

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.

**PETITIONER'S APPENDIX
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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 Q Okay.

2 A I've never met Mr. Koos.

3 Q Okay.

4 MR. CLOWARD: I'm going to just for the Court's, I guess,
5 and I took home my easels not thinking I would need them again. But I
6 just wanted to -- I prepared this to assist the Court.

7 THE WITNESS: If you set it front of the podium, I'd be fine.

8 THE COURT: Show counsel first.

9 MR. CLOWARD: It's just a demonstrative. This is just to
10 assist the Court in understanding who the folks that we just referenced
11 were.

12 THE COURT: Pictures and titles of people?

13 MR. CLOWARD: Correct.

14 BY MR. CLOWARD:

15 Q You agree that this would be Bob Rowan. I guess what is
16 Bob Rowan's position? What was it around 2013 --

17 A It was --

18 Q -- '14?

19 A I'm sorry. It was CEO and he may have been president of
20 some entities. I think he was, I don't recall which specific entities he was
21 president of.

22 Q Okay. And then Tom Koos, he wasn't there at the time that
23 you were there. But what was your understanding, his position within
24 Jacuzzi?

25 A My understanding was he was the CEO. But again, I wasn't

1 there. So that's a little bit speculation on that.

2 Q Understood. And then Joseph Davis, what was his position
3 around 2014, '15?

4 A President of Jacuzzi Luxury Bath, although from here, I don't
5 think that picture is Joey Davis. I can't see that picture very well, but I
6 am fairly confident from here, it's not Joey Davis. If you want to get it
7 closer to me, I can give you a definite, but I just can't.

8 Q Sure. It was on his LinkedIn profile. So I'd presume it's
9 accurate, but maybe not.

10 A No, that's not Joey.

11 Q Okay. But what was Joey's position for the Court?

12 A President of Jacuzzi Luxury Bath.

13 Q Okay. And then you agree that Mr. Bachmeyer testified, and
14 it was your understanding that his position was director of customer
15 service?

16 A At what time?

17 Q In 2013, 2014.

18 A Around there. I don't know exactly what years he changed
19 out of that position.

20 Q Okay. And then Audrey Martinez, you agree that she was
21 kind of the marketing manager liaison for First Street Jacuzzi
22 Partnership?

23 A That wasn't her -- it wasn't -- I don't think -- it was marketing
24 manager, I don't think it was Jacuzzi First Street Partnership, but I don't
25 know the exact title.

1 Q Okay. You agree that Audrey spent the majority of her time
2 working on issues with regard to First Street and aging in the home,
3 correct?

4 A Yes.

5 Q Okay.

6 A I don't think that's my picture either.

7 Q I think it is. Take a look.

8 A I can't see from here.

9 Q I think it's an older one of you. That you?

10 A It's absolutely not me.

11 Q Are you sure?

12 A Yes, I know who that is and it's not me.

13 Q Well, it was on your LinkedIn profile.

14 A I don't have a picture on my LinkedIn profile. It's a friend of
15 mine on LinkedIn.

16 Q Oh. Maybe he tagged you. Maybe that's where it came
17 from. Who is this individual?

18 A Thomas Well [phonetic].

19 Q Okay. In any case, so let's pretend like your photograph is
20 there. What is your position one more time for the record?

21 A That is my position that's stated there. Senior corporate
22 counsel of Jacuzzi Group Worldwide as a DBA of Jacuzzi Brands.

23 Q Okay. And then who is this gentleman right here?

24 A Bill Demeritt.

25 Q And what is his position?

1 A He holds officer titles of the few companies. I know one of
2 which is Jacuzzi Inc., DBA Jacuzzi Luxury Bath. And he is vice president
3 and I believe risk manager.

4 Q Okay. Thank you.

5 A The director of risk management I think it is.

6 Q Okay, thank you. And you also mentioned advertising issues
7 during the deposition of Audrey Martinez, this wasn't during her live
8 testimony, but during her deposition testimony, she indicated that if
9 there were specific claims that were going to be made that were outside
10 of her wheelhouse, she would forward those to you and the legal team
11 for approval; is that fair?

12 A I did receive some. I don't know if she sent them to others
13 on the legal department. But communicated a lot of me on those types
14 of issues.

15 Q Okay. So that was something I guess that was part of your
16 responsibility, your role and responsibility?

17 A Again, it's a jack of all trades and that was one of the things
18 that people have come to me on occasion.

19 Q Okay. All right. Now where we finished last time is we were
20 just about to go through some of the incidents. But I guess to kind of
21 refresh everyone's recollection of where we were at, my question was,
22 you agree that until I believe the Court's order in March of 2019, Jacuzzi
23 had only produced, I believe, 14 complaints of other similar incidents.
24 And of those 14, one was the *Cunnison* case, which we're litigating. One
25 was the *Smith* case, which I represent. One was the Chopper incident

1 that I believe I found an inadvertent disclosure of documents and one
2 was a CPSC incident that Mr. Charles Allen found involving Ruth
3 Curnutte. Is that your understanding?

4 MR. ROBERTS: Objection to form as to inadvertent
5 disclosure of documents. Assumes facts not in evidence. And counsel --

6 THE COURT: I think there were some issues with that
7 question. But setting aside the characterization of some of the events,
8 bottom line is you're looking into whether the matters produced in
9 March 2019 were those four matters, right?

10 MR. CLOWARD: Correct. In addition to the 10 that were
11 produced pursuant to Commissioner Bullas' ruling.

12 THE COURT: Right. Okay. So granted in part, sustained in
13 part. All right. Let's continue.

14 MR. CLOWARD: Thank you.

15 THE WITNESS: I don't recall numbers. I think it was around
16 that number. I think I saw somewhere reference to 11 produced in
17 response to Commissioner Bullas' order. But I don't recall specific
18 names of people that made a complaint of personal injury or death at
19 that time.

20 BY MR. CLOWARD:

21 Q Okay. Okay. You agree that at that time, Jacuzzi had not
22 produced a single prior incident?

23 A Without having them in front of me, I don't remember.
24 That's possible.

25 Q Okay, so let's just walk through. If you want to take the

1 binder there. We're going to look at Volume I of the binder. We're going
2 to go to Tab 8. And before we go to that, can you just refresh our
3 recollection again as to what you Jacuzzi's understanding of its
4 discovery obligations pursuant to the commissioner's various rulings?

5 MR. ROBERTS: Objection. Compound.

6 BY MR. CLOWARD:

7 Q Let's say the first --

8 MR. CLOWARD: I'm sorry, Your Honor. I'm sorry.

9 THE COURT: Let's rephrase.

10 MR. CLOWARD: Thank you. That's what I was -- I'm sorry. I
11 should have requested the Court's permission to do so.

12 BY MR. CLOWARD:

13 Q Let's focus on that first discovery commissioner report and
14 recommendation, okay? In mid-2018, what was Jacuzzi's understanding
15 of its discovery obligation at that time?

16 A If I recall the orders correctly and in the right order, that's the
17 one that Jacuzzi was to disclose matters of serious personal injury or
18 death involving a walk-in tub.

19 Q So serious injury or death?

20 A That's my recollection.

21 Q And then you agree that the scope of that expanded or
22 broadened?

23 A Can you give me some -- because my recollection is
24 Commissioner Bulla did not expand that.

25 Q Okay. I think we've gone over that in the hearings that it was

1 expanded to just injury or death. If you need me to pull the transcripts
2 from yesterday --

3 A Again, I've never read the transcripts until you put them
4 before me.

5 Q Okay. I guess --

6 A I'm way off what I remember reading in an order.

7 Q Okay. So when -- just so that we have a clear understanding
8 of the Jacuzzi's understanding the timeline, when was it that Jacuzzi
9 understood that the order of Commissioner Bulla was expanded to just
10 injury or death?

11 A Again, I don't recall being informed of that. It's my
12 recollection is the order did not -- it said significant personal injury or
13 death is my recollection.

14 Q Okay. Does Jacuzzi have any recollection of that order ever
15 at any point being expanded by any anyone?

16 A Just that portion of the order?

17 Q Yeah.

18 A I don't recall that order being changed. I recall subsequent
19 orders by Judge -- by this Court.

20 Q Okay. Did you ever actually read the writ that Jacuzzi filed,
21 or Jacuzzi's attorneys filed?

22 A I reviewed a draft of it. I don't recall if I reviewed the final
23 version.

24 Q Okay.

25 MR. CLOWARD: Brandon, could we pull up the writ? Sorry, I

1 know that's a little out of order.

2 BY MR. CLOWARD:

3 Q I believe we want to start page 3. Maybe if you just thumb
4 through the pages just one by one.

5 A I'm sorry, this is 185?

6 MR. CLOWARD: Is it 185? Exhibit 185, Ian, do you know?

7 MR. ESTRADA: Yes.

8 MR. CLOWARD: It is?

9 BY MR. CLOWARD:

10 Q Yes. 185.

11 A Thank you.

12 Q Okay. Now, if you'll follow with me, we're going to start on
13 line 1. Excuse me. It's on line -- but the paragraph at the bottom. It
14 says, to date, Jacuzzi has identified and produced to Plaintiffs all of the
15 evidence in Jacuzzi's possession of other prior and subsequent incidents
16 of alleged bodily injury or death related to the Jacuzzi tub in question.

17 Jacuzzi, when they told the Supreme Court that it turned over
18 documents, you agree with me that Jacuzzi told the Supreme Court of
19 Nevada that it had turned over all prior and subsequent incidents of
20 alleged bodily injury, true?

21 A That's what this says, yes.

22 Q And that was not limited to serious bodily injury, true?

23 A Yeah. That does not appear.

24 Q Okay. And then the next line, Jacuzzi says, notwithstanding
25 that broad disclosure, Plaintiff sought and obtained an order compelling

1 Jacuzzi to also produce all prior or subsequent incidents of any alleged
2 bodily injury related to any Jacuzzi walk-in tub.

3 You agree that at that moment Jacuzzi is telling the Supreme Court
4 of Nevada that the Plaintiffs had obtained an order compelling Jacuzzi to
5 turn over incidents of any alleged bodily injury related to any Jacuzzi
6 walk-in tub, true?

7 A That's what this says. Again, I don't -- it may have expanded
8 to taking out the serious bodily injury at some point. I don't -- this is a
9 year later. I don't recall that, but it certainly could have.

10 Q Understood. You agree that the writ was filed in December
11 of 2018, right?

12 A That sounds about right. I don't recall the date it was filed.
13 I'm looking for it in here, but that sounds about right.

14 Q Okay. And again, even though Jacuzzi objected to the
15 broader order of any alleged injury and any walk-in tub, Jacuzzi is telling
16 the Supreme Court it nonetheless complied, producing evidence of all
17 prior and subsequent incidents, even if minor, true?

18 A Are you asking me if that's what it says, or what are you
19 asking me?

20 Q Did I read that correctly?

21 A Yes.

22 Q Okay. All right. So let's go through some of the binder.
23 Start with tab 8. And we're not going to go through the entirety of the
24 binders, we're just going to focus on a few. So we won't belabor the
25 point.

1 But on tab 8, page Jacuzzi 005369, you agree with me that this
2 customer is indicating that he slipped and fell, he hurt his back, he wants
3 the tub removed and he's threatening to get a lawyer, correct?

4 A That's what appears he told our customer service.

5 Q Okay. Now, if you'll go to the tab 10 Jacuzzi 6854. Bottom
6 right hand corner.

7 MR. CLOWARD: And for the record, this is user Regina
8 Reyes, an entry that she made.

9 BY MR. CLOWARD:

10 Q She indicates that, agent did mention that Mr. Greenwell said
11 he slipped and fell in his tub and he had to call the fire department to get
12 him out, correct?

13 A That's what it says, yes.

14 Q Okay. Now we go to tab 11. Jacuzzi 5320. This is an email
15 from Andrea Dorman that was forwarded along Mr. Bachmeyer, who
16 indicated he would have forwarded this type of thing to you.

17 And Ms. Dorman says that Mr. Flashberger has slipped. His
18 friend has slipped. We get this complaint a lot. We have two customers
19 right now that have injured themselves seriously and are threatening
20 lawsuits, true? Did I read that correctly?

21 A I'm sorry. I was trying to find the portion to read as you were
22 talking. It sounded about right. It may have been off one or two words,
23 but the subject matter what you said was correct.

24 Q Okay. And then she also indicates that she has sent out
25 bathmats to put in the tub to three other customers because they slipped

1 and were afraid to use the tub, true?

2 A You're referring to Andrea Dorman of Home Safety Baths?

3 Q Yes.

4 A Yes. That's what the email says.

5 Q Next, if you'll go to 35. Jacuzzi 005315. Ms. Barrows
6 [phonetic] slipped in her tub and hit her arm on the grab bar. Oh, I'm
7 sorry, Mr. Templer. I didn't know you weren't there yet.

8 A I'm there.

9 Q Okay. You agree that this individual expressed that she
10 slipped in her tub and hit her arm on the grab bar, true?

11 A That's what the email says --

12 Q Okay.

13 A -- from Asley Davidson.

14 Q And she was requesting that something be done. She was
15 requesting a mat to be put in the bottom of the tub so that it's not so
16 slippery, correct?

17 A That's what the email states.

18 Q Tab 41. This is an email from Regina Reyes to Audrey
19 Martinez and Kurt Bachmeyer. And the third sentence, she says, there is
20 another email trail going around that Megan is going to be adding you to
21 the distribution list. We have a big issue and we are only pointing finger
22 per se. But due to the circumstances involved with timeline and slip
23 injuries, plural, this needs to be settled. So I'm keeping you in the loop.
24 Did I read that correctly?

25 A That's what the document states.

1 Q Okay. Do you know what this big issue that Ms. Reyes was
2 referring about?

3 A I don't.

4 Q Do you know what these injuries, these slip injuries that Ms.
5 Reyes was talking about?

6 A It'd be speculation on my part.

7 Q Okay. And do you know about the timeline with regard to
8 these slip injuries that she's talking about?

9 A Be speculation on my part.

10 Q Tab 45. You agree that this Salesforce document indicates
11 that the customer fell in the tub, got stuck and hurt her back, true?

12 A It's confusing. It also refers to a slipper getting stuck. So I'm
13 not sure exactly what it's saying here. But it does appear that somehow
14 the customer fell and hurt her back. Got stuck and hurt her back.

15 Q Okay. If you go to 49-B, page Jacuzzi 005489. My sight must
16 be wrong because that's --

17 A I don't have that page.

18 Q Yeah. I'm sorry. I must have -- let's go to 005345. I
19 apologize. You agree here that the voice message that was received
20 indicated that this is a man who has been injured in his tub, true?

21 A No. It says it's a lady.

22 Q Well, actually, if you follow along with me, I think the
23 voicemail was from a lady named Shannon talking about a man. So she
24 says, hey, --

25 A Oh, I see what you're saying. Okay. I understand.

1 Q Okay. So you agree that this call is about a man who has
2 been injured in his tub, true?

3 A That's what it states.

4 Q And then if you flip toward the front at 5342, you see that the
5 person referenced as Mr. Kinser and he slips off the seat when in the tub
6 and slips on the floor when getting out, true?

7 A I see what -- that's in this email. I don't know if this email
8 and that prior one we were just talking about are the same person or not.

9 Q Okay.

10 A I haven't looked at these documents thoroughly.

11 Q Well, why don't you take one moment, Mr. Templer, and just
12 confirm that? If you look at 5345 and then 5344 and 5343 and then 5342
13 and then 5341, we actually show the chain from where the call came in
14 and how it made its way to First Street Aging in the Home. And then
15 how it made its way to Jacuzzi.

16 A In looking through these, that seems to be the case. I'm not
17 having firsthand knowledge of this. I'm just going off what's in the
18 documents.

19 Q Okay. And then tab 52-B. Are you there?

20 A Yes. I'm here.

21 Q And in particular on page Jacuzzi 005732. Are you there?

22 A Yes.

23 Q Okay. You agree that this caller's wife was going to stand.
24 She used the bar to brace herself, but her feet slid out, causing her to
25 fall, correct?

005263

005263

1 A That's what this report states.

2 Q And that on the fourth line, she sustained minor injuries
3 including left foot and left knee bruising and then back and tailbone
4 bruising and pain, true?

5 A Again, that's what -- I don't have any firsthand information.
6 That's what this states.

7 Q And is it your understanding that this document is a
8 Consumer Product Safety Commission document?

9 A It appears to be a document, the type of document that is
10 sent out by the, I guess would be the CPSC. The only reason I'm
11 hesitating, they have a website called SaferProducts.gov. But I think that
12 is still the CPSC's website.

13 Q Okay. And you agree that Mr. Demeritt testified, you were
14 there at his deposition that he receives emails anytime somebody makes
15 a CPSC complaint, true?

16 A I don't recall what he testified.

17 Q Okay.

18 A I recall there was discussion about CPSC issues at his
19 deposition, but I don't recall the specifics.

20 Q Okay. One moment.

21 A I don't know if it'll help. I will say that I am aware that he
22 does receive some CPSC notifications on some companies and he
23 doesn't on others. I don't recall which he receives them on.

24 Q Okay. You wouldn't disagree, though, if he testified at the
25 deposition in his capacity as the Rule 30(b)(6) designee, if he said, yeah, I

1 receive CPSC emails for the walk-in, tub. You wouldn't disagree with
2 that, would you?

3 MR. ROBERTS: Objection to that. This is beyond the scope
4 of the 30(b)(6) notice, just to preserve the record, Your Honor.

5 THE COURT: Overruled. If you know. Don't speculate. I
6 mean, if -- he's asking you if you have any reason to dispute it. If you
7 don't know one way or another, you can say --

8 THE WITNESS: Yeah, that's what I would say. I don't know
9 one way or another. As I said, he does receive notices on some
10 companies. He may be on the bath notices, I just don't recall as I sit
11 here.

12 BY MR. CLOWARD:

13 Q Okay. Now those are entries where specifically the
14 individuals told Jacuzzi that they were harmed and hurt and had specific,
15 very specific injuries. Do you recall the marketing literature that we
16 covered with Mr. Bachmeyer about how many people slip and fall in the
17 bathroom that's used in the marketing literature?

18 A Are you talking about at his deposition or here in court?

19 Q Here in court.

20 A I remember a document he put up, but I don't remember if
21 that was the marketing. I remember a document that had the Jacuzzi
22 logo up in the left hand corner. I didn't have it in front of me, so I was
23 just trying to read at a pretty steep angle to the screen right here. So I
24 didn't -- I couldn't read it in any detail.

25 Q Okay.

1 A But I remember you talking about something like that.

2 Q Okay. And you agreed that the reason that Jacuzzi marketed
3 and created this tub and it's called designed for seniors, is to market and
4 sell to the elderly, right?

5 A I think that question assumes some stuff that's not accurate.
6 Designed for seniors is not a Jacuzzi name, one, and that document you
7 showed is not a Jacuzzi document.

8 Q Sir, you agree that the trademark that was obtained by First
9 Street to market this tub was, designed for seniors?

10 A That's my understanding.

11 MR. ROBERTS: Objection, Your Honor. Foundation.

12 THE COURT: Sustained. Got to lay some foundation that he
13 would have reason to know about the trademark, and why, and how it
14 was designed and if it was designed for seniors.

15 MR. CLOWARD: Okay.

16 BY MR. CLOWARD:

17 Q Mr. Templer, as part of your position, you mentioned that
18 you review marketing claims, true? And what the parties are telling
19 folks.

20 A Some, yes.

21 Q Okay. And if First Street obtained a trademark, designed for
22 seniors, you would have been involved in the decision making as to
23 whether that joint marketing of a Jacuzzi product could, in fact, take
24 place, right?

25 A No, because I wasn't with the company when that decision

1 was made.

2 Q Okay. Did you know that this product was called the design
3 for seniors?

4 A I don't think the product was called design for seniors. I'm
5 aware that it has either in the marketing or the tub itself, I don't recall
6 which or both, does have that that trademark.

7 Q Okay, so you're aware of that. How are you aware that?

8 A Just in dealing with the First Street documents and First
9 Street and just generally dealing with the walk-in tubs.

10 Q Okay. And Mr. Templer, isn't it true that the manufacturing
11 agreement between the parties actually contains design for seniors in
12 the manufacturing agreement itself?

13 A I can't say 100 percent certainty --

14 MR. ROBERTS: Objection, Your Honor. Relevance. And not
15 discovery hearing. This is in-house counsel who's been ordered to
16 appear for a very limited purpose, who would not normally be subject to
17 deposition, and who the discovery commissioner previously protected
18 from deposition. I don't understand the relevance with any of this to the
19 issue before the Court.

20 THE COURT: do you join?

21 MR. GOODHART: I join that. If I might add, Your Honor. The
22 whole design for seniors tagline was discussed during the deposition or
23 First Street's 30(b)(6) was Dave Bodine [phonetic]. And quite frankly
24 what Mr. Cloward is doing it is misrepresenting to this Court the
25 meaning of that tagline and the purpose of the tagline.

1 MR. CLOWARD: Woah. Woah. Woah.

2 THE COURT: Can't be misrepresenting. He's asking
3 questions. So let's --

4 MR. GOODHART: He's inferring that this tagline was
5 developed and designed specifically for this tub, which it was not.

6 THE COURT: All right. I mean, you're not here testifying.

7 MR. CLOWARD: Yeah.

8 MR. GOODHART: I understand that. And he went through
9 this or Mr. Allen went through this as well --

10 THE COURT: Okay.

11 MR. GOODHART: -- during Mr. Bodine's deposition.

12 THE COURT: All right. Anything else?

13 MR. GOODHART: No, Your Honor.

14 THE COURT: Your objection is noted as relevance, counsel.

15 MR. CLOWARD: Relevance I was just trying to lay the
16 foundation. I mean, he's already testified he knows what it was. I was
17 just laying additional foundation. But I can withdraw the question. I
18 think I laid the foundation. He says that he knows about the trademark
19 and how he knows about it.

20 THE COURT: Right. He knows about the trademark.

21 MR. CLOWARD: Correct.

22 THE COURT: And he knows that it's in some document that
23 he's seen. He doesn't know if it was the marketing material or some
24 other document, but he's aware of the trademark.

25 If there's any further questioning about the marketing

1 material, then he is testifying based in his individual capacity and not as
2 a representative of the company.

3 MR. CLOWARD: Understood, Your Honor.

4 THE COURT: All right. All right.

5 MR. CLOWARD: Okay.

6 THE COURT: Let's go forward.

7 MR. CLOWARD: You got it, Judge. And I'll move very
8 quickly forward with this.

9 BY MR. CLOWARD:

10 Q Mr. Templer, the whole purpose of that discussion was to
11 just point out that Jacuzzi was aware of the potential of injury if
12 somebody fell in the bathroom?

