR. ROBERTS: Well --

7 THE COURT: -- where Mr. Cloward --

8 Go ahead.

9 MR. ROBERTS: The -- excuse me, Your Honor. The
10 supplement by Mr. Cools representing that they had looked again was
11 July 12th, 2018.

12 THE COURT: Oh, very good. All right.

13 MR. CLOWARD: No.

14 THE COURT: So if that's true, Mr. Cloward, I think that this
15 amended response to the interrogatories that we're looking at now
16 under Tab 174 preceded the -- Mr. Cools' statement that they were going
17 to look again.

18 MR. CLOWARD: No. The --

19 THE COURT: I think that's what Mr. Roberts is saying.

20 MR. CLOWARD: Yes, I agree with that. But the point that I'm
21 trying to make is, is that the use of the declaration is it's laying out the
22 history. In the declaration, he's saying, we looked in May. We served
23 our responses. Me and Cloward had a couple conversations, meet and
24 confers. We agreed to look again. We did look again, and we
25 supplemented our responses. He's -- because we had filed a motion to

1 strike. And so that's --

2 THE COURT: Well, I know the history behind it. I guess if
3 you're going to ask Mr. Templer whether there was a request to look
4 again prior to December '17, can you remind us which document that
5 was?

6 MR. CLOWARD: Yes.

7 THE COURT: I'm trying to follow you. I really am. There's a
8 lot of documentation. So --

9 MR. CLOWARD: I understand. There is.

10 THE COURT: -- I --

11 MR. CLOWARD: Okay.

12 THE COURT: I mean, I can accept -- I understand your
13 argument, let me put it that way. I understand your argument. But it
14 would be helpful to see some documentation where -- you know, where
15 Jacuzzi was asked to look again that preceded December 2017.

16 MR. CLOWARD: The documentation -- okay. Yeah. Go to
17 174, Brandon. And I'm sorry, Brandon. It's going to be 176. 176, page 6.

18 BY MR. CLOWARD:

19 Q Okay. So do you agree that here the court is -- or here
20 Jacuzzi is representing to the court what it stated in its written discovery?
21 Correct? The very stop of the page, Mr. Templer.

22 A Correct.

23 Q And it actually set out interrogatory number 11, and states
24 what the answer is, correct?

25 A Correct.

1 Q And then Jacuzzi says, and it cites to the specific
2 interrogatory request, attached is Exhibit C. Do you see that?

3 A Yes.

4 Q And then Jacuzzi goes on, and it says, second, after several
5 meet and confer conferences, Jacuzzi's counsel agreed to search for
6 other prior incidents using Plaintiffs' proposed search terms.

7 Do you see that?

8 A Yes.

9 Q So Jacuzzi agreed to go back and look for additional issues,
10 correct?

11 A But, again, this is in the spring of 2018, not the December
12 2017 time frame.

13 Q In the declaration he's referring to conversations between
14 Mr. Cools and I, that we had.

15 MR. CLOWARD: I'll produce an affidavit on that issue, Judge.

16 THE COURT: All right.

17 THE WITNESS: My --

18 BY MR. CLOWARD:

19 Q Let me ask you this question --

20 MR. ROBERTS: Does that mean I get to cross-examine him,
21 Your Honor?

22 MR. CLOWARD: Absolutely. I'll -- yeah. 100 percent. Go
23 right ahead.

24 THE COURT: Yeah. So --

25 UNIDENTIFIED SPEAKER: He said yeah.

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1 THE COURT: That declaration of Mr. Cools that was attached
2 as Exhibit E to this interrogatory response, where can I find that? Is that
3 -- oh, here it is. All right. That's under tab 176. Very well.

4 MR. CLOWARD: Okay.

5 THE COURT: I'm following you now.

6 MR. CLOWARD: Thank you.

7 THE COURT: Thank you.

8 BY MR. CLOWARD:

9 Q Okay. Mr. Templer, you agree that attorneys should be able
10 to trust the representations made by their colleagues?

11 MR. ROBERTS: Objection. Argumentative. We'll stipulate to
12 that.

13 MR. CLOWARD: Okay.

14 THE COURT: All right. Very well. So stipulated.

15 BY MR. CLOWARD:

16 Q Mr. Templer, you agree that had we taken Mr. Cools' word
17 for and Jacuzzi's word for the matter that there were no other incidents,
18 that the Plaintiffs' case would be significantly different than it is right
19 now with the stack of additional incidents, correct?

20 MR. ROBERTS: Objection, Your Honor. Improper opinion
21 testimony.

22 THE COURT: Well, the Court obviously can take judicial
23 notice that -- if there's been acceptance and reliance on that statement,
24 then there may have been information that you didn't have for your case.

25 MR. CLOWARD: Okay.

1 THE COURT: Save that for argument though.

2 MR. CLOWARD: Okay.

3 BY MR. CLOWARD:

4 Q Now, let's take a look at the actual search terms.

5 MR. CLOWARD: We're going to go to 188, Brandon.

6 Actually -- yeah, 188. And then again the declaration.

7 THE COURT: All right. For the record, again, we're referring
8 to the first declaration under -- of Mr. Cools under tab 188, correct?