13 A I guess I'm not connecting the question with what you're
14 asking. If you're just asking me if the company is aware that people can
15 be injured in a bathroom? Yes.

16 Q From a fall?

17 A Yes.

18 Q Okay. So let's turn to tab 47. In particular, 5722. Okay. Y

19 A I have it in front of me.

20 Q Okay. You agree at the top here it indicates that the
21 customer slipped and fell in the tub, true?

22 A It says RP customer. So I'm just not sure what the RP is. If
23 that should be a space there. If it's reporting customer. I don't know.
24 Other than that, yes. I would agree with your statement.

25 Q Okay. Did you Jacuzzi take any steps to determine whether

1 when this individual who indicates that she has neuropathy and didn't
2 have the hand strength to push the buttons or turn the knob to drain the
3 tub, did Jacuzzi take any steps to ascertain whether this person was
4 injured when she said she slipped and fell in the tub?

5 A I'm sorry. I'm going to have to read the rest of --

6 MR. ROBERTS: Objection. Foundation.

7 THE WITNESS: I wouldn't know anything --

8 THE COURT: Sustained. All he can speak to is what's written
9 here unless you establish that he has some other --

10 MR. CLOWARD: Okay.

11 THE COURT: -- independent recollection of this event and
12 communication.

13 MR. CLOWARD: Okay.

14 BY MR. CLOWARD:

15 Q Mr. Templer, as I understand, all of the searches that were
16 performed and obtained were reviewed by yourself and Mr. Cools, true?

17 A As far as I know, that'd be accurate.

18 Q Okay. So when you and Mr. Cools were reviewing all
19 documents that you represented to the Supreme Court of Nevada that
20 had been turned over, when you came to this document and you saw
21 that this customer slipped and fell in the tub, what steps, if any, did
22 Jacuzzi take to ascertain whether this individual was injured?

23 MR. ROBERTS: Objection to form. Compound. Assumes he
24 reviewed the documents with Mr. Cools at the same and is inquiring into
25 what Mr. Cools did and what review he did.

1 THE COURT: So that's sustained in part. Break your
2 question up so we can deal first with what he independently did when he
3 received -- when he reviewed this document. Right. Not what Jacuzzi, in
4 a broad sense did and not what Mr. Cools did and not whether they did it
5 together.

6 MR. CLOWARD: Okay.

7 THE COURT: So break it up.

8 MR. CLOWARD: You got it, Judge.

9 THE COURT: Thanks.

10 BY MR. CLOWARD:

11 Q When you reviewed documents, was that together with Mr.
12 Cools at the same time?

13 A You mean sitting in the same room together?

14 Q Yes.

15 A No.

16 Q Okay. How was the review performed?

17 A And there's a lot of different reviews, so I don't know if
18 there's one specific way it was done, but in general I would get the
19 results and try to filter through them to weed out stuff that was clearly
20 not related to this case. Didn't involve a walk-in tub or whatever the
21 criteria would be. It just was clearly not related.

22 And then there is I try to -- some of the results that popped up
23 needed more investigations. Frankly, we couldn't tell whether they
24 involved a walk-in tub and other details regarding the report. And then
25 some stuff was forwarded to counsel for review and input.

1 Q So you did the first review and then outside counsel did a
2 second review?

3 A On some, not all. Some of them I -- some of the stuff was
4 forwarded in bulk to outside counsel and I did not review it.

5 Q Okay.

6 A So that's why I say, there wasn't one specific way it was
7 done in all situations.

8 Q Okay. Well, were there occasions when Jacuzzi or outside
9 counsel to your to your knowledge that was communicated? Not getting
10 into the substance, but were there times where there was follow up on a
11 particular incident?

12 A We follow up by --

13 Q Follow up by you or follow up by them asking for more
14 information, whatever the case may be, follow up that, hey, this person
15 fell. We need to find out if she was injured.

16 A If you're asking on that type of follow up -- I guess it depends
17 how you call follow up. If I got something that I couldn't tell if the person
18 that reported have any pain or being injured, I would follow up with
19 people in the company or do my own research to figure out if we had
20 that information in the company.

21 If you're asking if we'd reached out to this individual to ask, that
22 was not done.

23 Q Okay. So did you --

24 A Or not this individual, but any individual.

25 Q So who did you follow up with on this incident to determine

1 whether this person was or was not hurt when they fell in the tub?

2 A I don't know that there was follow up on this. This was not --
3 by the bottom of this, this wasn't printed until July of 2019, which was
4 seven months after the writ was filed. I don't know if there was follow
5 up on this.

6 Q Okay. Go to tab 49-A.

7 A Let me back up. I don't know the date it was produced.
8 That's the date it was printed.

9 Q Can you go to tab 49-A?

10 A I have it in front of me.

11 Q This indicates that Mr. Horn fell in the tub. Did you do any
12 follow up on this to determine whether Mr. Horn received injuries when
13 he fell in the tub?

14 A Again, I don't know when this -- two things, I don't know
15 when this was located, one. And two, if you asked me if I -- there would
16 have in my knowledge, no contact with Mr. Horn.

17 Whether there was follow up in other areas of the company, to see
18 if we had additional information on Mr. Horn, which I suspect it looks like
19 you have some other salesforce documents here regarding Mr. Horn.
20 Those would have been reviewed to see if we had more detail probably.

21 But again, I don't recall specifically what was done with Mr. Horn.

22 Q And on page 5878, the third line down.

23 A And under which section?

24 Q In the -- it just says Charles Horn. It's Jacuzzi 005878.

25 A End of the activity history?

1 Q Yeah.

2 A Okay.

3 Q Was there any follow up to determine whether he actually
4 was going to take Jacuzzi to court?

5 A I don't know.

6 Q Now, Tab 93 will be next. You agree that this individual
7 indicated he slipped in the tub and broke the hand-held sprayer, true?

8 A That appears to be what he reported.

9 Q Did Jacuzzi or did you do anything to determine whether he
10 broke that with an actual body part or how that was -- the tub handle was
11 broken?

12 A I don't recall specifically what was done in regard to this,
13 other than I suspect all the Salesforce documents regarding Mr. Bear
14 [phonetic] would have been looked through. And I don't know if that's
15 somewhere else in these documents or not.

16 Q Okay. tab 94.

17 A I have it in front of me.

18 Q Mr. Thwaites [phonetic] indicates that the tub is slippery, and
19 he falls. Was there any follow up by you as to whether he received
20 injury when he falls?

21 A Follow-up you mean with Mr. Thwaites or follow-up in
22 regard to reviewing additional information?

23 A Any follow up at all? So that would be including -- when I
24 say follow up, I mean talking to a consumer or customer. However,
25 Jacuzzi defines that. Or following up with somebody else within Jacuzzi.

1 Q I don't think I ever had any contact with Mr. Thwaites. And
2 again, the reviewing the salesforce documents that probably did occur,
3 and I don't recall whether the information is in here.

4 Q Okay, tab 101. Ms. Lugo [phonetic], individual is calling and
5 says, my parents bought one of your beautiful walk-in tubs and they love
6 it. However, my mom slipped and got her foot stuck, her foot and leg so
7 lodged into the corner of the tub that she couldn't pull herself out. My
8 parents are in their 80s so they couldn't get my mom out and had to call
9 the paramedics. It took two paramedics/men to dislodge my mom from
10 this slip. That's Jacuzzi 006028. Did I read that correctly?

11 A Yes and no. I think you tried to correct yourself in the middle
12 of it and I don't think it would become clear on the record. There's no
13 reference to being stuck here. But I think you went back and tried to
14 correct yourself.

15 Q Okay. Let me let me try again and you can --

16 A Other than the word, stuck, I think you read it correctly.

17 Q Okay. She indicated that my mom slipped and got her foot
18 and leg so lodged into the corner of the tub that she couldn't pull herself
19 out. My parents are in their 80s, so they couldn't get my mom out and
20 had to call the paramedics. It took two paramedics, slash, men, to
21 dislodge my mom from this slip, end quote. Did I read that correctly?

22 A I believe you read that portion correctly, yes.

23 Q Okay. What did you do to determine whether this elderly
24 individual, in her 80s, when she got her foot and leg so lodged into the
25 corner of the tub that it required two paramedics to get her out, what did

1 you do to determine whether she was, in fact, injured from that?

2 A I don't know if I did anything. It would depend, in part, on
3 when this was produced, but, ultimately, I would have looked through
4 these records to see if there was anything in there. I did not reach out to
5 Ms. Lugo.

6 Q Okay. Now, Jacuzzi 006046, it's tab 102.

7 A I'm sorry, which was the last two digits, 4-6? It's the first
8 page?

9 Q Yes.

10 A Okay.

11 Q This is an individual that's 90 years old, true?

12 A I don't have the information, but that's what it states here.

13 Q Okay. And she says that she doesn't like -- does not like the
14 door opening inward, correct?

15 A That's what it states.

16 Q And she indicated that she slipped and fell inbound, and she
17 fell, and it took 45 minutes for her to get up and out of the bath, correct?

18 A That's what it states, correct.

19 Q What steps, if any, did you take to determine whether this
20 90-year-old who slipped and fell in the bath, and it took 45 minutes for
21 her to get up and out of the bath, was actually injured or not?

22 A Same answer I've been giving to all of these. It's -- I would
23 have looked at the documents, but I did not, to my recollection, reach out
24 to Ms. Dolan [phonetic].

25 Q Okay. You agree that the documents that we've been going

1 through, the last few anyway, are Salesforce documents, right?

2 A Yeah. I did not look at every page within those exhibits, but
3 the pages you were directing me to were Salesforce.

4 Q Okay. So that --

5 A And just to be clear, the Salesforce doesn't have documents,
6 it's a database, but these are documents created from that database.

7 Q Yeah. But, I guess, the point is that they're not emails;
8 they're documents housed in the Salesforce database, true?

9 A The Salesforce database captures emails, so I'm not quite
10 sure how to answer that. It's information within the Salesforce database.
11 That database does have information such as part description, serial
12 numbers, customer numbers, comments, descriptions, emails.
13 Depending on the entry, it could have a number of different items.

14 Q Okay. Now, on page 5 -- Jacuzzi 005838 --

15 A I'm sorry, which exhibit are we on?

16 Q It's tab 126, Jacuzzi 005838.

17 A Okay.

18 Q You agree on the description that she slipped when trying to
19 get out and almost drowned, true?

20 A I agree that's what it says.

21 Q Did you take any steps to follow up whether, when she
22 slipped and almost drowned, she had injuries from that?

23 A Again, same answer. I would have looked through the
24 Salesforce documents, but to my recollection, I have not spoken with
25 Ms. Roehl.

1 Q Okay. tab 142, Ms. Gatewood, in this customer survey that
2 Mr. Bachmeyer indicated would have been forwarded to Jacuzzi in the
3 ordinary course, indicate the first time I got in and shower, I fell flat to
4 the floor. Did I read that correctly?

5 A You read it correctly. I don't know what your characterization
6 of what Mr. Bachmeyer said was accurate.

7 Q Okay. Well, we can rely on what Mr. Bachmeyer said on the
8 stand and provide that transcript. But did you take any steps whether
9 this individual, Ms. Gatewood, was injured when she fell flat to the floor?

10 A I don't recall. I don't recall ever speaking with Ms. Gatewood
11 or have any contact with her.

12 Q Did you do any other type of follow up?

13 A I don't recall. The name doesn't sound familiar, but I've dealt
14 with a lot of names over my almost six years with the company. I don't
15 recall if this was one of them.

16 Q Okay. And then tab 149. This one is a little hard to read.

17 MR. CLOWARD: Brandon, if you'll pull it up. Thanks.

18 BY MR. CLOWARD:

19 Q I believe she says I have fallen off of the seat and ended up in
20 tub, something. I had to call for help to get out. I have fallen twice. Do
21 you see that?

22 A I see where you're pointing to. Frankly, I can't read this. I
23 can catch bits and pieces of words. There's some -- there would be
24 some speculation on my part whether some of those words he said were
25 accurate. I can't say that they're not, but I just can't read this well

1 enough.

2 Q Okay. Did you take any steps to determine -- do you recall
3 ever taking steps to determine whether someone that fell off the seat
4 twice and had to call to get help was injured?

5 A I don't even have a name for a customer here, so did I -- at
6 least I don't see. So I don't recall.

7 Q It's at the top, left-hand corner. It's -- her name is Mary King.
8 Do you remember ever following up with -- on an individual by the name
9 of Mary King?

10 A I'm sorry, where does it say -- oh. I don't think Mary King is
11 the consumer. That appears to be somebody with a -- the seller. It looks
12 to be somebody with Community Builders.

13 Q Are you sure about that?

14 A I am not sure at all about that. I'm just going off of what I
15 read here.

16 Q Okay. And it's --

17 A But I'm fairly confident that Community Builders is in
18 Arkansas.

19 Q Sure. It's my understanding that Mary King would be the
20 customer. Community Builders would be the dealer.

21 A It just doesn't make sense to me that the customer's name
22 would be typed on this when the rest of it is in handwriting. It's --

23 Q Okay.

24 A -- somewhat speculation on my part.

25 Q Okay. And I -- let's clear this up so there's no confusion,

1 okay? Turn to 147, please.

2 A Sure.

3 MR. CLOWARD: You don't need to pull it up, Brandon.

4 BY MR. CLOWARD:

5 Q Look at the bottom. This 81-year-old woman. What does her
6 hand signature say?

7 A It appears to say Dorothy A. -- best guess is Kostro,
8 K-O-S-T-R-O.

9 Q Okay. Now, take a look at the typed name on the top,
10 left-hand corner, what does that say?

11 A It says Dorothy Kostro.

12 Q Okay.

13 A Kostro.

14 Q Okay. So you agree with my characterization that it looks like
15 the name on these documents, the first name is the customer, followed
16 by the dealer or installer of the tub?

17 A Again, I really don't know. I mean, I --

18 Q Okay.

19 A I would think -- I have an idea of how to check this, but it
20 would be as I sit here, I don't know if that's right.

21 Q Well, let's go to the next page. Let's go to 148. Do you see
22 that handwritten signature?

23 A I see that the names up in the top are corresponding with at
24 least some of the signatures. Again, I just don't know these customers,
25 and I don't know who signed them or --

1 Q Okay.

2 A I would -- it's just speculation on my part.

3 Q Okay.

4 A I'm not saying you're wrong. Just I don't know.

5 Q Understood. Now, we covered this earlier, so I'm going to
6 just briefly touch on it. You agree that the DDCR that was approved --
7 the District Discovery Commission Report and Recommendation that
8 was approved by the District Court judge that Jacuzzi would be required
9 to disclose incidents pursuant to that request, right, number 43 that we
10 talked about in detail yesterday?

11 A That sounds correct.

12 Q Okay. And you agree that other than the ten subsequent
13 incidents that were produced pursuant to Commissioner Bulla's oral
14 ruling at one of the hearings, Jacuzzi has never supplemented RFPD 43
15 to include any other incidents, true?

16 A I don't know what RFPD 43 is, but we -- there has been
17 supplemental disclosures.

18 Q Okay.

19 A I don't know if there's -- I don't recall what RFPD 43 is, and I
20 don't recall if there's been a supplemental written response to that
21 request.

22 Q Do you remember like probably two hours yesterday when
23 we talked about requests for production at document number 43? I
24 showed it to you in the writ. I showed it to you in the motions. I showed
25 it to you in the responses. You don't remember that?

1 A I remember talking RFPs. I don't recall numbers or the
2 specific wording of it in RFP as I sit here.

3 Q Okay. Fair enough. Well, I don't want to waste the Court's
4 time, so I'm going to move -- I'm going to move on. But, certainly, if
5 counsel, Mr. Robertson and I, agree to a stipulation on the timing, the
6 Court can rely on that, you agree, as to when things were done?

7 A Yes.

8 Q Okay.

9 A And, again, I'm not disputing anything you're just saying.
10 I'm just saying, I don't recall it as I sit here.

11 Q Okay. Fair enough.

12 A Is RFPD 43 the one that mentioned the -- it would be
13 supplemented -- or there would be supplemental correction after the writ
14 was decided?

15 Q Well, the first response that Jacuzzi provided was that it was
16 pending the District Court's final order. Then the supplemental response
17 indicated that there was a writ pending. And then I believe there was
18 another supplement that indicated and referred Plaintiffs back to the
19 previously disclosed documents. And I might be getting those mixed up,
20 but that's my understanding of the timeline.

21 A I may be getting it mixed up a little bit, too. I thought that
22 was the one that -- or one of the ones that Plaintiffs amended pursuant to
23 Commissioner Bulla's order, and there was a response to the amended
24 RFP.

25 Q Okay.

1 A But I just don't recall specifics as I sit here.

2 Q Ultimately, without getting into the -- I guess the substance
3 of any communication, who had the decision as to what documents to
4 turnover or not to turnover? Was that Jacuzzi's decision or was that
5 Snell Wilmer and outside counsel's decision?

6 A All productions and discovery in the case has been in
7 conjunction with outside counsel, both Snell Wilmer and Weinberg
8 Wheeler, depending on the timing.

9 Q Okay. So as I understand your response, the decision
10 regarding the production of documents was a jointing made decision
11 between Jacuzzi and its retained counsel, true?

12 MR. ROBERTS: Objection. Overbroad.

13 THE COURT: Well, overruled. If -- answer it to the best you
14 can.

15 THE WITNESS: Yeah.

16 THE COURT: And if you can't, let the counsel know that you
17 need clarification.

18 THE WITNESS: Sure.

19 THE COURT: All right?

20 THE WITNESS: I can't answer any more than I said it a
21 minute ago, is that all discovery responses were done in conjunction
22 with outside counsel.

23 BY MR. CLOWARD:

24 Q Okay. Was there ever, to your knowledge, a discovery
25 response or -- and that could be interrogatories, that could be -- that

1 could be requests for production, that could be requests for admissions,
2 so any of the discovery responses, was there ever a time that you recall
3 where it was not a collective decision?

4 A No. I mean, I didn't -- or, I mean, the company, exclusively,
5 did not serve any discovery responses. All of them were served through
6 counsel.

7 Q Okay.

8 A And to my knowledge and recollection, all discovery
9 responses were discussed with the company before being served.

10 Q Okay.

11 MR. CLOWARD: Now, Brandon, 182.

12 And, Your Honor, I am just about finished.

13 BY MR. CLOWARD:

14 Q Just let me know when you're there, Mr. Templer.

15 A I have it in front of me.

16 Q You have it?

17 A Yes.

18 Q Okay. And I think this was the hearing that you attended.

19 A My name is on the front page, so I would think that you're
20 right on that assumption.

21 Q Okay.

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

23 BY MR. CLOWARD:

24 Q Well, I guess, before we go to a specific page, Mr. Templer,
25 what was the reason for your personal appearance at this hearing?

1 A I don't know I had a specific reason. I wanted to -- I hadn't
2 been to any of the court hearings and I wanted to see the court and,
3 obviously, it was a significant hearing and I wanted to be -- see what
4 happened.

5 Q Okay. Is this, I guess, the type of hearing that you would
6 communicate with Anthony Lovallo?

7 A As I sit here, I don't recall exactly what happened at this
8 hearing, but, I mean, he kind -- I was communicating with him and -- I
9 would communicate with him in general with stuff such as -- excuse me.
10 I don't recall if this hearing had dealt with the motion to strike. That type
11 of thing, I certainly would communicate. If it -- if the hearing was in
12 regard to the forensic search scope or the motion for protective order, I
13 may have communicated with him. I just don't recall.

14 Q Okay. And in this hearing, do you remember Mr. Cools
15 saying to Commissioner Bulla, hey, Mr. Templer's here; he came here if
16 you had any questions, wanted to answer any questions? Do you
17 remember that?

18 A It does sound vaguely familiar.

19 Q Okay. Is that another reason that you were there, was to
20 answer any questions regarding the spreadsheets we'll get to in a
21 moment?

22 A Possibly. I just don't remember.

23 Q Okay.

24 A That may have been.

25 Q And you do remember that there were some spreadsheets

1 that were turned over for in-camera review, right?

2 A I remember there were some spreadsheets turned -- my
3 recollection, there were some spreadsheets turned over in electronic
4 form, I believe. I think they were on a thumb drive, if my recollection is
5 correct. But, I mean, I may be off.

6 Q Okay.

7 A I didn't see the actual submission to the Court is my
8 recollection.

9 Q You didn't see it?

10 A Hum?

11 Q You did not see --

12 A The actual -- I knew it was being produced. I don't recall
13 seeing the actual package being submitted.

14 Q Okay. And I wanted to just make sure that I understand
15 correctly. You don't have a recollection of Mr. Cools or somebody
16 handing that to the marshal and then handing that -- having the marshal
17 hand that to the commissioner?

18 A I don't recall. I'm not disputing that happen -- that could
19 have happened. I don't recall that.

20 Q But you're not saying -- you're not testifying today that you
21 did not review the production before it was given to commissioner,
22 correct?

23 A Well, my recollection is the production was the search done a
24 few months early that Commissioner Bulla wanted to review. I had
25 looked at it at that time when I originally got the results.

1 Q Okay. Are you sure about that?

2 A Which part?

3 Q That that was the search that was performed. Before we get
4 into the language of the transcript, are you sure that the search was the
5 one that was done a few months before or a couple months before?

6 A I'm not a hundred percent certain. That was my recollection.

7 Q Okay. Let's go through the hand -- the transcript and we'll
8 see if -- we'll see --

9 MR. CLOWARD: Go to page 5, Brandon. And on line 15
10 through 22 -- actually, Brandon, if you'll -- I'm sorry, if you'll just go on
11 13.

12 BY MR. CLOWARD:

13 Q Do you remember when Commissioner Bulla said, now I
14 have Defendants' motion for protective order, and I think I have a better
15 understanding, at least, of the mechanism of the injury in the case. But I
16 really -- I think really the question is what Jacuzzi knew or should have
17 known for the negligence part of the claim, and then the strict liability is
18 a different issue? Do you remember her saying that?

19 A I don't recall. I recall in general the hearing. I don't recall
20 specific statements made at the hearing.

21 Q Okay. Do you remember her saying, and I quote, "But if I
22 look at the negligence part of the claim, it's what Jacuzzi knew about the
23 tub, and if some of the complaints are coming through its retailers, for
24 lack of a better term, then that concerns me; and presumably they were
25 passed along to Jacuzzi, but I also need to know, you know, what you all

1 knew about this particular tub"? Do you recall her saying that to you?

2 A I don't think she was talking to me at this hearing. I was
3 sitting back in the audience. I wasn't at counsel table.

4 Q Okay. Do you remember being invited up to counsel table?

5 A I think she told me I could come in front of the bar, and I
6 could sit -- I sat behind counsel table at some point, but I don't recall
7 sitting at counsel table.

8 Q Okay. But you came up from the -- I guess, the audience part
9 and came across the bar and sat behind counsel, right?

10 A I didn't remember it until you brought it up, yes. That's what
11 I just testified about.

12 Q Okay.

13 A I do -- I believe that is what happened.

14 Q Okay.

15 MR. CLOWARD: Now on page 6, Brandon.

16 BY MR. CLOWARD:

17 Q Mr. Cools, do you agree, on line 6 of page 6 is explaining
18 kind of what the Jacuzzi Salesforce database is and how it stores the
19 information? Do you agree with that description so far of 6 through 10?

20 A In general.

21 Q Do you remember that discussion.

22 A I remember there was a -- this refreshes my recollection that
23 there was discussion regarding a subpoena you had issued to
24 Salesforce.

25 Q Okay. And you remember, here, where Mr. Cools, he says --

1 on line 10 he says, that's the -- those are part of the searches that Jacuzzi
2 performed. That second spreadsheet that was performed to you, that's
3 what that is, is using those search terms on the Salesforce database. Do
4 you recall that?

5 A I don't recall this specific reference Mr. Cools made, but I -- in
6 reading it, I think it's accurate.

7 Q Okay. And, certainly, those search terms were the 20 that
8 we've been talking about over and over, right?

9 A I believe that's correct.

10 Q And you agree that, that database was, in fact, provided to
11 Commissioner Bulla, true?

12 A The database wasn't provided.

13 Q The results from the searches of those --

14 A That --

15 Q -- of those terms, true?

16 A That was provided.

17 MR. CLOWARD: Brandon, if you can pull up the master OSI
18 list, Excel spreadsheet.

19 THE WITNESS: Is there an exhibit I should be going to?

20 BY MR. CLOWARD:

21 Q No, this is a court -- this is going to be provided -- I think it's
22 provided to counsel and to the Honorable Judge as a demonstrative aide
23 pursuant to the Rules of Evidence to allow the parties to summarize
24 information.

25 A I understand. I was just wondering if I should pull it up on

1 my -- in the books here.

2 Q Understood.

3 MR. CLOWARD: Just at the right-hand portion of the
4 spreadsheet are the search terms that would have been triggered in all
5 of the exhibits, Your Honor, in document binder 1 and 2, basically 1
6 through 157. These show all of the search terms, it shows 20 search
7 terms, that would have been triggered.

8 BY MR. CLOWARD:

9 Q Okay. Now, Mr. Templer, you indicated that at some point
10 Jacuzzi searched emails, and it came back with like a million hits or
11 something. Do you remember that?

12 A Yeah. I --

13 Q Remember telling the -- telling everybody that yesterday?

14 A There was a search done for a term and I -- like I say, my
15 recollection is the word slip came back with something like that. Correct.

16 Q Okay. And --

17 THE COURT: One second. It just occurred to me that
18 demonstrative document, the spreadsheet, the far-right column, you said
19 it's the search terms that would have -- would have yielded that
20 document.

21 MR. CLOWARD: Yes.

22 THE COURT: If you want me to consider that as part of this
23 hearing, I guess I would need an affidavit attesting to how you can make
24 that determination.

25 MR. CLOWARD: Absolutely.

1 THE COURT: What you based it on, what you did, to make
2 sure that what you just told me is accurate.

3 MR. CLOWARD: You can count on that. We actually took a
4 very technical --

5 THE COURT: All right.

6 MR. CLOWARD: It wasn't just eyeballing it. We -- so I will
7 get Your Honor an affidavit, certainly.

8 THE COURT: All right. Thank you.

9 MR. CLOWARD: Thank you.

10 BY MR. CLOWARD:

11 Q And, Mr. Templer, back to the search of the emails that you
12 talked about coming up with nearly a million hits, you agree that that --
13 that was done within the last 30 to 45 days, correct?

14 A I don't recall timing. Maybe a little longer than that, but I
15 would say within the July to present timeframe.

16 Q Okay. And so, in fairness, that means that it was not done
17 prior to July, during the pendency of this litigation, right?

18 A There's been searches run. That search resulted -- I'm
19 speaking about, my best recollection, is that was done in regard to the
20 discovery plans that were propounded in July of 2019.

21 Q Okay.

22 MR. CLOWARD: Mr. Templer, I appreciate your time today.
23 I don't have any other questions. Well, hold on.

24 MR. ALLEN: Well, can we have five minutes? Can I talk to
25 him?

1 THE COURT: Yeah. Well, why don't --

2 MR. ALLEN: Can I --

3 THE COURT: Why don't we take our lunch break and give
4 you time to determine if you're done with this witness.

5 MR. CLOWARD: Thank you.

6 THE COURT: And -- rather than taking a five-minute now and
7 then coming back. Is that --

8 MR. CLOWARD: Thank you, Judge.

9 MR. ROBERTS: And I have direct testimony after lunch, Your
10 Honor.

11 THE COURT: Of course.

12 MR. ROBERTS: So the witness will be back.

13 THE COURT: Are you okay with that, then --

14 MR. ROBERTS: Yes, of course.

15 THE COURT: -- Mr. Roberts?

16 THE COURT: Mr. Goodhart, take our lunch break now?

17 MR. GOODHART: That's fine, Your Honor.

18 THE COURT: Okay. Very good. Thank you. All right. Let's
19 come back -- Marshal, did -- off the record.

20 [Recess at 12:36 p.m., recommencing at 1:54 p.m.]

21 THE COURT: All right. Let's begin with the cross-
22 examination of Mr. Templer.

23 MR. ROBERTS: Thank you, Your Honor.

24 Well, Mr. Cloward --

25 THE COURT: Oh.

1 MR. ROBERTS: -- did you announce that you're done?

2 MR. CLOWARD: I'm sorry, Your Honor. Yes, we're finished.

3 Thank you for the opportunity to reflect over the lunch hour. At this
4 time, we would pass.

5 THE COURT: All right. Very good.

6 MR. CLOWARD: Thank you. All right.

7 MR. ROBERTS: Thank you, Your Honor.

8 THE COURT: You may proceed.

9 CROSS-EXAMINATION

10 BY MR. ROBERTS:

11 Q So let's -- Mr. Templer, let's go back toward the beginning of
12 today's testimony. You gave the Court a little bit of background
13 information about your title and job duties with Jacuzzi. In the time that
14 you've been with Jacuzzi -- which is how many years now?

15 A It will be six years next month.

16 Q Prior to this litigation, did you manage any other litigation
17 that required you to do ESI searches for terms?

18 A No.

19 Q It -- what about after this litigation?

20 A No.

21 Q Well --

22 A To the extent -- actually, no.

23 Q Okay. And to the extent that you need to do ESI searches for
24 litigation, do you have any staff in the legal department that can handle
25 those tasks for you?

1 A There's no dedicated staff for that. It's -- if somebody would
2 have some time available, I could reach out to them, but there wasn't
3 anybody.

4 Q So is it fair to say that everyone you asked to help you with
5 litigation searches had a full-time job unrelated to litigation they were
6 also doing?

7 A Correct.

8 Q Let's talk about the Pullen matter. Do you have a recollection
9 of the documents that you reviewed with Mr. Cloward on the Pullen
10 matter?

11 A I don't recall which pages he pointed me to, but I do have a
12 general recollection of the documents.

13 Q One of the questions he asked you about is if someone hires
14 a lawyer, someone retains a lawyer, did you have any actual knowledge
15 of whether Mr. Pullen had retained a lawyer at the time you received
16 those communications back around October 30th of 2018?

17 A No, we had -- I had no information that Mr. Pullen had a
18 lawyer.

19 Q Did you receive any contact from any lawyer claiming to
20 represent Mr. Pullen?

21 A No.

22 Q Internally, did you treat that communication as if a claim for
23 wrongful death had been filed against Jacuzzi?

24 A No.

25 Q Did you -- let me go back and ask another question. Let me

1 rephrase it. Did you provide notice of Mr. Pullen's communication to
2 Jacuzzi to Bill Demeritt?

3 A No.

4 Q Do you have any knowledge as to whether anyone else
5 communicated the Pullen communications to Mr. Demeritt?

6 A To my knowledge, he was not involved in that at all.

7 Q Do you have the foundation and background to know
8 whether the general liability insurance maintained by Jacuzzi requires
9 Jacuzzi to put the insurance company on notice when you receive a
10 claim for wrongful death?

11 A I have a general understanding.

12 Q Okay. And who would submit those notices to the insurance
13 company?

14 A Bill Demeritt.

15 Q And let me go back. You answered my question correctly,
16 but I don't think I got to the question. Does the policy require you to put
17 the insurance company on notice upon receiving a claim for wrongful
18 death?

19 A Yes.

20 Q And can you lose your coverage if you fail to do that?

21 A Yes.

22 Q Did you put the insurance carrier on notice when you
23 received the October 30th communications?

24 A No. It was not viewed as a claim.

25 Q As long as we're talking about Mr. Demeritt, could you

1 explain to the Court his job duties as you understand them?

2 A He also is a little bit of a Jack of all trades. He handles the
3 lease issues, Legacy issues, insurance program, does some risk
4 management in regard to -- handles subrogation claims, prelitigation.
5 And there's a number of other, like I say, Legacy companies that he
6 handles, continuing liabilities. Although the companies no longer sell
7 product, there's still some Legacy liabilities.

8 Q What is your understanding of when Mr. Demeritt would
9 typically get involved in a communication from a customer regarding a
10 safety concern with the tub?

11 A My understanding is he wouldn't get involved -- are you
12 asking in regard to communications with the customer?

13 Q No, in communications internally.

14 A Oh.

15 Q When should someone in customer service, or technical, or
16 the legal department, when would they typically notify Mr. Demeritt of a
17 communication from a customer?

18 A I don't think there's any hard and fast rules, but I think it goes
19 case-by-case basis, and dependent on what the customer service agent
20 thought the -- about the communication, whether it was -- how
21 legitimate it was and whether somebody in his department or the legal
22 department should be involved.

23 Q Are you aware of any written guidance for employees as to
24 when they should notify Mr. Demeritt of something?

25 A There's no written communications -- or no written policy to

1 my knowledge.

2 Q So in your view, is there a standard custom and practice in
3 Jacuzzi that's invariably followed as to when Mr. Demeritt is provided
4 notices of customer communications?

5 A No, again, it's case-by-case basis.

6 Q Let's talk about you and your role. Is there any written
7 guidance anywhere in the company that's distributed to employees as to
8 when they should notify you of communications from customers?

9 A No.

10 Q All right. What is your understanding of when you're
11 supposed to be contacted about a customer communication?

12 A I think it's somewhat like Mr. Demeritt's. If the customer
13 service person is concerned about a call, wants to discuss a call, or
14 discuss how to respond a call, they can reach out to me.

15 Q Okay. Do you have a recollection of how the Pullen inquiries
16 were elevated within the management structure at Jacuzzi?

17 A Within the management structure --

18 Q Yes.

19 A -- above me?

20 Q No, below you. When the call first came in -- how do people
21 get calls? Do people look up a phone number of an individual, or how
22 does that first call -- who decides how that first call gets taken?

23 A My understanding is the customer call center is, like a lot of
24 companies that have customer call centers, where I think you can find an
25 800 number, probably, on the website or in the documentation that

1 comes with the product. It goes into the call center, and then it's
2 directed to a customer service agent. And then depending on what the
3 call is about or whether they need to speak -- some people have
4 particularized knowledge of certain products or issues, and it can be
5 escalated that way.

6 Q And it's in the record, does it sound right, that it came into an
7 entry-level person who was routed the call, it was elevated to Megan
8 Davis, who then elevated it to Regina Reyes, who then elevated to you; is
9 that fair?

10 A That's fair accurate -- fair assessment.

11 Q When you are put on notice of inquiries from customers, do
12 you ever get notice directly from the person who fields the call, the
13 lower-level person, or does it come from a supervisor?

14 A Occasionally, I've probably gotten calls from some
15 lower-level people that know me. I don't have a lot of contact with the
16 lower-level -- phone agents. So normally the -- a person that would
17 contact me would be more of a Regina, Megan, or Kurt. Kurt's not in the
18 customer service department, but he does reach out to me on issues at
19 times from customers.

20 Q Thank you. You were shown a number of exhibits of other
21 incidents yesterday and today.

22 A Uh-huh.

23 Q In your view, is there a routine, habit of Jacuzzi, as a
24 company, that all of those types of incident would have been sent to you
25 in the normal course of business?

1 A No, they would not have been.

2 Q Yesterday you were shown a transcript where Commissioner
3 Bulla -- Justice Bulla referred to the ordinary course of business is what
4 I'm talking about. Do you recall that?

5 A I don't recall the exact context, but I do remember that
6 ordinary course of business.

7 Q And you said that you didn't review that transcript, right?

8 A Correct.

9 Q So I'm not going to ask you your interpretation of it but let
10 me ask you this.

11 In the ordinary course of business, at the time you were
12 responding to discovery requests in this matter, did you expect that, in
13 the normal course of business, emails referring to personal injury caused
14 by a Jacuzzi walk-in-tub product would be contained in the Salesforce
15 database?

16 A Yes.

17 Q Did you expect that there would be emails about alleged
18 injuries in a walk-in tub that were not also -- that were in emails that
19 were not also contained in the Salesforce database?

20 A I guess it --

21 THE COURT: I'm sorry, I didn't under --

22 MR. ROBERTS: So I'll rephrase.

23 THE COURT: -- understand all the parts.

24 MR. ROBERTS: I'll rephrase.

25 THE COURT: Thank you.

1 BY MR. ROBERTS:

2 Q Did you expect that there would be incidents referred to in
3 email communications --

4 A Uh-huh.

5 Q -- that were also not contained in the Salesforce database?

6 A My understanding of what's within the Salesforce database
7 has evolved over time, and it would depend on the context, I guess, of
8 the email and when it came in as to what my understanding is, whether
9 it would be in Salesforce or not.

10 Q So in 2018, so before 2019, what was your understanding of
11 whether emails would be captured by Salesforce?

12 A My understanding those -- Salesforce was capturing emails.

13 Q And would these have to be manually entered or what was
14 your understanding how they got into the Salesforce database?

15 A That I couldn't answer. I don't know that I had a specific
16 understanding as to how they got in there. I have learned -- I -- as I sit
17 here today, I believe some -- at least some are captured automatically. I
18 don't know whether it's all of them as I sit here today.

19 Q Have you seen email spam that's been captured by the
20 Salesforce database?

21 A Quite a bit of it.

22 Q Let's talk briefly about the -- some of the incidents in the
23 Salesforce printouts that have been introduced into evidence. Okay.
24 The first think I'm going to ask you to do is turn to volume 1, tab 32, and
25 this is a Salesforce entry from Catherine Reynolds, case number 304436.

1 A I'm sorry, you said tab 32?

2 Q Tab 32, yes. And this is the first page, 5689, Jacuzzi 5689.

3 A First page is 5284, it's an email, of that exhibit.

4 Q Oh, okay.

5 A What's the Bates number. I can look for it.

6 Q Actually -- okay. 5689, which is the first page I have tabbed.

7 A I have it in front of me. It's not tabbed in mine.

8 THE COURT: 50 --

9 BY MR. ROBERTS:

10 Q All right. First of all, so the Court -- make sure the Court
11 understands, the case number, does that refer to all contact with that
12 customer?

13 A My understanding is every time a -- yeah, it is a unique case
14 number that is generated when a customer service agent opens a new
15 report within Salesforce.

16 Q Okay. Does a customer service agent have the option of not
17 opening a new case number when a call comes in as that system now
18 operates?

19 A I believe it depends on when the call would come in and --
20 yeah, they can add to an older case number, I believe, as the
21 communications progress.

22 Q Okay. So the same customer could have multiple case
23 numbers or one case number with multiple dates of entry; is that fair?

24 A Correct.

25 Q So let's look here in the left-hand column under brand. Do

1 you see that JB under brand?

2 A Yes.

3 Q Could you explain what that means to you?

4 A I don't know -- I think it stands for Jacuzzi bath, but the JB
5 would indicate it's within the bath division -- the bath company.

6 Q Okay. And you mentioned that at times when you were
7 doing searches in the litigation that you were dealing with a lot of
8 volume that was hard for you to review feasibly, correct?

9 A Correct.

10 Q Explain --

11 MR. CLOWARD: I'm going to object as to time and scope --
12 vague as to time and scope, Your Honor.

13 THE COURT: Yeah, sustained. Put a time on that. I don't
14 remember what he said in his testimony as to that.

15 MR. ROBERTS: And I don't believe he gave a time reference
16 when he originally testified to that.

17 THE COURT: All right. Well, I'll leave that open-ended in my
18 notes, then.

19 MR. ROBERTS: I don't think it's important to this inquiry, but
20 I can try to bring that out after I lay some foundation here.

21 THE COURT: Very well.

22 MR. ROBERTS: Okay.

23 BY MR. ROBERTS:

24 Q So is that a manual entry or is it a dropdown?

25 A I personally have never entered anything in Salesforce, so I

1 don't know. I think it's a dropdown, but that is somewhat speculation on
2 my part.

3 Q Okay. And at some point in this litigation, when you were
4 running Salesforce searches, did you ask anyone to enter JB in that field
5 to limit the hits to walk-in-tub products, or Jacuzzi-luxury-bath products?

6 A I didn't ask somebody to enter JB, because I didn't know that,
7 but I did ask that the searches be limited to walk-in tubs.

8 Q And is it your understanding that in order to limit searches to
9 walk-in tubs, that some of the searches were run with the JB field
10 required?

11 A That is accurate.

12 Q Okay. And when was this?

13 A That I asked the search to be run with the walk-in tubs?

14 Q Yes.

15 A I mean, each search I've requested in this case, I've asked
16 that it be limited to walk-in tubs since that's the product that we're
17 talking about in this case.

18 Q Okay. Has it come to your attention that limiting the
19 searches to walk-in tubs in that field can fail to come up with records that
20 are relevant to the walk-in-tub division?

21 A Yeah.

22 MR. CLOWARD: Leading.

23 THE COURT: Lead --

24 MR. CLOWARD: Objection; leading.

25 THE COURT: That is loose leading. I don't know if he would

1 have foundation for that, either, Mr. Roberts.

2 MR. ROBERTS: Okay.

3 BY MR. ROBERTS:

4 Q Are there --

5 THE COURT: I mean --

6 BY MR. ROBERTS:

7 Q -- case --

8 MR. ROBERTS: Let --

9 THE COURT: -- do you know --

10 MR. ROBERTS: I can rephrase. I can --

11 THE COURT: -- is probably better than would it be fair.

12 MR. ROBERTS: I can -- I think I can get to it another way.

13 THE COURT: Thank you.

14 BY MR. ROBERTS:

15 Q Are you aware of customer contacts related to walk-in tubs
16 that did not contain the JB field under brand?

17 A Over time I did learn that, yes.

18 Q All right. Do you have an understanding of how that
19 happens?

20 A I guess I missed the question. What's the --

21 Q Okay.

22 A How what happens?

23 Q Let me back up a little bit. Do you have an understanding of
24 whether or not the customer service representatives entering the
25 information is required to enter a brand?

1 A Again, I think that's something that's -- I've learned has
2 evolved over time within the company as to how Salesforce was used
3 when it was first launched around 2014 or 2015 and how it's used
4 currently. I think currently they are required to enter a brand if they
5 know it. Also, my understanding is that, at times, customers that call in
6 don't really have information on a product, and so some fields may not
7 be filled in, like a brand. We have a number of different brands under
8 the Jacuzzi-brand umbrella.

9 Q I believe you mentioned yesterday, in your responding to
10 questions from Mr. Cloward, that information that was not originally
11 entered into Salesforce was, at some point, imported into Salesforce so
12 it could be searched; is that --

13 A That is correct.

14 Q Could you explain that, again, to the Judge, what that was?

15 A Yeah. For a period of time the company used a database that
16 I believe was called RightNow Technology, and my understanding is, the
17 data form RightNow Technology was imported into Salesforce when the
18 company moved to Salesforce. I think it's RNT Technology. It was
19 referred to RNT in the company.

20 Q So some of the witnesses may have called it RNT, correct?

21 A Yeah, I think that's normally what it's called, either RNT or
22 RightNow. I don't -- the technology part is the part I'm not a hundred
23 percent sure on.

24 Q And is the RNT or RightNow -- or RightNow Technologies the
25 system that was used prior to Salesforce for entry of customer service

1 contacts?

2 A Yeah. That's my understanding, is that was used as the CRM
3 system prior to Salesforce.

4 Q I'd ask you now to turn to tab 3, Bates number Jacuzzi 5719.

5 A I have that in front of me.

6 Q You have that in front of you?

7 A Yes.

8 Q Okay. So do you see the field case origin, top, middle of the
9 page, right-hand side?

10 A I do.

11 Q And what does that say?

12 A Legacy, RightNow.

13 Q And what does that mean to you? What is your
14 understanding of what that means?

15 A That would be something that was imported into Salesforce
16 from the RNT, or RightNow, database.

17 Q And do you have an understanding of when information was
18 imported, any brand field was imported from Legacy, RightNow?

19 A I've learned throughout the course of this litigation that that
20 information would not have been imported, the brand name. That's why
21 it's blank on this page.

22 Q So if someone performed a search limited to Jacuzzi bath --
23 Jacuzzi luxury bath division, would this record case number, 192130,
24 come up?

25 A I don't believe so.

1 Q Do you recall this customer contact information being
2 forwarded to you at any time?

3 A I don't recall, specifically, a Melanie Borja.

4 Q Well, I shouldn't say at any time. Let me say, at any time
5 prior to July of 2019?

6 A Thank you. I don't believe it was.

7 Q As corporate counsel, do you know, Mr. Bachmeyer indicated
8 that if someone was making a claim for damages for personal injury, he
9 would expect that to be forwarded to you. Do you agree with that
10 statement?

11 A I think that's accurate, if that's actually what he said.

12 Q And do -- does information like that typically come to you in
13 the form of an email communication?

14 A It can come in a variety of ways. It can be an email. It can be
15 -- Kurt calls me on a variety of issues, and I walk by Kurt's office
16 sometimes and we talk about issues.

17 Q When someone notifies you of a person making a claim for
18 personal injury against Jacuzzi as a result of one of its products, what
19 system do you use to track and store that information?

20 A I guess it would depend on what you mean by a claim. If it's
21 something that the company would legitimately -- or I would legitimately
22 view as a claim made for compensation, I would have it in my files if I
23 dealt with it. If it's just something -- and the company gets a lot of calls
24 of people threatening things, posting on social media, doing a variety of
25 things, then those would be within Salesforce.

1 Q Do you keep records on your personal computer of -- that
2 would contain people who have made claims for personal injury against
3 Jacuzzi?

4 A If I received a letter of something of that nature, it would be --
5 it would be stored in the Cloud.

6 Q Okay. What about if you received an email? What -- assume
7 hypothetically someone had forwarded you this email from Melanie
8 Borja?