9 MR. CLOWARD: Correct. But --

10 THE COURT: Okay.

11 MR. CLOWARD: -- I think -- it's somewhat confusing,
12 because I think it's actually the same thing. I may be mistaken on that,
13 but I think it's the same declaration. It was just attached to both exhibits
14 of what happened. I could be --

15 THE COURT: Well, it looks to me --

16 MR. CLOWARD: -- mistaken.

17 THE COURT: It looks to me that those declarations are
18 different.

19 MR. CLOWARD: Hmm.

20 THE COURT: But what you have on the screen is page 2 of
21 the first declaration, Mr. Cools, that you come to under tab 188. All
22 right?

23 MR. CLOWARD: Understood. Yeah. Okay.

24 BY MR. CLOWARD:

25 Q So, Mr. Templer, you agree, this declaration, Mr. Cools is

1 telling the court specifically the search terms that the parties had agreed
2 upon, correct?

3 A Correct.

4 MR. CLOWARD: Okay. This is where it is, Judge. It's
5 number 3. I knew I had it in there. It's number 3 --

6 Yeah, it's number 3. Thank you. Thank you.

7 Okay. Here we go.

8 MR. CLOWARD: Throughout the pendency of this litigation,
9 Jacuzzi has repeatedly told Plaintiffs that it is aware of no prior personal
10 injury incidents involving the subject bathtub. This includes
11 conversations with Plaintiffs' counsel as well as written discovery
12 requests on June 19, 2017 and December 8, 2017.

13 THE COURT: I see it. We can continue.

14 MR. CLOWARD: Thank you.

15 All right. Brandon, if you'll go to page 2.

16 BY MR. CLOWARD:

17 Q And Jacuzzi notified the court that it had used these search
18 terms to search its records, including documents electronically retained
19 by the customer service and warranty departments. You agree with that,
20 right?

21 A That's what it states, yes.

22 Q Did Jacuzzi actually perform that search?

23 A Yes.

24 Q And number 7, Jacuzzi's information technology, customer
25 service warranty, and legal Departments helped perform the searches?

1 A That's what it states. And it's a true statement.

2 Q Okay. So who in particular at Jacuzzi participated in these
3 searches?

4 A Myself, this -- the actual searches, I'm not positive who did
5 all of them. Jessica Steele was involved in some. I think Regina. I think
6 there was some other people in our IT department; I just don't remember
7 who it was. I don't recall the name of anybody else. There may have
8 been. I think some people reached out to other people to help them.

9 Q You agree Mr. Bachmeyer --

10 A That -- I don't remember if he was involved at that time
11 frame. I believe I spoke with him. I don't recall if he did any actual
12 search. I may have asked for some clarification on something.

13 Q Well, do you agree that yesterday he testified that he
14 performed some searches?

15 A He did. I think he was referring to a different search than this
16 one.

17 Q Okay. That's your understanding?

18 A Based on his testimony, yes.

19 Q Okay. He indicated that Connie Dentz was involved. Was
20 she involved in this search?

21 A She may have been. I should have included her. She
22 probably was. Connie was absent for a period of time for a medical
23 issue, and I don't recall if that was during this time frame or not.

24 Q Okay. Anyone else that you recall that participated in any
25 searches?

1 A I don't recall anybody else. Oh, wait. I do -- I remember one
2 other person in IT. Bill Lay.

3 Q How do you spell his last name?

4 A L-A-Y.

5 Q And you agree that in this declaration, Jacuzzi told the court
6 and the parties that it had reviewed thousands --

7 MR. CLOWARD: Can you pull this?

8 BY MR. CLOWARD:

9 Q Thousands of results, correct?

10 A Correct.

11 Q And that none of them were relevant to this case, true?

12 A That's what it states, yes.

13 Q All right. Now, yesterday Mr. Bachmeyer indicated he was
14 copied on those results and he testified that he reviewed the results, and
15 he testified that he saw results that had people slipping and falling and
16 injuring themselves. Do you recall that testimony?

17 A Yes. But, again, that's why I think he was referring to a
18 different search.

19 Q Okay. Well, he testified he was involved in this search during
20 this time. And so what I'm going to ask is that the email that was
21 produced and circulated to Mr. Bachmeyer be reduced to the Court for in
22 camera review of what the searches were so that the Court can look at
23 the searches to determine what was in there and whether there was
24 anything in there that should have been turned over to the parties.

25 A From this search?

1 Q Yeah.

2 THE COURT: Do you have such document --

3 THE WITNESS: Well, the --

4 THE COURT: -- communicating to Mr. Bachmeyer to have
5 some involvement in the search for these documents?

6 THE WITNESS: I don't recall if I did with Mr. Bachmeyer at
7 this time. I may have. All of the documents that we came -- that came
8 back from the search were submitted to Commissioner Bulla.