9 A If it was in an email, it would just be within the email service
10 somewhere. I don't think those are stored on my computer. They're -- I
11 think some get stored on the computer, but the computer has an
12 automatic system where every 12 months, 18 months, it is no longer on
13 my computer. It is still in the email system, but, so it doesn't bog down
14 the computer, it kind of cycles out.

15 Q Goes into archives or pst files?

16 A I don't know if it's called an archive or not, but it's accessible
17 to me still, but I would have to click a separate button to download it. It's
18 not readily available on my computer.

19 Q Do you have the ability to search your email, including the
20 older files that have been archived?

21 A Yes.

22 Q And when Jacuzzi was looking for incidents involving
23 personal injury or death, did you search your own emails to see if you'd
24 been put on notice of anything?

25 A I did a search or a review. I didn't do it as a search.

1 Q Okay.

2 A And I can explain that if you want me to.

3 Q Yes, please do.

4 A When I would get a claim from a customer, I would put it into
5 a file under that customer's name or consumer's name, and I went
6 through all of those files in conducting -- or searches, in this case, I
7 opened every one of those files to see if any of them were related to a
8 walk-in tub.

9 Q And of these new prior incidents that were produced in July
10 of this year involving customers that had not previously been produced
11 in response to discovery orders, are any of those customers contained in
12 your files of people who had submitted information to Jacuzzi about
13 personal injuries that was forwarded to you?

14 A For the personal injury, I don't believe so. I -- discovery has
15 evolved throughout this case, and there's been -- the recent discovery
16 asked for -- those just in July, asked for anything involving a slip.

17 Q Yes.

18 A Is it possible that -- I have not searched my computer for that.
19 I don't believe.

20 Q And you're correct. I was only limiting my question to
21 personal injuries. And the slip, subsequent searches were run for just
22 slips that were not filtered for the lack of a personal injury, correct?

23 A Correct.

24 Q And the emails that Mr. Cloward showed you in volume 2,
25 you know, up in the hundreds, all the people that he said, well, it doesn't

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1 reference an injury, but did you investigate to see if there was an injury,
2 do you recall all those?

3 A I do recall that.

4 Q Okay. And at some point, did your understanding change
5 from being required to produce only things involving injury or death to
6 things involving a slip, even if there was no reference to injury or death?

7 A Yeah, I think the discovery served in July of this year asked
8 for slip regardless of injury or death. Previously, I don't believe there
9 was that expansive a scope of discovery request.

10 Q So if you had searched for slip back with the 20 terms were
11 being searched in 2018 --

12 A Uh-huh.

13 Q -- and you got a hit for someone, and there's no reference to
14 injury, would you have produced it at that time?

15 A I guess it would depend on timing. Pursuant to the --

16 Q 2018.

17 A Right. There's just -- there's two separate time period in
18 2018. That's why I'm trying to --

19 Q Good point. Okay.

20 A -- separate the two.

21 Q Please clarify an answer the first time period.

22 A Sure. The first time period, the company, I think, received
23 the list of 20 terms in sometime around mid-February. A search was run,
24 and it was not limited to injuries. I did review all of those hits that were
25 obtained, and a determination was made as to what was to be produced

1 pursuant to claims being made at the time and the tie period that was
2 perceived to be the discoverable time period. Later, after the
3 commissioner issued the order and the Court adopted it, there was a
4 different search, and that was looking just for injuries.

5 Q At any time in this litigation, have you made a decision not to
6 produce a document concerning an incident that you thought was
7 discoverable under an order of this Court or the discovery
8 commissioner?

9 A Absolutely not.

10 Q Yesterday, the Court requested us, Jacuzzi, to look for
11 communications regarding the searches that were run and things that
12 may have been copied to Mr. Bachmeyer that he might have looked at as
13 indicated in his testimony, correct?

14 A Correct.

15 Q And last night, after court, did you perform searches for that?

16 A I did.

17 Q Okay. In addition --

18 THE COURT: Thanks for doing your homework. I appreciate
19 it.

20 THE WITNESS: You're welcome.

21 BY MR. ROBERTS:

22 Q So what -- when you found documents or emails that you
23 thought were relevant to a request for a search or a response to a
24 request for a search, did you forward that to my paralegal, Audra, and
25 me?

1 A Yes.

2 Q And after Audra printed out the emails and the attachments,
3 did you look through them to verify that the information was there?

4 A I did not look through every, single page, but --- because they
5 were voluminous. I -- but I thumbed through them, and it appeared to be
6 everything was there.

7 Q Okay. And did you select the ones to forward to Audra,
8 correct?

9 A Correct.

10 Q And were there any emails to, from, or cc'd to Mr. Kurt
11 Bachmeyer regarding a request for a search term or a response to a
12 search conducted on search terms that you did not forward to Audra?

13 A The only thing I can think of was there was some there were
14 some that were chain emails, and I didn't forward the middle email if the
15 end email contained all the same information.

16 Q Okay.

17 MR. ROBERTS: So, Your Honor, what I've got is there are
18 actually three volumes here of emails and attachments. A lot of volume
19 is just the -- simply the attachments. The emails are not that
20 voluminous. And the one thing that I have to warn, we -- Audra was --
21 was at the office last night until about midnight putting these together,
22 and simply because of the fact we had to send them to an outside
23 printer, we were unable to have tabs inserted since they went by emails.
24 So it's a little difficult.

25 If the Court would like, we can go back and put tabs in, create an

1 index. But I think it should be self-explanatory when you get to the
2 attachment because it's either a document or an Excel spreadsheet, not
3 the email format.

4 THE COURT: I can figure it out. So these are the documents
5 that I'm to review in camera?

6 MR. ROBERTS: Yes, Your Honor.

7 THE COURT: All right.

8 MR. ROBERTS: We would offer them to you in camera.
9 Since -- and I think that I do need to put this on the record, get
10 confirmation from the Court. I think yesterday it was unclear to me
11 whether the Court wanted only requests that had been sent to or copied
12 to Mr. Bachmeyer. But because he was not involved in some of the
13 searches, especially the later one after he left customer service, if we
14 had submitted only those, it would have painted an incomplete picture of
15 what Jacuzzi did to look for responsive documents, and it would not
16 have generated the things the Court needed to compare to the
17 spreadsheets that were sent to Commissioner Bulla, and that you could
18 access in the vault.

19 So we had expanded perhaps the scope of what we
20 produced beyond what was directed by the Court. So I just wanted to
21 confirm that even if this increased scope, that we can submit these to the
22 Court in camera without waiving any privilege. I'm not asking for the
23 Court to rule that they're privileged; only that by submitting them to the
24 Court for in camera review, we're not waiving any privilege as to work
25 product or --

1 THE COURT: Understood. So for --

2 MR. ROBERTS: -- attorney-client.

3 THE COURT: -- logistical reasons, you had to include
4 additional documents that weren't specifically requested by the Court.
5 The Court accepts that and is fine and accepts that no privilege has been
6 waived. And the Court appreciates what appears to be your fair effort to
7 gather this for me even though it looks a lot more voluminous than I
8 expected.

9 Mr. --

10 MR. ROBERTS: So --

11 THE COURT: Yes. Go ahead.

12 MR. ROBERTS: There are a couple of other things that I do
13 need to advise the Court of. Is one -- and they dealt with the issue --
14 Mr. Cloward was showing the Court when you tried to print the full Excel
15 spreadsheet --

16 THE COURT: Uh-huh.

17 MR. ROBERTS: -- if it doesn't --

18 THE COURT: Right.

19 MR. ROBERTS: -- fit on one page, Excel kind of has a quirky
20 of printing the fields and then going back and printing other columns
21 which you don't really know where they go.

22 THE COURT: Understood. All right.

23 MR. ROBERTS: So if the Court looks -- I did look at that and
24 see that at least as to the productions that you -- that -- we've also
25 included what was said to Commissioner Bulla here, which you can

1 compare to what's in the vault, of course. But that's kind of printed out
2 in a funky way. We can either go back and print them out eight and a
3 half, 11 by 17, or I think the Court has enough that you could verify that
4 the electronic version that is in the vault that was given to Commissioner
5 Bulla matches up with the printed version, and then use the electronic
6 version to peruse probably in an easier way than you could use these.

7 THE COURT: That would be a tedious process. I
8 understand --

9 MR. ROBERTS: That's --

10 THE COURT: -- what you're saying, I understand the issue
11 here. Perhaps I'll just spot-check some.

12 MR. ROBERTS: Okay. If there -- I'm just saying, if there's
13 anything the Court needs us to provide, either a document in electronic
14 form or a document in a different format, you just have your JA let
15 Audra know, and we'll provide that, and provide notice to Mr. Cloward --

16 THE COURT: And I may be looking for --

17 MR. ROBERTS: -- if we give anything else to the Court.

18 THE COURT: I may be looking for specific things here.

19 Let me hear from Mr. Cloward.

20 MR. ROBERTS: And --

21 THE COURT: Oh, go ahead.

22 MR. ROBERTS: And there's one --

23 THE COURT: Go ahead.

24 MR. ROBERTS: -- more thing which is completely different,
25 and that is there was an issue as to when Jacuzzi received the 20 search

1 terms. And --

2 THE COURT: Uh-huh.

3 MR. ROBERTS: -- the only place that I could find that original
4 information was in an email from Mr. Cools to Mr. Templer, which
5 actually -- although there is attorney-client privilege communication in
6 the opening paragraph and then in the subsequent five pages, the
7 communication and the way it was sent to Mr. Templer was actually by
8 forwarding an email from Mr. Cloward to him containing the terms. And
9 I thought that it -- that was factual, and it provided information at issue in
10 this hearing as to when Jacuzzi received those 20 terms.

11 So we have included a redacted version of that email with
12 nothing but the to -- the to, from, and the date, and then the email from
13 Mr. Cloward. And everything else is redacted. And even though we're
14 submitting these in camera, since the Court indicated that you weren't
15 going to ask for communications with outside counsel, that I could give
16 you that information and still redact the actual information from outside
17 counsel. If there's a way you'd like that done differently, either now or
18 after review, you know, you can let us know.

19 THE COURT: I think the important issue there was when the
20 search terms were provided, and which terms were provided.

21 MR. ROBERTS: Yes.

22 THE COURT: And what you've given to me, even in redacted
23 form, should be sufficient. But let me --

24 MR. ROBERTS: Yes, Your Honor.

25 THE COURT: -- hear from --

1 Anything else before I ask Mr. Cloward?

2 MR. ROBERTS: No. No. I'm actually done now, Your Honor.

3 Thank you.

4 THE COURT: Mr. Cloward, so you --

5 MR. CLOWARD: Too many.

6 THE COURT: -- you may comment on that. And you may
7 also put on the record when you want me to do with these in camera
8 documents.

9 MR. CLOWARD: Certainly, Your Honor. I guess the first
10 question that I had -- that I would have for Mr. Roberts is, if we're not
11 being provided with a copy of the email --

12 MR. GOODHART: Excuse me, Mr. Cloward, your notes are --

13 MR. CLOWARD: Oh, those are my clothes.

14 MR. GOODHART: Sorry about that.

15 MR. CLOWARD: Thank you. Nobody wants to see my
16 chicken scratch.

17 I guess we would just like to know the date that that was
18 provided from counsel. We don't need to know the substance, but we
19 would like to know the date that that was forwarded.

20 THE COURT: You're talking about the Cools to Templer
21 email forwarding your email regarding the 20 terms? It sounds like that
22 will be on there. And I can specifically find that document and let you
23 know the date. In fact, I don't --

24 Mr. Roberts, since it's redacted, I don't know if that would
25 be --

1 MR. ROBERTS: That's exactly what I was thinking,
2 Your Honor. I think that we would have no objection to providing the
3 redacted document because so much has been cut out, that there's --

4 THE COURT: Maybe you can find that later.

5 MR. ROBERTS: -- nothing left. And there's no work product
6 since it's just a forward of an email from Mr. Cloward.

7 MR. CLOWARD: And we could --

8 THE COURT: But do you need it for --

9 MR. CLOWARD: No.

10 THE COURT: -- redirect examination?

11 MR. CLOWARD: No. No.

12 THE COURT: All right. We can -- I don't want to take the --

13 MR. ROBERTS: I will provide that to Mr. Cloward. And --

14 [Counsel confer]

15 THE COURT: So I just want my court clerk to have an
16 understanding of what we're talking about. The -- there's an email from
17 Mr. Cools to Mr. Templer forwarding Mr. Cloward's email regarding the
18 20 search terms. And Mr. Roberts has agreed to locate that and provide
19 that to Mr. Cloward in the redacted form.

20 MR. CLOWARD: Thank you.

21 THE COURT: Thank you. All right. What else, Mr. Cloward?

22 MR. CLOWARD: Addressing the other issues, we want to
23 make sure that what was provided was the email that Mr. Bachmeyer
24 referenced during his examination. And so we would like to know the
25 specific date of the email and we would like to make sure that that email

1 is provided to Your Honor. Not just some documents that contain Bate
2 ranges unknown -- you know, amorphous Bate ranges would -- just like
3 in the headers of the emails where we've shown the court, this came
4 from Regina to Kurt Bachmeyer on this date, and attached is an Excel
5 spreadsheet, we want the email that was sent to Kurt with the
6 attachment showing him the subject, and then the emails. We want
7 those things provided to Your Honor.

8 And specifically I would like Jacuzzi, through its counsel, to
9 state for the record so we have very clearly what search in particular this
10 is. Because my examination of Mr. Templer, he didn't -- couldn't give us
11 specific dates.

12 And so, for the record, I think we need to know is this a
13 combination of multiple searches, is this a -- one search, is this -- you
14 know, I want to know the specific date that this search is claimed to have
15 been done. Because, ultimately, I think that's the inquiry, is did they
16 actually do the search that they told Commissioner Bulla that they were
17 going to do? And did they receive documents that -- that they were not
18 -- that they did not turn over to Commissioner Bulla?

19 So I want to make sure that the search that they claim that
20 they performed is the same search that was turned over to
21 Commissioner Bulla. And so if this search is from, you know, May
22 versus, you know, when she ordered this in -- you know, later in the --
23 you know, June, July area, I think we just need to have very clearly on
24 the record when this search was performed from Jacuzzi.

25 THE COURT: Well, you really said a lot there. That covers a

1 lot of different issues. And I don't know if you can simplify it for me or
2 the record --

3 MR. CLOWARD: Sure.

4 THE COURT: -- but let me just ask -- because I didn't
5 understand all the parts you're talking about there.

6 MR. CLOWARD: Okay.

7 THE COURT: I -- it seems like you're asking something about
8 what was produced to Bulla and what's produced here. I thought what's
9 here, I didn't think that had anything to do with Bulla. I thought that's
10 something he did last night, based on what we talked about in court
11 yesterday.

12 So I'm kind of confused --

13 MR. CLOWARD: Okay.

14 THE COURT: -- by your question. It was a pretty long --

15 MR. CLOWARD: It was long. I'll try --

16 THE COURT: -- long question. Let me just ask Mr. Roberts.

17 MR. CLOWARD: May I try again?

18 THE COURT: If you understand what he was saying, what
19 would be your response to that?

20 MR. ROBERTS: I'm going to deal with that in two parts.

21 THE COURT: Okay. Thank you.

22 MR. ROBERTS: The first part is what was sent to
23 Commissioner Bulla? It's my understanding was a compilation of the
24 searches that were run on different -- on the 20 terms. And, for example,
25 it's my understanding that on the warranty database, a separate search

1 was run on each term, it generated a separate spreadsheet, and each
2 spreadsheet was separately emailed to Mr. Templer. And then those
3 spreadsheets were consolidated by Mr. Cools into what he gave to
4 Commissioner Bulla. But we have included not only was giving to
5 Commissioner Bulla, which you have electronically in the vault, but
6 we've --

7 THE COURT: Right.

8 MR. ROBERTS: -- included the emails and a copy of the
9 attached spreadsheet for each of the 20 search terms. There was a
10 separate --

11 THE COURT: You mean -- which --

12 MR. ROBERTS: -- person --

13 THE COURT: -- emails? And emails are you talking about?
14 Are you talking about the emails from Mr. Bachmeyer?

15 MR. ROBERTS: No. If you remember, Your Honor, there
16 were -- and I believe Mr. Bachmeyer was a little confused at times, he
17 was vague as to dates. But what I believe is there was only -- several
18 searches that were actually sent to and done by Mr. Bachmeyer under
19 his direction. There was --

20 THE COURT: Right. I remember.

21 MR. ROBERTS: -- an early search regarding the height of the
22 tub walls and the inward versus outward opening door, and one other
23 issue. And those emails and all of his responses are in there.

24 Then there was a later search that he ran with regard to
25 looking I believe for injure, injured, hurt, pain, and hits were generated.

1 Those hits are in here. And then there's follow-up correspondence
2 where Ron is saying, hey, what's this, what's that, and he's writing back
3 to Ron and saying, paint, not pain. Here -- here's the explanation for the
4 full record. Those are all in here.

5 Then --

6 THE COURT: Further, can you clarify for the record --
7 because nobody's going to see the video here -- what -- when you say,
8 those are all here --

9 MR. ROBERTS: The -- you're right. You're right. Thank you.
10 Don't we have video, Your Honor?

11 THE COURT: Yeah. Well, we do, but, in any event, we've got
12 binders on your desk and binders up here on --

13 MR. ROBERTS: And I'm --

14 THE COURT: -- court recorder's --

15 MR. ROBERTS: -- I'm referring to Volumes I through III of the
16 privilege documents submitted to the Court for in camera review.

17 THE COURT: All right. Very well.

18 MR. ROBERTS: And they're contained in here.

19 There were also follow-ups that he did to track down
20 additional information from hits generated from other people's sources.
21 And at least one of those references an injury, which he did say he'd
22 seen an injury in those documents, or maybe more. I don't remember.

23 But I can -- what will I can represent to the Court is -- because
24 we were unable to determine every reference that he was referring to. I
25 can't do what Mr. Cloward is doing because I don't know what document

1 he was referring to or what time frame he was referring to, because he
2 wasn't specific enough.

3 So, therefore, what I did was I included every document
4 involving a search or a follow-up to a search which was to, from, or cc
5 Mr. Bachmeyer. And it's in the three binders --

6 THE COURT: All right.

7 MR. ROBERTS: -- that's been submitted to the Court for in
8 camera review.

9 THE COURT: To, from, or cc. That seems pretty expansive.
10 That should cover --

11 MR. ROBERTS: Yes.

12 THE COURT: -- everything.

13 MR. ROBERTS: Correct.

14 THE COURT: That and the attach that's.

15 Mr. Cloward, so I understand --

16 MR. ROBERTS: And I was looking over Mr. Templer's
17 shoulder when he looked for those emails and can vouch for the fact that
18 I was pointing and looking as they were each opened up and sent to -- to
19 Audrey -- Audra.

20 THE COURT: I understand the scope then of your review and
21 what you've produced to me.

22 So, Mr. Cloward, if you could be very specific.

23 MR. CLOWARD: Sure.

24 THE COURT: Setting aside what was done with
25 Commissioner Bulla -- I don't want to hear about that right now --

1 MR. CLOWARD: Certainly.

2 THE COURT: -- what was your understanding of what
3 additional documents, if any, Mr. Roberts agreed to produce yesterday?

4 MR. CLOWARD: The main thing was the cc document,
5 because my recollection --

6 THE COURT: Hold on. I need you to be specific. When you
7 say cc documents, from what period of time and what person on what
8 topic?

9 MR. CLOWARD: Okay. Mr. Bachmeyer, when he testified, he
10 said the first search that he testified -- or the -- that he talked about and
11 looked for were for the tub walls and things of that nature. And that was
12 done in 2017.

13 THE COURT: Right.

14 MR. CLOWARD: Then he indicated in 2018 he performed a
15 second search. And there were certain things that he looked for, hurt,
16 arm, pain, thing of that nature. I specifically asked him if he had
17 searched for any of the such terms --

18 THE COURT: Uh-huh.

19 MR. CLOWARD: -- and he said, no.

20 THE COURT: Uh-huh.

21 MR. CLOWARD: But he said that he was copied on results
22 that his team members or other people within the organization had I
23 guess obtained. And he opened that document.

24 If you recall, Mr. Roberts was standing right here and he said,
25 did you look into those? And Mr. Bachmeyer sat there for a moment and

1 was thinking, and then Mr. Roberts said, if you don't remember, it's
2 okay. And then Mr. Bachmeyer said, no, I do remember. I did open
3 them, and I looked through them. Mr. Roberts sat down. I got up --

4 THE COURT: I do remember that testimony.

5 MR. CLOWARD: -- and said, what did you see? Did you see
6 things with slippery, with slip, with fall, and injury, and so forth? And he
7 said, yes. So, in particular, it's really that cc that he was copied on where
8 it would have been a search performed by one of his team members that
9 is the --

10 THE COURT: Right.

11 MR. CLOWARD: -- this --

12 THE COURT: That he received. Well, that's one of the thing
13 I'm going to look --

14 MR. CLOWARD: Yeah.

15 THE COURT: -- for. When I go through those three binders,
16 I'm going to look to see those instances where he was directly identified
17 as the recipient or a cc regarding the results of searches using the search
18 terms or some -- some subset of those search terms. That's what I'm
19 going to be looking for.

20 And it sounds to me, from the scope of what Mr. Roberts had
21 Mr. Templer do last night, it should include all those.

22 MR. CLOWARD: Well --

23 MR. ROBERTS: And that does provide some clarity,
24 Your Honor. And it -- since, you know, we're narrowing down to the
25 search with the injure related terms, injure, pain, harm. If that's it, that

1 he says he's copied on --

2 THE COURT: No, no. He's talking about copied on the
3 second search --

4 MR. ROBERTS: Yes.

5 THE COURT: -- for when he received the emails dealing with
6 the -- a broader group of search terms.

7 MR. CLOWARD: Correct. And the other concern that I would
8 have is I would anticipate there would actually be many more documents
9 than just those, based on the representations of counsel, Mr. Cools, in
10 the prior hearings regarding the voluminous amounts of --

11 THE COURT: So let's just find out what database because
12 searched in order to compile these documents.

13 MR. ROBERTS: And these are not documents. These are
14 Excel spreadsheets, which are summaries of documents.

15 THE COURT: The Excel --

16 MR. ROBERTS: So the --

17 THE COURT: -- spreadsheets --

18 MR. ROBERTS: -- Excel spreadsheet --

19 THE COURT: -- were attached to emails?

20 MR. ROBERTS: Correct. But they are not a full document.

21 One page of the Excel spreadsheet would have, you know, different
22 entries with a summary of what the entry was, which is why when
23 Commissioner Bulla reviewed the spreadsheet, she said, hey, Jacuzzi, I
24 need more information about these seven or eight entries. Just from the
25 descriptive summary, I can't tell what that is. And then we went back

1 and provided her that additional information, which was a full print out
2 of individual -- those cases.

3 THE COURT: I understand. So the question is did
4 Mr. Bachmeyer receive just the Excel spreadsheets when he was talking
5 about these yesterday or did he receive the underlying documents that
6 are identified on the spreadsheets?

7 MS. LLEWELLYN: And I -- can I just --

8 MR. ROBERTS: Sure.

9 MS. LLEWELLYN: -- clarify?

10 THE COURT: You may.

11 MS. LLEWELLYN: I think that there's a -- maybe a confusion.
12 I don't know that we have testimony that Mr. Bachmeyer received all of
13 the searches; that he only perhaps received some --

14 THE COURT: Well, I did --

15 MS. LLEWELLYN: -- of the searches.

16 THE COURT: I know he received at least some. I can't
17 remember if he said all.

18 MS. LLEWELLYN: Right. So perhaps some of the searches --

19 THE COURT: So regard- --

20 MS. LLEWELLYN: -- that you're speaking about are
21 voluminous are not going to be contained. They're in the vault.

22 MR. ROBERTS: So --

23 THE COURT: Regardless of what he said, did we get
24 everything that he actually received?

25 MR. ROBERTS: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. ROBERTS: And the -- based on what Mr. Cloward said
3 and my understanding of his testimony that I was referring, did you open
4 it, I would direct the Court to privileged Jacuzzi 1216 through 1266. And
5 the summary of this chain is it documents a request from Ron Templer
6 to Kurt Bachmeyer, Regina Reyes, William Demeritt, and Mike
7 Dominguez, and Jessica Steele to search for injury, injure, injured,
8 injuries, death, hurt, and pain.

9 And Jessica Steele forwarded data pulled from the JLB and
10 KBM system with a copy of that going to Kurt Bachmeyer. And then the
11 information is all attached.

12 THE COURT: Was there any email to Mr. Bachmeyer or --
13 where he was copied that a search was performed using the word slip?

14 MR. ROBERTS: I don't recall that --

15 THE COURT: Okay.

16 MR. ROBERTS: -- right off, Your Honor.

17 THE COURT: Okay.

18 MR. ROBERTS: I can look for that and provide an update to
19 you and --

20 THE COURT: So I think that --

21 MR. ROBERTS: -- Mr. Cloward next week.

22 THE COURT: -- that's probably one thing Mr. Cloward is
23 looking for. He wants to make sure that those documents either were
24 withheld or would have been captured by whatever search was run.

25 MR. ROBERTS: I know the searches for the word slip are in

1 here. I reviewed those last night.

2 THE COURT: When you -- again, when you say --

3 MR. ROBERTS: I just don't recall right now --

4 THE COURT: Hold on. When you say --

5 MR. ROBERTS: In Volumes I through III of the in camera
6 documents submitted to the Court for review.

7 THE COURT: Thank you. Thank you. So if they're in here, as
8 you say, would --

9 MS. LLEWELLYN: These are copies of those.

10 THE COURT: I understand.

11 MS. LLEWELLYN: Yeah.

12 THE COURT: If they're in here, using what we've defined as
13 here --

14 MR. ROBERTS: Correct.

15 THE COURT: -- then does that mean it was on those Excel
16 spreadsheets that -- that Mr. Bachmeyer was copied with?

17 MR. ROBERTS: That is what has been represented to me,
18 Your Honor.

19 THE COURT: Okay.

20 MR. ROBERTS: I have not personally last night compared
21 these attachments to the ones submitted to Commissioner Bulla in the
22 vault. I believe so. It's my understanding that they are. But I believe
23 that's one of the points of this exercise is so the Court can --

24 THE COURT: Understood.

25 MR. ROBERTS: -- pull it out of the vault --

1 THE COURT: I'm going to do that.

2 MR. ROBERTS: -- and see if they match up.

3 THE COURT: I have to compare the two it sounds like.

4 MR. ROBERTS: Yes.

5 THE COURT: Mr. Cloward, so I understand your request
6 and Mr. Roberts' response in what was produced -- it seems as if I have a
7 lot of homework now -- is there any other comment you wanted to make
8 on that?

9 MR. CLOWARD: The only comment that I would have to
10 make is Mr. Roberts indicated that these were searches for the JLB and
11 KBM systems. Those are not the systems that would house the type of
12 relevant information. The type of relevant information, as discussed
13 with Mr. Bachmeyer and even Mr. Templer, would be the RNT database,
14 which was then --

15 THE COURT: Merged into Salesforce.

16 MR. CLOWARD: Salesforce. Correct, Your Honor.

17 THE COURT: RNT.

18 MR. CLOWARD: And so --

19 THE COURT: Well, RNT doesn't exist anymore I suppose.

20 MR. CLOWARD: Correct.

21 MR. ROBERTS: So the Salesforce searches which contained
22 the imported RNT information are also in here.

23 MR. CLOWARD: Those 20 terms?

24 MR. ROBERTS: Yes.

25 MR. CLOWARD: Could you just make a summary of that to

1 provide to --

2 MR. ROBERTS: Well --

3 MR. CLOWARD: -- the Court so that he can --

4 MR. ROBERTS: -- if I knew where it was.

5 MR. CLOWARD: I just hate to --

6 MR. ROBERTS: I didn't have time to tab it all.

7 MR. CLOWARD: It caused more work for you --

8 MR. ROBERTS: Could I ask --

9 MR. CLOWARD: -- you know.

10 THE COURT: Are -- are those -- the documents that were generated,
11 Mr. Roberts, from the search of those databases, are they segregated in
12 these three binders or are they going to be all mixed up?

13 MR. ROBERTS: They are not mixed up because different
14 persons ran the search. They're separate emails forwarding the
15 warranty database searches, which were from Jessica Steele, and there
16 are different emails forwarding the Salesforce searches.

17 THE COURT: Understood. All right.

18 So it sounds like he made a good faith effort overnight in the
19 short --

20 MR. CLOWARD: Well, I --

21 THE COURT: -- period of time he had.

22 MR. ROBERTS: I did my best, Your Honor. So did
23 Mr. Templer. Have I misstated anything, Mr. Templer, from our --

24 THE WITNESS: No. I --

25 MR. ROBERTS: -- review?

1 THE WITNESS: -- just remembered something that was
2 discussed earlier. I just want to clear it up.

3 When they were being printed out last night, I think some of -
4 - at least one of the Excel spreadsheets didn't appear to be printing out
5 directly. And I think that is the spreadsheet that is on a flash drive that I
6 believe was submitted to Commissioner Bulla.

7 So when you're going through it, I don't know that the hard
8 copy is going to line up exactly with what's on the USB drive. So, again,
9 I just think it was a printing error with Excel. It was a very long
10 document. It had --

11 MR. ROBERTS: And so some of the fields were printing at
12 the end of the document.

13 THE COURT: Okay.

14 THE WITNESS: It had nearly 6,000 --

15 MR. ROBERTS: But that's [indiscernible] --

16 THE WITNESS: -- entries on it. And just -- it started -- it looks
17 like it started out printing okay, and then towards the end of it, it just was
18 not printing out accurately. And I don't know if it was a conversion issue
19 to a PDF or what the reason was.

20 THE COURT: Mr. Cloward?

21 MR. CLOWARD: I don't -- I wish I could have participated
22 with the gathering of the information, so I had a better idea. I mean, I
23 feel like I'm somewhat in the dark with regard to -- I feel like I'm back in
24 the position that I was in 2018 when I have to just take their word for it.
25 And it's -- I trust Mr. Roberts, you know, but I've had some issues

1 obviously. That's why we're here. And that's my big struggle.

2 That's been the struggle from day one, is, you know, when I
3 sit down and have a very personal conversation with Josh Cools and he
4 looks me right in the eye and tells me, look, Ben, there are none, you
5 know, there are none, there's nothing, and, you know, we come to find
6 out that that's just not accurate. And so now I'm in that same position.

7 THE COURT: Well, let me stop you. That's something that
8 was supposed to be worked out in connection with the forensic review.
9 At this point in time in proceeding with a motion to strike, I think I would
10 need to know not what that forensic review would have revealed, but
11 whether there was a good faith attempt to comply with the order for the
12 forensic review, right?

13 Because we're not going to open this all up for discovery.
14 The purpose of this proceeding isn't to do discovery; it's to find out if
15 there was compliance with the orders.

16 MR. CLOWARD: Yeah. I can see that. But I think with the
17 testimony of Ms. Reyes regarding the simplicity of the search, I think that
18 there's been an intention -- this is my own -- my argument, my view -- is
19 there's been an intentional effort to attempt to persuade both yourself as
20 well as Commissioner, now Judge Bulla, that this is a really complicated
21 problem that we have when in reality it's quite as simple as --

22 THE COURT: Well, after hearing all the testimony, I
23 understand the different databases and understand how -- generally how
24 they worked, and the scope of the documents that were in the different
25 databases. And I think I generally understand how the searches were

1 performed here. I do think it's a serious question and there are issues on
2 whether there was actual compliance with the request. So I'm keeping
3 an open mind there, of course.

4 MR. CLOWARD: Thank you, Your Honor. Thank you.

5 THE COURT: So how much time do you all expect me to take
6 then to go through these three binders of in camera documents and
7 compare them to what's in the vault that represents what was provided
8 to Commissioner Bulla? I'll work as hard as I can, but I've --

9 MR. CLOWARD: Yeah.

10 THE COURT: -- got a lot of other cases, and it -- sometimes
11 it's frustrating to have voluminous discovery documents to go through.
12 But I'll comply with what you suggest, and we can get through this
13 without hampering this is litigation.

14 MR. CLOWARD: May I address the Court on one issue?

15 THE COURT: Sure.

16 MR. CLOWARD: Last night I guess -- last night, as we
17 thought through the issues, that the first of -- when we were preparing
18 for this, you know, the representations made by counsel where
19 that Mr. Templer was going to be the corporate representative. And so
20 we kind of prepared our questioning based on that understanding and
21 reliance. And the problem is, is that during the questioning, there's no
22 specificity as to dates and no specificity as what databases were
23 searched, and specificity --

24 THE COURT: Right. So I think what you're probably leading
25 to is there should be discovery allowed or questioning allowed now on

1 communications between outside counsel and Mr. Templer on what was
2 done to comply with the request to obtain the documents that
3 Commissioner Bulla was looking for.

4 MR. CLOWARD: Exactly. And, Your Honor, we prepared a
5 Rule 30(b)(6) notice that contained very specific topics that we wanted to
6 address, including having Jacuzzi bring very specific documents that
7 would allow us. Because the scope -- may I approach, Your Honor --

8 THE COURT: Yes.

9 MR. CLOWARD: -- with a proposed copy?

10 [Counsel confer]

11 MR. CLOWARD: May I approach?

12 THE COURT: Yes. Thank you.

13 MR. CLOWARD: Thank you.

14 THE COURT: Yes, sir.

15 MR. CLOWARD: So the matters, I guess -- as we analyze this,
16 our view was that when Mr. Cools left the hearings, either one of three
17 things could take place; either, one, Mr. Cools would have a conversation
18 with Jacuzzi and say, this is what the judge did, this is what the judge,
19 commissioner, ordered, and Jacuzzi either:

20 A, said, okay, we're going to willfully disobey that;

21 B, we would like your advice of what you think should be
22 done in this situation, and we're going to take your advice; or,

23 C, that information was never communicated by Mr. Cools to
24 Jacuzzi.

25 And so in the C option, that would mean that Jacuzzi wasn't

1 made aware of their obligations in this.

2 THE COURT: I understand. Let me ask Mr. Roberts a
3 question though.

4 So, Mr. Roberts, communications between outside counsel
5 and either Mr. Bachmeyer or Mr. Templer regarding what documents
6 should be assimilated and produced, I don't know that -- I don't think that
7 would be privileged because it's not providing advice --

8 MR. ROBERTS: Well, it is to the --

9 THE COURT: -- to the client.

10 MR. ROBERTS: -- extent that Mr. Cools interpreted the
11 discovery commissioner's ruling --

12 THE COURT: Uh-huh.

13 MR. ROBERTS: -- and gave Jacuzzi advice about what they
14 need to do look for. I think that's the --

15 THE COURT: Well, we need to --

16 MR. ROBERTS: -- very definition of --

17 THE COURT: -- isn't that --

18 MR. ROBERTS: -- legal advice.

19 THE COURT: That's what we need to know. We need to
20 know what was asked to be produced.

21 MR. POLSENBERG: The privilege isn't based on legal advice.
22 It's based on providing legal services.

23 THE COURT: Right, because it's not based on facts, right?
24 And we need to know the fact of what was requested to the company to
25 comply with the court order. I know it sounds like that would be a --

1 MR. ROBERTS: And just to nitpick a little, Your Honor, the
2 transcript of the discovery commissioner's hearing, regardless of what
3 she said, is not a court order. A minute order or an oral pronouncement
4 from the bench is of no legal effect in Nevada.

5 THE COURT: I --

6 MR. ROBERTS: The court order is what this Court signed.
7 So I don't think --

8 THE COURT: I suspected that argument to be coming up at
9 some point in time during this hearing. And I know -- I've actually had to
10 cite to those cases, that what's said from the bench and what the
11 minutes reflect are not always -- are not to be deemed an order of the
12 court. The Supreme Court has said that.

13 MR. ROBERTS: Yes.

14 THE COURT: Right? You know --

15 MR. CLOWARD: Your Honor --

16 THE COURT: -- I personally have -- there's a case appealing
17 me of -- where they're discussing this very issue. And I don't think the
18 Supreme Court's going to change what it's done in the past on that
19 issue.

20 MR. ROBERTS: Thank you. Thank you, Your Honor.

21 It seems to me that the discovery on that, if allowable at all,
22 would be premature. But a prerequisite to allowing that discovery would
23 be a finding that Jacuzzi violated specific court orders or order, an order
24 or orders, and then once the court finds that Jacuzzi violated an order,
25 then maybe you get to discovery about whether that was willful or what

1 were they told they needed to do to comply with the order. But to allow
2 broad discovery without a finding that an order has been violated is
3 getting ahead of ourselves I believe.

4 THE COURT: Well, the main point of this proceeding is to
5 clarify -- are you guys both listening -- is to clarify for the Court or remind
6 the Court or show the Court what was actually ordered to be produced,
7 and then to compare that with what was actually produced and to
8 understand the procedure that Jacuzzi undertook to try to comply with
9 the court order. I don't know that there's ever been an order for outside
10 counsel to produce communications regarding their interpretation of the
11 discovery commissioner's orders.

12 So I understand what Mr. Roberts is saying, but I would like
13 to hear your response, Mr. Cloward, to that.

14 MR. CLOWARD: Your opinion, I think the ultimate issue here
15 is was there willful -- a willful violation of the court -- the court's order
16 and guidance? And I'm unsure of the case that the Court is referring to,
17 but I do have the *Romero* case that indicates -- and I'll --

18 THE COURT: Right.

19 MR. CLOWARD: Specifically on page -- it's page 3 of the -- 3
20 on my page, but 780 of the opinion, or the alternate cite, 92, the Nevada
21 cite is 92. And specifically it says, generally NRCP 37 authorizes
22 discovery sanctions only if there has been willful noncompliance with a
23 discovery order of the court.

24 And it's citing the *Fire Exchange v. Zenith* case, which is
25 103 Nev. 648.

1 Then the court goes on and says, the Court's express oral
2 admonition to *Young* to rectify any inaccuracies in his deposition
3 testimony suffices to constitute an order to provide or permit discovery
4 under NRCP 37(b)(2).

5 So we believe that Commissioner Bulla when she was
6 saying, I expect supplementation, I expect another search, I expect
7 Jacuzzi to go back and do these things, that fits within the guidance of
8 the *Young* case.

9 THE COURT: Let me interrupt. So determine willfulness. It's
10 simply -- and from my perspective, did they know what they had to
11 produce? And did they produce it or not? The cases where there was
12 found not to be willfulness is where, you know, documents or some
13 evidence, a car or something, a wheel was maintained by some third
14 party and it got accidentally lost or destroyed or thrown away. We don't
15 have that here. There's been no testimony of that here, and the Court
16 has no reason to believe any of that has here [sic].

17 So I'm going to accept it as will -- or willful if -- you know, a
18 willful response to discovery if there's a clear request and if there is an
19 effort to comply, and then there was compliance -- or there was
20 production and the production was found later not to include what
21 should have been produced. Then that's willful conduct, right?

22 But what -- obviously all that depends upon whether there
23 was a wrongful interpretation by Jacuzzi on what they had to produce, if
24 it's crystal clear, if it's very clear on what they were supposed to produce
25 from the court orders, right, and those documents existed and those

1 documents were not produced, and there's not a situation where there
2 was, you know, an accident as to why they weren't produced, like the
3 whole computer system shut down --

4 MR. CLOWARD: Sure.

5 THE COURT: -- or everything on the computer system was
6 erased, and then they found it on, you know, some separate drive
7 somewhere. You know, that would be non-willful. We're talking about
8 willful conduct. Was there willful conduct not to produce documents?
9 And I can discern that simply from what was the order, what was the
10 process of obtaining the documents, and what was actually produced.

11 MR. CLOWARD: Yeah. And --

12 THE COURT: So -- and it sounds like outside counsel is not
13 saying that if there's nonproduction based upon our advice, then that's
14 not willful. They are not taking that position, as far as I understand it.
15 And since they're not taking that position, then I don't need to look at
16 outside counsel's interpretation of court order because I'm going to -- I'm
17 going to interpret the court order and I'm going to make the decision as
18 to whether certain documents existed that should have been produced.
19 And if there's a repeated -- if there's evidence of a repeated
20 nonproduction of documents that did exist --

21 MR. CLOWARD: A pattern of conduct?

22 THE COURT: -- a pattern of conduct, then, you know, that's
23 going to go to willfulness. That's how I see in, Counsel.

24 MR. CLOWARD: Sure. I guess we would --

25 THE COURT: Now, if Mr. Roberts were to say, well, wait a

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1 minute, this can't be willful because they followed our instructions and
2 we interpreted the order more narrowly than the Court interprets it, you
3 know, if you were to take that position, then that would probably open it
4 up to actual direction from outside counsel on what Jacuzzi had to do or
5 not to do .

6 MR. CLOWARD: Certainly. And, Your Honor, I would also
7 like to point the Court to the *Bahena v. Goodyear Tire & Rubber*--

8 THE COURT: Okay.

9 MR. CLOWARD: -- case. This provides the Court with some
10 additional guidance on the issue as to whether or not
11 Commissioner Bulla's rulings needed to be -- now Judge Bulla's rulings,
12 were sufficient. This says, quote,

13 "Goodyear was required to comply with the Discovery
14 Commissioner's ruling announced at the December 14
15 hearing unless the ruling was overruled by the District Court.
16 See NRCP 16, Subsection B, stating that the discovery
17 commissioner has the authority to do all acts and take all
18 measures necessary to proffer for the efficient performance
19 of his duties.

20 A ruling by the Discovery Commissioner is effective and
21 must be complied with for discovery purposes once it is
22 made orally or written unless the party seeks a stay of the
23 ruling pending review by the District Court."

24 So *Bahena* very clear, orally or written. And this is on page
25 251.

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1 THE COURT: Uh-huh.

2 MR. CLOWARD: It's at 126 Nev. 243; specific cite to page
3 251.

4 THE COURT: That's a -- I appreciate that. That was a little bit
5 different issue than what we're talking about here.

6 MR. POLSENBERG: Right. And it --

7 THE COURT: Hold --

8 MR. POLSENBERG: -- would seem to be dicta, too, because
9 in *Bahena*, it was a written --

10 THE COURT: I --

11 MR. POLSENBERG: -- order.

12 THE COURT: I'll take a look at *Bahena* on that. I was
13 referring to a Supreme Court decision that says court rulings from the
14 bench and minutes of the court rulings are not court orders to be relied
15 upon. Here we have specific rules under 16.1 and Rule 16 that give the
16 discovery commissioner certain authority. And I understand *Bahena*
17 is talking about what you need to do to comply with your discovery
18 obligations.

19 But that's not why we're here. Whether -- that's a legal issue
20 that I'm going to make at the end of this case, what Jacuzzi was ordered
21 to produce and what efforts did they undertake to comply with that
22 order, and --

23 MR. POLSENBERG: Understood.

24 THE COURT: -- and what was actually produced.

25 One thing that is concerning me, Mr. Roberts, is if Jacuzzi

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1 was directed to only produce documents that were ordered to be
2 produced from a reported recommendation signed by the judge and not
3 documents that were ordered to be produced orally by the discovery
4 commissioner, then that would tend to show not willfulness on the part
5 of the client but perhaps a wrong interpretation or some incorrect action
6 by counsel.

7 So how would I -- how could I legally or properly under
8 *Ribeiro* hold Jacuzzi responsible for advice of counsel on interpreting
9 their obligation not to comply with an oral discovery commissioner
10 request as of course to a report and recommendation? Do you
11 understand?

12 MR. ROBERTS: I do, which I think places Jacuzzi in the very
13 unfair position of either coming forward with proof that they did what
14 they were advised to do, but in order to gain that protection they have to
15 waive the attorney-client privilege and open up their outside counsel to
16 deposition and trial testimony. And that's really a --

17 THE COURT: I'm trying to limit it to only what they were
18 directed to do. Not communications on -- that were needed to, you
19 know, to represent them. What -- did --

20 MR. ROBERTS: I --

21 THE COURT: If the discovery commissioner made an order,
22 did that order get communicated to the client? And was there such an
23 interpretation of the order that Jacuzzi should not be faulted if I now
24 determine that it was a wrong interpretation?

25 MR. ROBERTS: I --

1 THE COURT: And the reason --

2 MR. ROBERTS: I understand --

3 THE COURT: -- I need to --

4 MR. ROBERTS: -- it.

5 THE COURT: Okay.

6 MR. ROBERTS: And as I'm preparing for the hearing and we
7 made the decision not to waive the privilege, I thought that the issue
8 preliminarily was, was Jacuzzi's interpretation of an order in bad faith,
9 did they fail to comply with an order? And as I interpreted --

10 THE COURT: How would I know --

11 MR. ROBERTS: -- and I -- as I interpreted --

12 THE COURT: How would I know --

13 MR. ROBERTS: Well --

14 THE COURT: -- if it's bad faith or not bad faith if I don't know
15 what they were asked to do?

16 MR. ROBERTS: Well, Mr. Templer has given you his
17 understanding of what he was required to do and required to look for. If
18 you find that that's not a good faith interpretation of an order, then the
19 next step, I suppose, would be for us to waive the privilege and prove
20 that's what he was advised.