9 THE COURT: Uh-huh.

10 MR. ROBERTS: And, Your Honor, I'm going to object to the
11 form of the question. It mischaracterizes Mr. Bachmeyer's testimony. If
12 you'll recall, there was a board with the 20 search terms on it, and
13 although Mr. Bachmeyer testified the inward opening door, a short list,
14 injure, hurt, pain, he mentioned hate was one of the responsive
15 documents, but when showed the 20 search terms that are being
16 referred to now, he said the only one would have been door when I did
17 inward opening --

18 THE COURT: What's your --

19 MR. ROBERTS: -- inward and outward and --

20 THE COURT: -- objection rather than arguing your case now,
21 Mr. -- Mr. Roberts?

22 MR. ROBERTS: Because in his question, he said, Mr.
23 Bachmeyer testified that he searched these 20 terms.

24 THE COURT: Okay.

25 MR. ROBERTS: That mischaracterizes the record and the

1 testimony.

2 THE COURT: But he searched some terms, but we just don't
3 know --

4 MR. ROBERTS: But not these 20, Your Honor. That's not
5 what the record will show.

6 THE COURT: You're correct on that. All right.

7 MR. ROBERTS: Thank you, Your Honor.

8 THE COURT: So --

9 MR. CLOWARD: The record will show that he searched 7, 12,
10 13, 14, 15, and 16.

11 THE COURT: Whatever it shows.

12 MR. CLOWARD: He testified to that.

13 THE COURT: Let's stick to --

14 MR. CLOWARD: Okay.

15 THE COURT: -- without argument and asking the witness
16 questions.

17 MR. CLOWARD: Understood.

18 THE COURT: I do have my notes, all right --

19 MR. CLOWARD: Understood.

20 MR. ROBERTS: -- that Bachmeyer did two searches, one
21 back in May of 2017, and I had another one in July 2018, which is right
22 around the time of this affidavit. And he used some search terms. He
23 was using the warranty database, and it may or may not have included --
24 he may or may not have been doing that work pursuant to email
25 instructions, because we don't have any document to that effect.

1 MR. CLOWARD: Understood.

2 THE COURT: All right?

3 MR. CLOWARD: And --

4 MR. ROBERTS: Thank you.

5 THE COURT: And you don't know -- Mr. Templer, you don't
6 know if such email exists, correct?

7 THE WITNESS: In --

8 MR. CLOWARD: Well --

9 THE WITNESS: For these --

10 MR. CLOWARD: Well --

11 THE WITNESS: -- words?

12 THE COURT: Well, I'll tell you what --

13 MR. CLOWARD: Let --

14 THE COURT: -- we'll let Mr. Cloward ask --

15 MR. CLOWARD: Okay.

16 THE COURT: -- these follow-up questions.

17 MR. CLOWARD: Thank you.

18 THE COURT: All right.

19 MR. CLOWARD: My specific request to the Court is, is that
20 the emails that Mr. Bachmeyer -- and Mr. Bachmeyer had a very clear
21 recollection -- and it was actually to Mr. Roberts' questioning -- he said,
22 did you open the email? Did you look at the results? And he said, yes, I
23 did.

24 THE COURT: Uh-huh.

25 MR. CLOWARD: And then I got up and said, what did the

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

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 --

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 --

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

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

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

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

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 -- I'm, 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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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,

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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

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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.

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

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

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.

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

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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

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

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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 --

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.

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

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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

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

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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

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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

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?

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 --

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.

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.

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?

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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 bates 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:

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[Counsel confer]

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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 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.

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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

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.

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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.

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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.

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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.

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 --

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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.

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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.

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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?

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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

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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?

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.

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.

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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

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:

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

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

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?

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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

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.

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

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.

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.

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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.

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.

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 --

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,

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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.

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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.

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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 --

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.

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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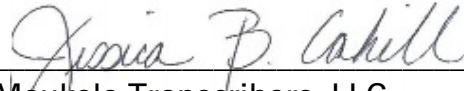
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23

24 
Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

25

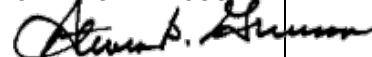
EXHIBIT 203

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EXHIBIT 203

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4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 ROBERT ANSARA, ET AL.,

CASE#: A-16-731244-C

8 Plaintiffs,

DEPT. II

9 vs.

10 FIRST STREET FOR BOOMERS &
11 BEYOND INC., ET AL.,

12 Defendants.

13 BEFORE THE HONORABLE RICHARD F. SCOTTI
14 DISTRICT COURT JUDGE
15 WEDNESDAY, SEPTEMBER 18, 2019

16 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 3**

17 APPEARANCES:

18 For the Plaintiffs:

BENJAMIN P. CLOWARD, ESQ.
CHARLES H. ALLEN, ESQ.
IAN C. ESTRADA, ESQ.

20 For Defendant First Street
21 for Boomers & Beyond Inc:

DAN POLSENBERG, ESQ.
MEGHAN M. GOODWIN, ESQ.
PHILIP GOODHART, ESQ.

22 For Defendants:

23 D. LEE ROBERTS, JR., ESQ.
BRITTANY M. LLEWELLYN, ESQ.
24 JOEL HENRIOD, ESQ.

25 RECORDED BY: DALYNE EASLEY, COURT RECORDER

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None

1 Las Vegas, Nevada, Wednesday, September 18, 2019

2

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

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

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?

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

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.