21 But I think that before we get to that, the Court has to make a
22 determination that his understanding was a bad faith interpretation of
23 the order, and that you can interpret -- you can use the transcripts to the
24 extent they provide context and he should have been aware of it. If it's
25 an independent requirement, I don't think it's an order. But if it's used to

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1 provide context and to interpret the meaning of the order, I think that's
2 fair.

3 But getting to willfulness, I think that if the discovery
4 commissioner says, I want you to run these searches, but limit it to walk-
5 in tubs of any style in these time frames, and Jacuzzi can prove that it
6 searched those terms and put in a limiter to JD, Jacuzzi Luxury Bath,
7 because the Commissioner ordered them to only produce walk-in tubs,
8 which are supposed to be a luxury bath, and they didn't come up with
9 some things because there were some blank fields that they didn't know
10 about at the time, the court could not find that was a bad faith refusal to
11 comply with an order because they made a good faith attempt. Based
12 on a mistake, everything didn't get reduced.

13 THE COURT: I -- you're making a closing argument. I tend to
14 agree with what you said, but it doesn't get to the issue, in my mind,
15 which is suppose Jacuzzi repeatedly failed to comply but clear -- if it's
16 clear and unmistakable -- let's use that phrase -- that they didn't attempt
17 to comply with the discovery commissioner order as I interpret it, all
18 right, then would we need to know if they did that based upon advice of
19 counsel -- or advice or direction of counsel?

20 MR. ROBERTS: I think Jacuzzi gets to take that risk. The case
21 law seems to say that you only waive the attorney-client privilege in the
22 client chooses to rely on advice of counsel as a defense to the sanctions
23 motion. And if we --

24 THE COURT: I understand.

25 MR. ROBERTS: -- don't choose to invoke that as a defense,

1 the Court cannot breach the privilege.

2 THE COURT: So if their interpretation was clearly erroneous,
3 you know, clearly erroneous interpretation of the discovery
4 commissioner order, and there were documents that should have been
5 produced -- perhaps several times, but we'll look at that -- but involve
6 been produced based upon the correct interpretation of the discovery
7 commissioner order, to me, that goes to the issue of willfulness.

8 And I could only mitigate the fault of Jacuzzi if I were to know
9 that they were simply complying with outside counsel. Do you see what
10 I'm saying? I think what I would need to --

11 MR. ROBERTS: I do. I'm --

12 THE COURT: -- know what you said if we were -- if I was
13 going to rely on that to mitigate a finding of willfulness.

14 MR. ROBERTS: Okay. We may have a difference of opinion
15 of what's repeated conduct versus several different interpretations --

16 THE COURT: Of course.

17 MR. ROBERTS: -- resulting in discreet batches of stuff being
18 produced under the --

19 THE COURT: Of course.

20 MR. ROBERTS: -- different interpretations. But I understand
21 what the Court is saying. If there's a bad faith interpretation which
22 results in a failure to comply with an order, then --

23 THE COURT: I wonder if that --

24 MR. ROBERTS: We don't believe that's shown, but --

25 THE COURT: I wonder if that should be a second phase. I

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1 wonder if --

2 MR. ROBERTS: I --

3 THE COURT: If I were to preliminarily reach the conclusion
4 that Jacuzzi willfully failed to produce documents on one or more
5 occasions that were -- that was clearly required to be produced, under
6 my interpretation of the court order, right, then should I give you an
7 opportunity to come in here and say, well, they only did it because we
8 told them to, you know, do you want to reserve your right to do?

9 MR. ROBERTS: I would, Your Honor, and simply because if
10 the Court say only finds a bad faith interpretation of one order on this
11 one issue, then that would present a different question as to waiver of
12 privilege than all of the issues in dispute, which we're faced with at this
13 time.

14 And so I think, you know, we would appreciate it if -- I don't
15 think we're -- Jacuzzi's going to choose to do that and go down that
16 slippery slope, but did you would allow us to reserve that, it would be
17 appreciated.

18 THE COURT: It seems *Ribeiro* requires me to make that
19 analysis. And --

20 MR. ROBERTS: Yeah.

21 MR. POLSENBERG: Well --

22 THE COURT: And when I have to determine -- one of factors
23 of *Ribeiro* is --

24 MR. POLSENBERG: Trust me, I know the factors.

25 THE COURT: Of course you do.

1 MR. POLSENBURG: I'm just saying, to Judge Gonzalez, it's
2 the only law we have in Nevada.

3 But *Ribeiro* boils down -- except for that, it boils down to two
4 factors. I know there's seven. But it's willful misconduct. Not just -- not
5 just deliberate behavior; it's a --

6 THE COURT: Uh-huh.

7 MR. POLSENBURG: -- willful misconduct. And just because
8 we intentionally did something because it was based on an
9 interpretation of an order, just because that interpretation is wrong
10 doesn't mean it's misconduct.

11 I mean, I've been fighting the issue my whole adult life.

12 THE COURT: I -- let's assume you're absolutely correct and --

13 MR. POLSENBURG: Yeah.

14 THE COURT: -- and -- actually, there is another case on this.
15 It's the case where I issued that 30-page sanction against *Centennial*
16 *Hills*, and the Supreme Court did look at my analysis of willfulness.

17 MR. POLSENBURG: Yeah.

18 THE COURT: So let's just -- let's suppose I agree with you.
19 I'm going to make that determination without regard to what direction
20 they were given by outside counsel.

21 MR. POLSENBURG: Exactly. And I think you can make that
22 determination. But realize there's not just willfulness; there's prejudice.
23 Even willful misconduct doesn't merit the extreme sanction absent
24 prejudice.

25 THE COURT: I understand that, too . That's another factor of

1 *Ribeiro*. And that's --

2 MR. POLSENBERG: It's --

3 THE COURT: -- that's closing argument.

4 MR. POLSENBERG: Right. And --

5 THE COURT: It's not --

6 MR. POLSENBERG: -- and I don't want to be making a
7 closing argument. But I think you need to -- I think you have evolved
8 your thinking on this, and that's very good, but I'm asking you to keep an
9 open mind on how these factors are going to apply in this case.

10 MR. CLOWARD: And --

11 THE COURT: I like your explanation that my analysis has
12 evolved rather than saying I was wrong and now I'm right.

13 MR. POLSENBERG: Well, I didn't mean that.

14 MR. ROBERTS: Close enough, Your Honor.

15 MR. POLSENBERG: I meant you've obviously thought about
16 this for more than one case. All right? I don't mean like your thinking
17 has evolved --

18 THE COURT: Okay.

19 MR. POLSENBERG: -- in this case. You clearly have a
20 handle about what we're talking about. I --

21 I think these -- I think the circumstances here are different
22 from most of the other cases. As Lee pointed out yesterday, *Johnny*
23 *Ribeiro* was the manufacturer of fraudulent evidence.

24 THE COURT: I understand. All right.

25 MR. POLSENBERG: But -- and *Bahena* --

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1 THE COURT: So --

2 MR. POLSENBERG: -- *Goodyear* purposefully refused to
3 turn over thousands of documents that they refused to turn over in
4 another case in California.

5 THE COURT: No. I understand exactly.

6 So what I need to determine in this case -- and maybe I'm
7 repeating myself. But what I need to determine is if there was willful
8 noncompliance with --

9 MR. POLSENBERG: Yeah.

10 THE WITNESS: -- a true order. Right? And say it was
11 repeated or say there was a -- some kind of insufficient searching of
12 databases, or whatever it is, if there is enough evidence to convince me
13 that what Jacuzzi did rises to the level of bad faith, is outside counsel
14 going to say, well, they did it because we told them to, right? And how --
15 and I can't make that last determination without seeing the actual
16 correspondence or direction --

17 MR. POLSENBERG: Gotcha.

18 THE COURT: -- from outside counsel on what Jacuzzi had to
19 produce.

20 MR. POLSENBERG: Well --

21 THE COURT: And so that's the dilemma we're in. And the
22 only way to resolve that -- and I'm going to let Mr. Cloward speak in a
23 moment.

24 MR. POLSENBERG: I think phases --

25 THE COURT: I think the only way was to --

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1 MR. POLSENBERG: -- is a good idea.

2 THE COURT: -- bifurcate.

3 MR. POLSENBERG: Right. I agree with you on that one.

4 THE COURT: Mr. Cloward?

5 MR. CLOWARD: Your Honor, the 30(b)(6) topics, the notice
6 that I provided to Your Honor --

7 THE COURT: Yes, sir.

8 MR. CLOWARD: -- get right to the heart of that exact issue
9 that the Court just announced; that is, as you look at the documents that
10 we requested be produced and the examination, it is -- that is the heart
11 of what we were trying to provide Your Honor with so that Your Honor
12 has the information to make the decision that the Court feels is just in
13 this situation.

14 THE COURT: So perhaps in the interest of attempting at this
15 point to meet, if fairness, both sides' concerns, maybe we need to
16 bifurcate this, which is for me to hear the rest of the evidence here, make
17 a determination whether there was willfulness or bad faith on the part of
18 Jacuzzi, and then allow outside counsel to make the determination in
19 consultation with their client, if the client's going to waive the privilege,
20 and like outside -- or demand that outside counsel come in and say, it
21 wasn't our fault. It was their fault.

22 MR. CLOWARD: I think that's a -- I think that's a wise choice,
23 Your Honor.

24 THE COURT: All right. So, great. So, I think I am going to
25 order that we bifurcate in proceeding now, all right, such that -- and it

1 looks like your co-counsel is standing up. Maybe I should wait.

2 [Counsel confer]

3 MR. CLOWARD: He just wanted to confer. I should have
4 conferred with him before I --

5 THE COURT: Of course.

6 MR. CLOWARD: -- I announced that I was okay .

7 I apologize, Mr. Allen.

8 MR. ALLEN: That's all right. That's all right.

9 THE COURT: All right. So I'm not ruling that you're not
10 allowed to the correspondence between outside counsel and Jacuzzi; I'm
11 deferring that determination until such time as we complete a first phase
12 of this now bifurcated proceeding to determine if there's sufficient
13 evidence for me to conclude that there was bad faith or willfulness to
14 level required by *Ribeiro* for me to sanction Jacuzzi by way of striking the
15 answer, which is what you're asking for here.

16 If I make a preliminary -- if I have the preliminary decision
17 that Jacuzzi has faulted to that level and a sanction of striking the answer
18 should be imposed, then I will provide outside counsel the opportunity
19 to come in and say, some of the blame or all of the blame should be
20 shifted to us, and the company, the client, should not be punished for
21 that reason.

22 MR. CLOWARD: Understood.

23 THE COURT: So -- but we'll get to that second phase and
24 that analysis after we complete the first phase.

25 MR. CLOWARD: Thank you, Your Honor.

1 THE COURT: Does that seem fair to everybody here?
2 MR. CLOWARD: It does to Plaintiffs, Your Honor.
3 THE COURT: I see no one --
4 MR. ROBERTS: Yes.
5 THE COURT: -- objecting to that.
6 MR. ROBERTS: Yes, Your Honor.
7 THE COURT: Okay.
8 MR. ROBERTS: That seems fair to Jacuzzi.
9 THE COURT: We took a long time to discuss that, but it's a
10 very critical issue here given the severity of the sanction being
11 requested.
12 MR. ROBERTS: Sure.
13 THE COURT: And the solemnity of the attorney-client
14 privilege that exists in our society. All right.
15 So do you guys want to take a 15-minute recess now?
16 MR. ROBERTS: Sure.
17 MR. ALLEN: Yes, Your Honor.
18 MR. CLOWARD: That would be great.
19 MR. ALLEN: Yes, Your Honor.
20 THE COURT: Okay. Very good. A 15-minute recess, and
21 then we'll come back and continue with the examination of Mr. Templer.
22 MR. ROBERTS: Thank you, Your Honor.
23 [Recess at 3:23 p.m., recommencing at 3:51 p.m.]
24 THE COURT: All right. Are we ready to proceed?
25 MR. CLOWARD: Yes.

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1 MR. ROBERTS: Yes. Your Honor, Jacuzzi has no more
2 questions for Mr. Templer.

3 THE COURT: All right. Very good.

4 So redirect examination, Mr. Cloward?

5 MR. CLOWARD: Very brief, Your Honor.

6 THE COURT: Yes, sir.

7 MR. CLOWARD: Very, very brief.

8 THE COURT: How are you doing, Mr. Templer? All right.
9 Very good.

10 THE WITNESS: A little tired, but I'm fine.

11 THE COURT: All right.

12 REDIRECT EXAMINATION

13 BY MR. CLOWARD:

14 Q Okay. I wanted to confirm. Earlier Mr. Roberts asked
15 regarding the Pullen matter whether you had put your -- I guess your
16 carrier on notice of that claim; is that -- do you recall that testimony?

17 A I do.

18 Q During my cross-examination earlier, I believe yesterday, you
19 indicated that you spoke with another attorney and gave us the name of
20 another attorney that you consulted with regarding the Pullen matter.
21 Do you recall.

22 A I do.

23 Q Was that individual that you discussed that with, to ascertain
24 whether or not Jacuzzi should put its carrier on notice?

25 A The only reason I'm struggling is it seems to me it's invading

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1 an attorney-client communication on the subject.

2 Q But I'd like --

3 THE COURT: Let -- answer it -- answer it --

4 THE WITNESS: Just answer it yes or no . The answer would
5 be no.

6 THE COURT: Okay. Thank you.

7 BY MR. CLOWARD:

8 Q And you were also asked about whether or not the legal
9 department had staff dedicated to ESI searches. You heard the
10 testimony of Ms. Reyes yesterday regarding the ease of searching the
11 databases. Did you consult with Ms. Reyes prior to commencing any
12 and all of the searches?

13 A I communicated with her at times during some of the
14 searches I -- does that answer your question? I did talk to her about
15 some of the searches.

16 Q Okay. Is there a reason that she was not asked to be kind of
17 the point person given the fact that she testified yesterday she was the
18 one that gets requests all the time for -- to perform searches, and that's
19 kind of what she does?

20 MR. ROBERTS: Is this during the search process or are you
21 referring to --

22 THE COURT: Why don't you --

23 MR. ROBERTS: -- these proceedings?

24 THE COURT: -- identify the time frame.

25 MR. CLOWARD: Sure.

1 THE COURT: Yeah. Thank you.

2 BY MR. CLOWARD:

3 Q I guess was -- why didn't Jacuzzi just use Ms. Reyes to
4 perform all of the searches given her proficiency, as she testified, with
5 conducting searches of the Salesforce database?

6 THE COURT: Of course her testimony was that her ability to
7 search was somewhat limited, right? So --

8 MR. CLOWARD: I -- my recollection was her testimony -- she
9 said she -- at the beginning of the -- of this -- of the program in 2014, but
10 that she's become quite proficient.

11 THE COURT: Okay. I thought she said -- well, I'll have to
12 check my notes. I thought she said it was limited to like parts. But I'll
13 check my notes on that, and I'll probably have to listen to JAVS.

14 MR. CLOWARD: For --

15 MR. ROBERTS: Your Honor, object. In the absence of
16 relevance, who did the searches was incompetent. I don't know that this
17 is relevant --

18 THE COURT: Well --

19 MR. ROBERTS: -- why counsel chose --

20 THE COURT: -- it might go to willfulness. Let me hear it, and
21 then I'll decide how to weigh it.

22 Yeah. Okay. Go ahead. You know what, I'm sorry I
23 interjected there. I'll have to --

24 MR. CLOWARD: Sure. It's okay, Your Honor.

25 THE COURT: I just wanted to make sure I understood your

1 question. So --

2 MR. CLOWARD: Certainly.

3 THE COURT: -- why don't you go ahead and answer -- ask
4 the question again.

5 MR. CLOWARD: And I would invite the Court, I have -- I
6 appreciate the Court's guidance. So if there's any issues that need
7 clarity, it's -- I appreciate the Court, you know, asking for that. And I'm
8 happy to assist as I can.

9 THE COURT: Perfect.

10 BY MR. CLOWARD:

11 Q Do you remember when I asked Ms. Reyes about a specific
12 type of a search called a Boolean search?

13 A I do recall that.

14 Q Remember, she said she could use a Boolean search, which
15 is similar to like a Westlaw search, where you can enter two terms into
16 the database, and it will pull results? Do you recall that?

17 A Yeah. I don't think the exact -- that's really how it was
18 described yesterday, but I understand what a Boolean search is. I
19 remember yesterday you said you could enter one word and then put it
20 within five of other word --

21 Q Yeah.

22 A -- or something. I think that was the example you used.

23 Q Sure. And Ms. Reyes indicated that Salesforce is capable of
24 doing that, and that she does that. Do you recall that?

25 A I recall her saying that could be done in Salesforce. I don't

1 recall her saying she has done that. But she may have. I just don't
2 recall.

3 Q Okay. And with regard to knowledge of the Pullen matter,
4 hiring a lawyer, you were asked, you know, did you know, or do you
5 know whether Mr. Pullen hired a lawyer, and I think you indicated that
6 from the communication on October 30th, you were not aware; is that --
7 do you recall that you told Mr. Lee Roberts that?

8 A That is accurate.

9 Q Okay. However, you were aware at that time of the Pullen
10 incident, that the parties in this litigation had been engaged in lengthy
11 discovery disputes regarding the issue of prior and subsequent
12 incidents, true?

13 A Yes.

14 Q And regarding the writ of prohibition, you indicated that you
15 reviewed that before it was submitted to the Supreme Court, correct?

16 A I said I reviewed a draft of it. I may have reviewed the final. I
17 don't know if the version I looked at had any changes before it was filed.

18 Q Okay. And you're aware in the writ that Jacuzzi indicated
19 that the entire universe of documents had been turned over, which are
20 death incidents involving someone being trapped in a tub? Do you recall
21 that part of the writ?

22 A Yeah. I think that's in there.

23 Q Okay. And the writ was filed after Pullen, right?

24 A Correct.

25 Q Okay.

1 MR. ROBERTS: Your Honor, I'd just stay the writ speaks for
2 itself. I'm not sure that characterization's correct.

3 THE COURT: Okay.

4 MR. ROBERTS: But the Court --

5 THE COURT: I -- yeah. I've stayed the writ. And I'll look at it
6 again and --

7 MR. ROBERTS: Thank you.

8 THE COURT: But thank you.

9 MR. CLOWARD: Okay.

10 BY MR. CLOWARD:

11 Q You were asked a question by Mr. Roberts about I guess why
12 the documents were turned over, and there was some explanation that
13 there was an initial attempt to find documents and some were missed.
14 Do you recall that?

15 A You're -- I'm not following you on that one.

16 Q Okay. I believe Mr. Roberts was trying to -- trying to set out
17 the reasoning as to why certain things were missed in the searches. Do
18 you remember that, talking about JLB and different things?

19 A JB, yes.

20 Q JB. You're aware of that -- I guess the memo that was
21 provided to Commissioner Bulla indicated that in addition to JB, like all
22 of the divisions were searched? Like in the memo that was provided to
23 Plaintiffs' counsel, there were entries that predated the walk-in tub
24 entirely, true?

25 A Yeah. We're talking about different searches, but, yes.

1 Q Okay. And so if the entries that were provided to
2 Commissioner Bulla contained products prior to 2008, then you agree
3 that that was searching all of the products throughout the Jacuzzi
4 system?

5 A Again, we're talking different searches. That was in
6 reference to the KBM search. The JB was in reference to the Salesforce
7 search.

8 Q Have you refreshed your memory on when the searches
9 were performed?

10 A I have a general recollection of when they -- of when
11 searches were performed. I don't have exact dates in mind.

12 Q Well, give me a general -- give me your general recollection
13 of when each search was performed, including what was searched for.

14 A Again, back in --

15 MR. ROBERTS: I'm going to object to compound. There's so
16 many searches. That's too hard to answer.

17 THE COURT: It may be difficult to answer, but let's see from
18 the witness if he has -- what recollection that he has on that. But the
19 Court recognizes that -- I probably can't give lot of weight to his
20 recollection on this, and there's been specific testimony --

21 MR. CLOWARD: Sure.

22 THE COURT: -- on when various things were done. So that
23 will be the best communication for me.

24 MR. CLOWARD: You got it, Judge.

25 THE COURT: All right. Thank you.

1 BY MR. CLOWARD:

2 Q Can you give us the best estimate as to when the searches
3 were performed? Because as -- my recollection of yesterday when I
4 asked you those questions, you couldn't remember. And so my specific
5 question is, have you done anything to refresh your memory on when
6 the searches were performed?

7 A Well, I went through last night a number of emails to
8 produce to the Court, so that helped refresh some recollection.

9 Q Okay.

10 A But, again, there was -- as you can see by what was
11 produced, there was a substantial amount that I went through. So
12 remember exact dates and when searches were conducted, I'm not
13 going to be able to --

14 THE COURT: That's something I'll try to --

15 THE WITNESS: -- go off memory.

16 THE COURT: -- something I'll try to figure out for the --

17 MR. CLOWARD: You got it, Judge.

18 THE COURT: -- parties through the in camera documents
19 submitted to me. It should be obvious from those.

20 MR. CLOWARD: You got it.

21 THE COURT: Okay.

22 MR. CLOWARD: I'm just trying to --

23 THE COURT: And thank you for --

24 MR. CLOWARD: I was trying to narrow what you had to do,
25 Judge.

1 THE COURT: No. Yeah, I understand. It sounds like you --
2 he doesn't specifically know.

3 But would the answer to that be, in part, or in whole in the in
4 camera documents that I have?

5 THE WITNESS: It would be in -- I don't know if in whole,
6 because I did have verbal communications with people that the
7 documents would have set forth a very good chronology of what
8 happened and what searches were run. I mean, I remember basically
9 there was a search in May of 2017 -- we talked about that one yesterday
10 -- with the four terms.

11 THE COURT: Uh-huh.

12 THE WITNESS: In the February, March time frame of 2018,
13 there was the search of the 20 terms. After Commissioner, now
14 Justice Bulla, issued her order in August-ish of 2018, there was a search
15 of the terms of hurt, pain, injure, injuries --

16 THE COURT: Uh-huh.

17 THE WITNESS: -- injured. I don't recall; there may have
18 been one more. And then there was some follow-up searches and
19 searches that -- when I would get results, some of the information, as I
20 said earlier, I didn't understand all of the -- or what I got was not
21 complete information for me to determine whether it was a walk-in tub,
22 whether it was responsive to discovery issues or a court directing an
23 order. So I had to do some follow-up searches to get information on
24 that. And then --

25 THE COURT: All right.

1 THE WITNESS: -- in July of 2019, in response to discovery
2 that the Plaintiffs served, there was more searches.

3 THE COURT: Thank you for that.

4 THE WITNESS: That's the general chronology. There's -- as
5 you can see from the three volumes, there was multiple
6 communications.

7 BY MR. CLOWARD:

8 Q Okay. And, Mr. Templer, you were asked about the case
9 numbers on the Salesforce documents?

10 A Yes.

11 Q You indicated that each time somebody calls, there's a new
12 case number?

13 A No. That's not what --

14 Q No?

15 A -- I said.

16 Q Okay. Refresh my memory --

17 A Yeah.

18 Q -- of what you said.

19 A When a -- my understanding on Salesforce -- and, again, I
20 have never created a case, I've never entered information in a case, I've
21 never deleted information in a case; I've only reviewed cases -- is each
22 time a customer service agent creates a new file or new case, it auto
23 populates a case number. My understanding is if -- once a case is
24 opened, an agent can enter multiple things within that entry. As you've
25 seen in the Pullen documents, there's multiple different phone numbers

1 or emails and different things within a single case. So stuff can be added
2 to cases as it goes along if it's -- and my understanding is, if it's the same
3 call, same case, they just kind of update it; if it's a new call, new issue,
4 new case, they create a new case.

5 Q Okay. What I want to --

6 THE COURT: So there could be different case numbers for
7 the same customer or client?

8 THE WITNESS: Correct.

9 THE COURT: Okay.

10 THE WITNESS: And the Pullen matter, we've produced
11 multiple case numbers for Pullen.

12 BY MR. CLOWARD:

13 Q And what I wanted to tie together for the Court was that --
14 and this is what we learned when we took Deborah Nuanes' deposition,
15 is that when you put in the serial number, the serial number holds all of
16 those things together and links all of those entries, true?

17 A Yes and no. That's the -- my understanding, that's the intent.
18 But, again --

19 Q If it --

20 A -- they --

21 Q -- entered correctly?

22 A As I mentioned earlier, there's some people call up that don't
23 know their case -- their serial number.

24 Q Correct?

25 A And some entries just don't have a serial number tied to

1 them. If the serial number is entered, I believe it's easy to then access
2 all --

3 Q Calls?

4 A Salesforce cases for that particular product.

5 Q Okay. Thank you. And then the final, I guess, question that I
6 have is the -- you talked about the RNT data. Do you agree that the RNT
7 data was migrated into Salesforce back in 2013, '14?

8 A I think it was '14, '15. But it was somewhere in that time
9 frame.

10 Q Okay. So searches of the Salesforce databases would have
11 pulled data from the RNT system, true?

12 A Yes. But as I mentioned, the RNT system did not pull any
13 information such as -- it didn't populate things such as JB. If it didn't
14 have a -- the serial number, that wouldn't have populated. Some fields I
15 don't think would have populated, but it was in the Salesforce database
16 and could be searched.

17 Q Okay.

18 MR. CLOWARD: Your Honor, at this time, we would -- we
19 would rest with Mr. -- not rest the case, but --

20 THE COURT: Understood.

21 MR. CLOWARD: -- we would pass. Thank you.

22 THE COURT: Okay. Really quick. When I --

23 MR. CLOWARD: Yeah.

24 THE COURT: When I mentioned, you know, the searches
25 were parts, I was referring to Martinez, not Reyes.

1 MR. CLOWARD: Oh, I'm sorry.

2 THE COURT: Yeah. No. I made a mistake in saying -- in the
3 person.

4 MR. CLOWARD: Gotcha.

5 THE COURT: All right.

6 MR. ROBERTS: One --

7 THE COURT: Mr. Roberts, any recross?

8 MR. ROBERTS: Yes. I just want to try to clarify one issue.

9 THE COURT: Uh-huh.

10 RECROSS-EXAMINATION

11 BY MR. ROBERTS:

12 Q You went through a number of searches and when you did
13 the searches. Those were all searches of electronic databases, ESI,
14 correct?

15 A The searches I discussed, yes.

16 Q Yes. Were there other searches that you did other than for
17 ESI?

18 A Yes.

19 Q Okay.

20 A Paper documents were searched.

21 Q Okay. And tell the Court what you recall about that.

22 A I recall that your office, Snell & Wilmer, and -- went through
23 -- I didn't count the boxes -- rough estimate, 50 boxes worth of
24 documents that we thought potentially could have something in there. I
25 sat in the room while they were doing the searches and would answer a

1 question if it came up as to, hey, is this a walk-in tub type of thing? But I
2 did not -- I did not do the research myself, the review of the documents
3 myself.

4 THE COURT: Who had custody and control of those boxes?
5 And what I mean, who's --

6 THE WITNESS: The company.

7 THE COURT: Pardon me?

8 THE WITNESS: The company's documents.

9 THE COURT: Was there like a specific person at the company
10 that had the responsibility of maintaining those boxes, or were they
11 collected from various sources?

12 THE WITNESS: Since I didn't actually look through the
13 documents, I'm not sure. But I think it was -- maintaining the boxes, I
14 don't know that we have somebody dedicated to that. They are stored in
15 a -- they're stored in an area of our warehouse.

16 THE COURT: All right. The -- I mean, this is a new issue
17 that's come up that -- so I'll -- I will advise --

18 MR. ROBERTS: We footnoted it in one of our briefs --

19 THE COURT: I'm just going to --

20 MR. ROBERTS: -- I -- that it is not --

21 THE COURT: -- invite Mr. Cloward to --

22 MR. ROBERTS: -- and I just --

23 THE COURT: -- ask the question.

24 MR. ROBERTS: -- didn't want to -- I didn't want to have an
25 incomplete record, you know, that that was all the searches that Jacuzzi

1 had done.

2 THE COURT: This is important information.

3 BY MR. ROBERTS:

4 Q And were those recent documents or were they older
5 documents? Do you recall?

6 A Again, I didn't look through all the boxes myself, but I think
7 there was some pretty old documents in there, and very dusty
8 documents.

9 THE COURT: Understood. Thank you.

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

11 THE COURT: Did you want to follow up on the new topic of
12 the paper searches?

13 MR. CLOWARD: Just one question.

14 THE COURT: Yes.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. CLOWARD:

17 Q You agree that that search was never conducted until after
18 Mr. Roberts' firm got involved, true?

19 A That specific search, correct. I mean, there's --

20 Q Okay.

21 A -- there may have been some smaller searches of paper
22 documents, but not to that extent previously.

23 Q Thank you.

24 MR. CLOWARD: Nothing further, Your Honor.

25 THE COURT: Thank you. All right.

1 I guess you're excused right now --

2 THE WITNESS: Thank you.

3 THE COURT: -- Mr. Templer. Thank you. You may rejoin
4 your counsel.

5 All right. It would be great if we could get one more witness
6 in. Does --

7 MR. ROBERTS: We may have something even better for you,
8 Your Honor.

9 THE COURT: Okay.

10 MR. ROBERTS: I think we're done except for the witness
11 who is not available until the 25th.

12 MR. CLOWARD: Mr. Demeritt.

13 THE COURT: Well, very good. Then we're going to continue
14 the proceedings until the 25th where we'll hear from Plaintiffs' last
15 witness, Mr. Demeritt. At which time you can let me know officially if
16 you rest.

17 MR. CLOWARD: Thank you, Your Honor.

18 THE COURT: All right.

19 MR. CLOWARD: Well --

20 THE COURT: Yes, sir?

21 MR. CLOWARD: I'm sorry, Your Honor. I just wanted to
22 make sure that -- that I had an understanding of the exhibits that had
23 been admitted. And if there's anything that's not been admitted at this
24 time, I would move to have it admitted. I think the only thing that --

25 THE COURT: Okay.

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1 MR. CLOWARD: -- I did not -- I think there was not a clear
2 ruling on were the Guild surveys. And so I wanted to talk about that and
3 whether we would get a stipulation on that, whether counsel had an
4 opportunity to confirm whether those were provided to Jacuzzi or not,
5 because those contain significant entries as well.

6 MR. ROBERTS: And, Your Honor --

7 THE COURT: I recall --

8 MR. ROBERTS: -- it was shortly after midnight when I
9 finished compiling the notebooks, and I did not have a chance to direct
10 anyone to review those Guild surveys last night.

11 THE COURT: We'll keep that --

12 MR. ROBERTS: But --

13 THE COURT: -- issue open.

14 MR. ROBERTS: But if we can keep that open. We're
15 tempting to clarify whether or not we were sent those particular
16 documents, and if we were, we'll stipulate to their admission into the
17 record. And if not, we were going find out who may have received some
18 of the Guild documents so that they could be brought in as a witness,
19 and you could attempt to lay a foundation if we're not going to stipulate.

20 MR. CLOWARD: Yeah.

21 MR. ROBERTS: But --

22 THE COURT: And --

23 MR. ROBERTS: -- we've agreed that they're either entitled to
24 a stipulation or a witness, Your Honor.

25 THE COURT: Understood. Thank you for that. So we'll leave

1 that issue open and so -- as to those so-called Guild surveys.

2 And Plaintiff is retaining the right to seek admission on
3 those.

4 MS. LLEWELLYN: That's the --

5 THE COURT: What about --

6 THE CLERK: I'm sorry. That's the thumb drive, Exhibit 191?

7 MR. ROBERTS: Yes.

8 MR. CLOWARD: Yes.

9 THE COURT: So you're now moving officially to have
10 admitted the additional Exhibits, which I think are 157 through --

11 THE CLERK: Uh-huh. 192.

12 THE COURT: -- through 192?

13 MR. CLOWARD: Correct, Your Honor.

14 THE COURT: I don't recall whether any of those were
15 individually admitted. But let's check with Mr. Roberts.

16 Mr. Roberts, aside from the Guild survey, which I think we
17 were discussing --

18 MR. ROBERTS: I remember we had 193 that was admitted.

19 THE COURT: Yes. What about the others, 157 through 192?

20 [Counsel confer]

21 THE COURT: Off the record.

22 [Recess at 4:12 p.m., recommencing at 4:12 p.m.]

23 MR. GOODHART: In reviewing the exhibits, I noticed Exhibit
24 192, I believe Mr. Cloward had used that just as a summary of what was
25 contained in Exhibit 191, the Guild surveys is what I -- is that right, Ben?

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1 MR. CLOWARD: Which one?

2 MR. GOODHART: 192.

3 MR. CLOWARD: Yes. Those were selected. And I want to be
4 clear, Your Honor, on that, because I took the liberty on that document to
5 delete columns that were extraneous, so I want to clearly state for the
6 record that I deleted columns that were extraneous and only put the
7 summary of the description and then the contact information for the
8 individual. I made no alterations or changes to the contents of any cell
9 or format of the cells or things of that nature. I just deleted columns, so
10 that it would print on one page --

11 THE COURT: All right. So --

12 MR. CLOWARD: -- for the Court, so the --

13 THE COURT: And where's the rest of it, then?

14 MR. CLOWARD: The entirety of the Guild surveys are on that
15 thumb drive.

16 THE COURT: Oh, okay.

17 MR. CLOWARD: That's the document that --

18 MR. GOODHART: So I think --

19 THE COURT: So --

20 MR. GOODHART: -- two things will have to happen by next
21 week. Number one, we'll figure something out with the Guild surveys.
22 Whether they're stipulated to where the witness will be there. And then
23 also before then, I think we'll have to -- Defense counsel will have to go
24 through Exhibit 192, which is Mr. Cloward's production or his creation. I
25 want to make sure all the information is correct.

1 THE COURT: Right. So I'm reserving a ruling on whether
2 192 should be admitted and then 191 is the thumb drive. I'm reserving
3 ruling on whether 191 should be admitted.

4 Mr. Roberts and Mr. Goodhart, any objection to admitting the
5 rest of those documents? That would be 157 through 190 and then 190 --
6 well, 193 is already admitted.

7 MR. ROBERTS: No objection to the remainder of the
8 exhibits, with the exception of 170 and 171, which are the leave behind
9 brochures that Mr. Cloward has used with -- used them with one witness
10 and referred to them in another. With -- and our objection is based on
11 relevance.

12 THE COURT: To 170 and 171?

13 MR. ROBERTS: Yes. So Your Honor, as Mr. Cloward just
14 pointed out, on Exhibit 170 at Jacuzzi 7, the consultant's name is Hale
15 Benton. He is the salesman who --

16 THE COURT: Uh-huh.

17 MR. ROBERTS: -- sold the walk-in tub to Ms. Cunnison --

18 THE COURT: Uh-huh.

19 MR. ROBERTS: -- in this case. We're not disputing its
20 authenticity. We're not disputing its relevance at trial. We're simply
21 saying it's not relevant to any issue in this hearing. The only thing it was
22 used for was a blurb in there indicating how many people fall in
23 bathrooms. And we've stipulated -- Mr. Templer on behalf of Jacuzzi has
24 admitted that Jacuzzi knew that people fall in bathrooms. So I just don't
25 think it's relevant to any issue here.

1 Whether -- even if Jacuzzi thought no one fell in bathrooms
2 and it was absurd to think someone could be injured in a bathroom, it
3 would have no relevance, if the discovery commissioner or this Court
4 ordered them to search for injuries in bathrooms. They couldn't refuse
5 to comply based on that fact.

6 So I just don't see. I think it is inflammatory. It's attempting
7 to inject issues into this proceeding that simply are not relevant in this
8 proceeding.

9 THE COURT: Okay. Mr. Cloward.

10 MR. CLOWARD: In response, Your Honor, this Exhibit 170
11 and 171, my office did make a mistake. It's in there twice, so one of
12 those don't need to come in. One is a duplicate. However, this is the
13 exact -- a copy of the leave behind packet that Ms. Sherry Cunnison
14 received in this case. So this is a copy of the document that she
15 received.

16 THE COURT: How do we know?

17 MR. CLOWARD: Because Hale Benton is the person that sold
18 the tub to her.

19 THE COURT: No, but I mean, there's no testimony on that.

20 MR. CLOWARD: Not in the evidentiary hearing but in Hale
21 Benton's deposition testimony, he talked about it. And I don't think
22 there's any disagreement by the parties --

23 THE COURT: Okay.

24 MR. CLOWARD: -- that this is --

25 THE COURT: I don't see how it's relevant.

1 MR. ROBERTS: We don't dispute that, Your Honor.

2 THE COURT: I don't see how --

3 MR. ROBERTS: But there's --

4 THE COURT: -- it's relevant, counsel.

5 MR. CLOWARD: Okay.

6 THE COURT: So I'm not going to admit it. It's just -- I took a
7 quick look through it and it -- there's nothing in here that goes to the
8 issue of whether or that support for whether the motion to strike should
9 be granted.

10 One question -- so I'm not letting that in, but -- so 170 -- let's
11 say 170 is withdrawn, as it's a duplicate. 171, the Court denies the
12 motion to admit over objection of counsel. One exception, guys, JAC
13 00004 is a picture of the tub. Is that a picture of the model of the tub
14 that's at issue here?

15 MR. CLOWARD: Let me confirm, Your Honor.

16 THE COURT: Tab -- look at Tab 171.

17 MR. CLOWARD: Yes. It's very similar to --

18 THE COURT: Well, any objection for me at least for having
19 that in the record just to indicate what the tub looked like that this whole
20 case is about?

21 [Counsel confer]

22 MR. GOODHART: There are certain faucets and attachments
23 on there.

24 THE COURT: Oh.

25 MR. GOODHART: And I'm not 100 percent sure what kind --

1 THE COURT: Okay.

2 MR. GOODHART: -- Ms. Cunnison had. I don't even know --
3 maybe Ben knows, because he's been involved in this longer if the door
4 was a right hand or a left hand door.

5 THE COURT: Okay.

6 MR. ROBERTS: We would suggest that we take this out of
7 one of the binders and mark it as a Court's exhibit. We have no problem
8 with it being used as a demonstrative by the Court.

9 THE COURT: Okay.

10 MR. ROBERTS: If the fixtures are different, there's an
11 allegation that she was leaning forward to do something with the
12 fixtures that might be relevant, so want to stipulate --

13 THE COURT: Okay.

14 MR. ROBERTS: -- that it is identical.

15 THE COURT: I just had a general --

16 MR. ROBERTS: Right.

17 THE COURT: -- had a general idea --

18 MR. ROBERTS: Sure.

19 THE COURT: -- of what this thing looked like.

20 MR. ROBERTS: As a demonstrative, we'd have no objection
21 to marking it as a Court's exhibit.

22 THE CLERK: 171?

23 THE COURT: Great. So 171 JAC 00004. It's just going to be
24 marked as a Court exhibit. And I'm going to hand that to you and the
25 rest of 170 and 171 will be returned to counsel.

1 THE CLERK: Okay.

2 MR. GOODHART: And just so the Court is clear, and Mr.
3 Cloward can confirm this is even though that is Bates number JAC 0004,
4 that was produced by Plaintiff's counsel in their initial production. It was
5 not produced by Jacuzzi.

6 MR. CLOWARD: Correct.

7 THE COURT: You're on the record for that. Great. Counsel,
8 anything else we need to put on the record before we return on the next
9 date?

10 MR. ROBERTS: Nothing on the record, Your Honor, but I
11 would like to receive some guidance from the Court on an issue, so we
12 would know if we have to file a motion. And we may even be able to
13 reach agreement on this, but it's a fairly important and time sensitive
14 issue to Jacuzzi.

15 THE COURT: Do you want to do it off the record?

16 MR. ROBERTS: Either way is okay with me. Yeah. We can
17 keep it on.

18 THE COURT: All right. First let me ask my Clerk, is there
19 anything that you need before we go off the record?

20 THE CLERK: I just needed you to state on the record which
21 exhibits are actually admitted.

22 THE COURT: Okay, so --

23 MR. ROBERTS: Judge, Mr. Cloward would prefer that it stay
24 on the record. That might be good, so we can verify --

25 [Counsel Confer]

1 MR. ROBERTS: Yes, it is our joint agreement that we stay on
2 the record, so that we can refer back to it, if it --

3 MR. POLSENBERG: I insist.

4 MR. ROBERTS: Mr. Polsenberg was insisting, yes. He
5 doesn't even know what I'm about to raise.

6 MR. POLSENBERG: That's true. That is true.

7 MR. ROBERTS: So, the issue, Your Honor, is -- you know, the
8 Court has ordered a forensic search. And one of the Court has ordered
9 that they can search the assets, which would include laptops and
10 cellphones that were used by employees. And if you remember, we filed
11 a list of those assets in camera. Mr. Cloward was allowed to come in
12 and review that --

13 THE COURT: Uh-huh.

14 MR. ROBERTS: -- and make notes, but not pictures, I believe.
15 And then he was able to inquire into those lists with the deposition of
16 Mark Allen [phonetic]. We have not yet accomplished that stage of the
17 forensic search and the difficulty that we have, as I had advised Jacuzzi --
18 well, without waiving attorney-client privilege, I told him, look you guys,
19 okay, you have to preserve all the assets on that list. If it exists now and
20 you've got it now, then we can't destroy it.

21 So they implemented a program where if -- they apparently --
22 they have about 40 employs transition a month worldwide, you know,
23 over 1,000 people, 40 new employees a month.

24 That's a substantial cost to take out the hard drives and
25 preserve the iPhones and buy new ones every time you -- someone

1 leaves the company. The estimate for the evidence preservation is
2 \$557,000 worldwide for this year and through two years, it would be
3 estimated at \$1.8 million according to Mr. Allen and some calculations
4 he ran. And so his question is can we narrow what we have to preserve?
5 Do we really have to preserve all the computers that the factory is using
6 in Mexico and Italy? Do we have to preserve the computers from the
7 Sundance Spa division?

8 Can we limit this to Jacuzzi Luxury Bath or even better, since
9 Mr. Cloward has had the list, can he give us a list of -- say for example,
10 can we go ahead and remove the hold on everything but the bath
11 division and then have Mr. Cloward give us a list of assets that need to
12 be preserved, so we're not even, you know, buying new computers
13 every time someone in the bath division leaves. That -- just some
14 reasonable accommodation, you know, so that -- I didn't want to have to
15 move for a protective order request for reimbursement for the costs. I
16 thought we might be able to solve it here today informally.

17 MR. CLOWARD: We've always maintained that I'm not
18 interested in the computers for the plant in Valdosta or folks in the
19 receiving department or you know, from the -- somebody in -- you know,
20 in some un-remote -- or in -- excuse me, unrelated, remote division.
21 We've always communicated -- my understanding was that I was pretty
22 clear with Mr. Roberts that look, we have a few select folks. You know,
23 maybe 20, 30 people that we're interested in that's really it. And you
24 know, that was -- I've never been interested --

25 MR. ROBERTS: Okay.

1 MR. CLOWARD: I think I'm on record saying that, that I'm
2 not interested in all of these other sources of information. I'm just not.
3 It's a waste of everyone's time.

4 MR. ROBERTS: Right.

5 THE COURT: Plus it's unduly expensive.

6 MR. CLOWARD: Yeah.

7 THE COURT: I would never order that.

8 MR. CLOWARD: Yeah. And I don't think that Your Honor's
9 ruling -- well, maybe it -- I don't think that it was that broad.

10 THE COURT: Mr. Roberts, what do you say about Mr.
11 Cloward's suggestion?

12 MR. ROBERTS: I think that's great. It sound like we've got a
13 stipulation we don't have to preserve outside the bath division. And
14 maybe you'd be willing to give me the asset --

15 MR. CLOWARD: You got it.

16 MR. ROBERTS: -- the 20, 30 names and then that would be a
17 great relief to us, Your Honor.

18 THE COURT: All right. The scope of the asset preservation is
19 hereby ordered to be limited to the 20 or 30 individuals specifically
20 identify by Mr. Cloward that are within the Jacuzzi luxury bath division.
21 All right?

22 MR. ROBERTS: All right. Thank you.

23 THE COURT: Thank you. My Clerk told me that I need to put
24 on the record that official Exhibits 1 through -- 157 through 169 were the
25 ones that were admitted over the -- no. They were admitted by

1 stipulation and then 172 through 190 are also admitted by stipulation.

2 All right.

3 [Plaintiffs' Exhibits 157 through 169, and 172 through 190 were
4 admitted in evidence]

5 MR. CLOWARD: Your Honor, may I address one more
6 moment very briefly? And I think this is maybe --

7 THE COURT: Yes. Go ahead.

8 MR. CLOWARD: We wanted to talk about potentially the
9 briefing schedule for the motions in limine and whether it made sense to
10 extend those. I know that Ms. Llewellyn, Mr. Estrada, and others who
11 are working on those would appreciate the additional time and would
12 that be a problem now that we've kind of had an agreement with the
13 parties that --

14 MR. ROBERTS: Not a problem with me.

15 MR. CLOWARD: Okay.

16 MR. GOODHART: I would maybe propose that we --

17 MR. CLOWARD: Put together a schedule --

18 MR. GOODHART: -- I don't want to say withdraw the
19 motions, but we can refile them at a later date or do you want to put
20 together a briefing schedule now? Because some of those motions may
21 have no bearing on the case any longer, depending upon the --

22 THE COURT: I'd rather keep them.

23 MR. GOODHART: Okay.

24 THE COURT: Because otherwise, on Odyssey, if you
25 withdraw them --

1 MR. GOODHART: You lose them.

2 THE COURT: -- and they get refiled, it doubles the number of
3 entries in Odyssey and --

4 MR. GOODHART: Okay.

5 THE COURT: -- it really makes it tough to navigate.

6 MR. GOODHART: Then we will come up with a schedule, a
7 briefing schedule --

8 THE COURT: All right.

9 MR. GOODHART: -- for motions in limine and things like
10 that. And I think we could probably do the same with the motions for
11 summary judgment.

12 THE COURT: So given --

13 [Counsel confer]

14 MR. GOODHART: Yeah. We'll come up with a briefing
15 schedule certainly before next week.

16 THE COURT: Given the protraction of pretrial proceedings in
17 this case, perhaps we do need to push trial into June. Thoughts on that,
18 counsel?

19 MR. GOODHART: Your Honor, actually we were talking a
20 little bit about that before. I talked to Mr. Cloward about it and he was
21 thinking in Octo -- you know, year, 12 months. And initially I thought
22 well, you know, really, but the reality is we still don't have the ESI search
23 completed yet and that's going to take a little bit of time. We need a
24 ruling from this Court. We don't want to put you under any undue
25 pressure to come up with the right decision. Then we have Christmas

1 holidays. And I know my clients, First Street, and ALTHR typically take a
2 lot of time off during the summers to do family vacations and things like
3 that, so the more that I'm thinking about it, I don't think Mr. Cloward's
4 recommendation for an October trial date is completely unrealistic.

5 THE COURT: Tell you what, let's discuss this when we meet
6 again. I will grant you this. We'll do it after June.

7 MR. GOODHART: Okay.

8 THE COURT: And we'll come -- I'll come up with some other
9 dates, all right?

10 MR. GOODHART: Thank you.

11 THE COURT: Maybe October. All right counsel?

12 MR. ROBERTS: Okay.

13 MR. ALLEN: And what time to we start on Wednesday next
14 week?

15 THE COURT: Whatever we discussed before. I don't --

16 MR. ALLEN: Do we know?

17 THE COURT: I might be in trial, but let me see here. How
18 much time --

19 THE CLERK: I believe there's a bench trial.

20 THE COURT: -- are we going to need Wednesday? How
21 much time are we going to need, counsel?

22 [Counsel confer]

23 MR. ROBERTS: We've just got one witness for Wednesday,
24 Bill Demeritt, so I would think a half a day would be enough time, based
25 on how things have gone so far, but that'd probably be more in Ben's

1 Court.

2 MR. CLOWARD: I would think maybe five hours, so half a
3 day. Well, I guess, you know, couple in the morning, couple in the
4 afternoon.

5 MR. GOODHART: The proposed schedule that I have, Your
6 Honor, was to start at 10:00 and conclude by 3:00 or so.

7 [Clerk and Court confer]

8 THE COURT: My JA's out today. Let me double check. I'm
9 pretty sure I have a trial starting Monday. I can probably suspend that to
10 some extend on Wednesday to get this done, but let me double check
11 tomorrow.

12 MR. ROBERTS: And Ms. Llewellyn has also alerted me to
13 something. If you recall, when I provided the documents to the Court, I
14 said as they were printing out, I noticed that the Excel spreadsheets, all
15 the fields were printing and then fields were printing at the end, but
16 she's looked through them and it appears they're fields in the electronic
17 version of the Excel spreadsheets that didn't print at all and our proposal
18 to the Court would be that Ms. Llewellyn goes back to the notebooks.
19 Obviously, whenever there's an email transmitting the result of a search,
20 there's a little lcon in the email.

21 THE COURT: Uh-huh.

22 MR. ROBERTS: And that she then puts together the
23 electronic version of the files.

24 THE COURT: Uh-huh.

25 MR. ROBERTS: And the name of each file would be the

1 page, the Bates numbered page that that attachment can be located, so
2 that as you're going through and you have trouble with the attachments,
3 you can actually pull that from the stick and navigate it. That way -- and I
4 think that may explain why Mr. Cloward thought the printouts would be
5 bigger than they are, and that's because everything didn't print.

6 THE COURT: So that's acceptable to me. Thank you for
7 explaining that and when can you get that to me?

8 MR. ROBERTS: Hopefully by the end of the day.

9 THE COURT: I'm not going to -- I don't need it for a week.

10 MR. ROBERTS: Okay. By the end of -- no we've got Audra
11 has them. They were all forwarded to Audra, so our office has them.

12 THE COURT: All right.

13 MR. ROBERTS: We'll get them to you before close of
14 business on Friday, Your Honor. Tomorrow, if we can.

15 THE COURT: Are we done?

16 MR. ROBERTS: Yes. Audra's out of town, but we do have
17 other paralegals, so --

18 MR. CLOWARD: I just wanted to confirm that the closing
19 brief that the Court wanted would be one week after Mr. Demeritt next
20 week. So that would be -- one week after his -- my understanding.

21 THE COURT: That sounds reasonable. Talk about it. See if
22 you guys need more time than that, all right?

23 MR. ROBERTS: I'm going to propose more time and a waiver
24 of page limits, given the subject matter. Now that we don't have a trial
25 date on October 28th, I'd like to at least get, you know, 14 days maybe,

1 the old rule.

2 MR. CLOWARD: We can work together, Your Honor. Thank
3 you.

4 THE COURT: Two weeks sounds more reasonable to me.

5 MR. CLOWARD: Okay. Thank you, judge.

6 THE COURT: All right.

7 MR. CLOWARD: Very much.

8 MR. ROBERTS: Thank you, Your Honor.

9 THE COURT: Thank you. Off the record and have a nice
10 evening.

11 [Proceedings concluded at 4:31 p.m.]

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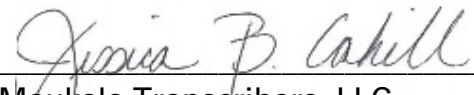
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23

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

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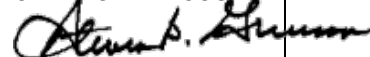
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CLERK OF THE COURT



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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7)
8 ROBERT ANSARA, ET AL.,)

CASE#: A-16-731244-C

9 Plaintiffs,)

DEPT. II

10 vs.)

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

13 Defendants.)

14 BEFORE THE HONORABLE RICHARD F. SCOTTI
15 DISTRICT COURT JUDGE
16 TUESDAY, OCTOBER 1, 2019

17 **RECORDER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 4**

18 APPEARANCES:

19 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:

PHILIP GOODHART, ESQ.

22 For Defendants:

23 D. LEE ROBERTS, JR., ESQ.
24 JOHNATHAN T. KRAWCHECK, ESQ.
25 BRITTANY M. LLEWELLYN, ESQ.
JOEL HENRIOD, ESQ.

RECORDED BY: DALYNE EASLEY, COURT RECORDER

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FOR THE DEFENDANTMARKEDRECEIVED

None

1 Las Vegas, Nevada, Tuesday, October 1, 2019

2
3 [Case called at 9:09 a.m.]

4 THE MARSHAL: Department 2 is now in session, The
5 Honorable Judge Richard Scotti presiding.

6 THE COURT: Good morning, counsel. Thank you for
7 accommodating my schedule. I appreciate that. Glad we're all back.
8 This is Ansara v. First Street, case number A-16-731244.

9 Go ahead and state your appearances for the record.

10 MR. CLOWARD: Your Honor, Ben Cloward for the Plaintiff. I
11 have Mr. Charles Allen attending on my speakerphone here on the
12 phone. I don't think that he's going to make a record, but he is present
13 on the phone.

14 THE COURT: Very good.

15 Mr. Roberts?

16 MR. ROBERTS: Thank you, Your Honor. Lee Roberts for
17 Defendant Jacuzzi. And also with me today is my partner, Johnny
18 Krawcheck, who's been admitted pro hac vice in this case.

19 MR. KRAWCHECK: Good morning.

20 THE COURT: That's you?

21 MR. KRAWCHECK: That's me.

22 THE COURT: Very good. Nice to see you, sir.

23 MR. KRAWCHECK: Thank you.

24 THE COURT: It's a pleasure.

25 MR. KRAWCHECK: As for me.

1 THE COURT: All right. You can all be seated momentarily.

2 MR. GOODHART: Good morning, Your Honor.

3 THE COURT: Oh of course. Mr. Goodhart.

4 MR. GOODHART: That's okay. I'm sitting on the side.

5 THE COURT: I see you back over there.

6 MR. GOODHART: I'm way out of the way. Philip Goodhart
7 on behalf of First Street, AITHR, and Hale Benton.

8 THE COURT: Very good. Thanks.

9 MR. ROBERTS: And we also have two lawyers remotely with
10 the witness by a Bluetooth. I don't know if they're connected yet, but
11 they should probably be noted on the record.

12 MR. CLOWARD: Correct.

13 THE COURT: Okay.

14 MR. CLOWARD: Ian Estrada for the Plaintiff, Your Honor.

15 MR. ROBERTS: And Brittany Llewellyn for Jacuzzi.

16 THE COURT: I see. Okay. Two things. One thing that my
17 JEA wanted to know is the court is looking for someone to handle a
18 settlement conference at 1:30 today. They were asking me if I could
19 handle it. I told them I thought my evidentiary hearing was going to go
20 all day. So should my JEA find somebody else to handle -- some
21 attorneys from out of town were coming in for a settlement conference.
22 Should I tell them that another judge should probably take that one?

23 MR. CLOWARD: Your Honor, I know Mr. Roberts, as well as
24 myself, we have calendar calls that we've asked the Court for a brief
25 recess at 10:30. I'm fortunately just down the hall with Judge Williams. I

1 think Mr. Roberts is with Judge Delaney. With that, I think that might eat
2 some of the time. I'd like to say that we could get done by then. But
3 with that short recess, I'd be hesitant to say that, Your Honor.

4 THE COURT: Yeah. I think you're right. Let's go ahead and
5 find somebody else for that one. They'll -- it was, kind of, an emergency,
6 but they'll -- there's plenty of judges in the courtroom. They can find
7 somebody else.

8 MR. CLOWARD: 2:30 might be fairly safe.

9 THE COURT: Do you think we might, 2:30?

10 MR. ROBERTS: Yeah. I think -- yeah, I think that'd be a safe
11 estimate. Yeah.

12 THE COURT: All right. The second thing, counsel, I had
13 indicated we need to come up with a new trial date. And I think that was
14 dependent upon my ultimate ruling in this case, because that will affect
15 how much discovery, if any, the Court is going to allow, and whether
16 there's a need for any discovery. But in talking with my JEA, it looks like
17 I could give you a block of three or four weeks almost any time after July
18 1 of next year. All right. And so you guys talk amongst yourselves and
19 find out which four weeks you'd like me to block off. I would appreciate
20 that.

21 Okay. Why don't I -- Mr. Cloward, why don't you come
22 forward? This is just a calendar. I've highlighted in yellow when each of
23 my five-week stacks begin.

24 MR. CLOWARD: Okay.

25 THE COURT: And there's some four-day weeks in there.

1 Keep that in mind.

2 MR. CLOWARD: Thank you.

3 THE COURT: And it would -- it's better for the Court if you
4 could do two weeks before the start of a stack and two weeks after the
5 start of a stack, so I can have other weeks in those stacks available --

6 MR. CLOWARD: Understood.

7 THE COURT: -- for other parties.

8 MR. CLOWARD: Understood. Thank you.

9 THE COURT: So take a look at that and see if you can work
10 something out, and then let Melody know.

11 Okay. Are we ready to proceed?

12 MR. CLOWARD: Yes.

13 THE COURT: Oh, one other thing. Okay. My court clerk did
14 retrieve the confidential -- or the documents that were provided to the
15 discovery commissioner for in-camera confidential review. They're in
16 sealed envelopes, so I wanted to open them in open court. All right.
17 And then I'm going to ask permission from the parties to allow my court
18 clerk to maintain control and custody of those and not reseal them, for a
19 period of time that's necessary for me to review them. And at which
20 time when I'm completed with my review, I'll give them back to the court
21 clerk. She can reseal them and then return them to the vault. Does that
22 sound acceptable?

23 MR. CLOWARD: Yes.

24 MR. ROBERTS: Yes, Your Honor.

25 THE COURT: All right. Very good.

1 We should go ahead and open them. First we have -- she's
2 taking them out of the vault. We'll open them on the record. I just want
3 to make sure we have a clear chain of custody.

4 All right. So there's one big white envelope. Inside are two
5 smaller Manila envelopes. There's an Exhibit 1 and Exhibit 2. I think
6 they have discs in them. You can go ahead and -- I'll go ahead and open
7 them.

8 All right. So showing you now what is Exhibit 1, I'm going to
9 go ahead and open that. Okay. What do we have here? Well, all right. I
10 have a flash drive and cover letter with some kind of, like, privileged log
11 type of document attached. So that's Exhibit 1. I'll return that to Liz until
12 I need to look it over.

13 All right. And then let's see what's in Exhibit 2. 2 does not
14 have a flash drive. It does have some minutes of the Court from
15 November 2nd, 2018, with some type of a spreadsheet in there. No
16 floppy drive though. No other media. I'll give that back to Liz.

17 Also, I do have the official court exhibit list both of those
18 two, which is a public record and publicly available. I'll give that back to
19 Liz.

20 All right. Are we ready to proceed?

21 MR. CLOWARD: Yes, Your Honor.

22 THE COURT: All right. Mr. Cloward, you may call your next
23 witness, sir.

24 MR. CLOWARD: Okay. Your Honor, Plaintiffs call William
25 Demeritt, the risk manager and former vice-president of Jacuzzi.

1 THE COURT: All right. Mr. Demeritt, are you on the phone,
2 sir? Hello, Mr. Demeritt, can you hear me, please?

3 UNIDENTIFIED SPEAKER: I'm sorry. Can you hear me?

4 THE COURT: Yes. Oh, hi.

5 UNIDENTIFIED SPEAKER: Hi. Good morning. The witness
6 had just stepped out. We're going to go find him right now.

7 THE COURT: All right. That's fine.

8 UNIDENTIFIED SPEAKER: It should be just a second.

9 THE COURT: No worry.

10 MR. CLOWARD: Okay. Just sit back down, I guess?

11 THE COURT: Yes.

12 MR. CLOWARD: Here's our witness, Your Honor.

13 THE COURT: Oh Mr. Demeritt, is that you, sir?

14 MR. DEMERITT: This is he.

15 THE COURT: Very good. Can you ask the videographer
16 there to see if she could adjust the camera downward a little bit, because
17 we're only getting half of your head. Okay. Very good. That's good, sir.

18 All right. For the record, Mr. Demeritt is appearing through, I
19 think, what it's called is the Blue Jean system here at court. Let's go
20 ahead and swear -- we're getting feedback here. How do we eliminate
21 the feedback? I -- all right. Let's -- I think she fixed it. Very good.

22 Mr. Demeritt, we need to have you sworn.

23 Mr. Cloward, did you arrange for that? Or is -- do you know
24 if that's a notary that's with him, authorized to give oaths?

25 MR. CLOWARD: We did not, Your Honor. It was our

1 understanding that the stipulation which the witness signed and
2 returned to court yesterday, authorized him to be sworn remotely by the
3 Court's clerk.

4 THE COURT: Very good. Let's proceed that way then.

5 Mr. Demeritt, will you please stand and raise your right hand,
6 and prepare to be sworn.

7 Very well. You may proceed.

8 WILLIAM DEMERITT , PLAINTIFF, SWORN

9 THE CLERK: Okay. You may be seated. Can you please
10 state and spell your first and last name for the record?

11 THE WITNESS: William, W-I-L-L-I-A-M, Demeritt,
12 D-E-M-E-R-I-T-T.

13 THE CLERK: Thank you.

14 THE COURT: All right. Mr. Cloward, you may proceed.

15 MR. CLOWARD: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. CLOWARD:

18 Q Mr. Demeritt, would you mind telling us your current
19 position at Jacuzzi?

20 A I'm director of risk management and vice-president of a few
21 of the companies.

22 Q Okay. Are you still working in that capacity at Jacuzzi?

23 A I'm in the process of phasing out.

24 Q And my understanding is -- what was -- what I was told was
25 that you're retired actually now, and you're on leave this month?

1 A Yeah. I'm -- I am retired, but I've agreed to work through a
2 transition with the company. So I'm making myself available has
3 needed.

4 Q Okay. Do you have a specific end date?

5 A Right now the -- you know, the -- December 31st. End of the
6 calendar year.

7 Q And is there any plan that you'd continue working or coming
8 back to Jacuzzi in the future, for instance, if this litigation ceases or ends?

9 A There's been discussion about me working into 2020. So
10 yes.

11 Q Okay. And it's -- as I understand, you're an officer of the
12 company, true?

13 A I -- which company?

14 Q Jacuzzi -- one of the Jacuzzi brands.

15 A I am not an officer of Jacuzzi Brands, LLC. I am an officer of
16 Jacuzzi, Inc. and Sundance Spas.

17 Q Okay. And who is your direct supervisor or boss?

18 A A gentleman by the name of Anthony Lovallo.

19 Q Can you tell the Court where Ron Templer would fit into the
20 scheme of, I guess, leadership? Is he above you, below you?

21 A We're -- I would say we're on the same level. We're both
22 directors. That's an internal term to basically figure where you fit into
23 the bonus program. But we're both about at the same level.

24 Q Okay. Now, Mr. Demeritt, we've received testimony
25 throughout this proceeding of certain searches that were performed.

1 We're going to go over those in a moment. But what I want to do is first
2 off get your testimony about the searches that you personally have been
3 involved in. So can you tell me how many searches of the computer
4 systems? And when I'm talking computer systems, I'm talking the KBM
5 systems, the RNT systems, utilizing ClickView, utilizing Salesforce,
6 utilizing the Legacy system. Any and all searches of the email systems
7 that were conducted, how often and how many times have you been
8 involved?

9 A I have not been personally involved in any searches other
10 than the one on my personal computer.

11 Q And when was the search on your personal computer
12 conducted?

13 A A couple months ago, I think when this -- when this hearing
14 was first talked about, when it was supposed to be a phone call. And the
15 case was Pullen, I believe. I'm doing this from memory. And I searched
16 my computer at that point to see if I had anything on Pullen.

17 Q Okay. Now, before I transition to the Pullen matter, do you
18 know why your computer was never searched prior to just a couple of
19 months ago?

20 A No, I do not.

21 Q Was there any -- ever discussion about hey, we're not going
22 to search certain computers, but we are going to discuss other
23 computers?

24 A No. Not with me.

25 Q Okay. Now, regarding the Pullen matter, Mr. Templer

1 indicated that he was notified the same day that Mr. Pullen called in on
2 October 30th, indicating that he thought that the tub killed his mom, and
3 that he was hiring a lawyer. When were you notified?

4 A I do not remember.

5 Q Okay. Do you know if it was before or after Mr. Templer was
6 notified?

7 A Well, I was notified by Mr. Templer. So I would have to
8 assume that it was after Mr. Templer had been notified.

9 Q Do you know if it was the same time that Mr. Templer --
10 meaning, contemporaneous to Mr. Templer, or did you find out months
11 and months after?

12 A Sir, I do not know.

13 Q Okay. Mr. Templer indicated that he sent an email to outside
14 counsel the same day he was notified of the Pullen matter. Would you
15 normally be copied on those type of communications?

16 A No, sir.

17 Q Do you have a recollection of Mr. Templer coming into your
18 office? And for some foundation for the Court, my understanding is is
19 that you and Ron Templer share an office wall, true?

20 A That's true.

21 Q You told me that at your deposition, correct?

22 A That's correct.

23 Q And you told me at the deposition that that was one of the
24 reasons that you felt confident knowing that the testimony you were
25 giving under oath in your deposition was accurate because anything that

1 comes into Jacuzzi, you and Ron usually talk about, correct?

2 A That is correct.

3 Q Okay. So do you have a specific recollection of Ron Templer
4 saying to you, hey, Bill, somebody just called, and they said that their
5 mom was killed in one of our tubs? Does that ring a bell?

6 A No, sir. My first recollection was when he came in and he
7 asked me if I was going to be available a specific day, that there was
8 going to be a phone call, and that I was going to need to go for another
9 location for it, and that I should check my computer to see whether I had
10 anything on my computer about it, which I didn't. But the timeframe
11 between he -- when he found out and when he came into my office, I
12 have no idea.

13 Q Okay. So why don't we spend a moment now -- you
14 indicated that you were not involved, I guess, or that you didn't
15 personally conduct the searches. But we know from email
16 correspondence that you were involved in the process. So what I'd like
17 to do is find out from you how many searches were performed, and
18 when they were performed?

19 A I do not know.

20 Q You do not know, or you do not recall?

21 A I was never consulted on that. I was told that the searches
22 were going to take place. But beyond that, how many times, which
23 systems were searched, I don't remember.

24 Q Okay. So you don't remember receiving emails from Ron
25 Templer specifically to you, indicating that hey, we need to do certain

1 searches, and we're going to limit it to certain things? You don't recall
2 that?

3 A I would like to see the email. But no, I -- what I remember is
4 there was discussion about some number of specific words that the
5 system was going to be searched for. That's my recollection.

6 Q And what system are you referring to?

7 A I don't know. There were multiple systems. It's not in my
8 area of responsibility, so I don't know which ones.

9 Q Other than that search of the search terms, are you aware of
10 any other searches, or do you have a recollection of any other searches
11 that were performed?

12 A I do not have firsthand knowledge about what searches were
13 performed when. But I did -- I was informed that after the initial search,
14 other searches were done.

15 Q And you were involved in those as well?

16 A No, sir.

17 Q Okay. Well, I'm going to refer to some testimony that was
18 given in this evidentiary hearing a few weeks ago -- a couple weeks ago.
19 This is Mr. Bachmeyer on page 170 to 171 of his courtroom testimony.
20 He indicated that there was a search that he performed in May of 2017,
21 where he looked for height of tub walls, doorway width, inward v.
22 outward opening door, and grab handles. Do you recall that search?

23 A No, sir.

24 Q Okay. And then he also indicated that there was another
25 search on July of 2018, where injury, injured, injuries, death, hurt, and

1 pain, was conducted. Are you aware of that search?

2 A No, sir.

3 Q Okay. He also testified that there was a search. He did not --
4 he was not able to give us the name -- or excuse me, the date of the
5 search. Mr. Roberts asked him that question; he was not able to answer.
6 Where he indicated that 20 of the search terms was conducted, is that
7 the only one that you remember being done?

8 A Yes, sir.

9 Q Okay. And Mr. Bachmeyer, the following testimony he gave
10 in court. And I'm going to read it to you, and then I'm going to ask you a
11 question. It says:

12 "Q Now, you reviewed the hits that were found, right?

13 "A Yes.

14 "Q So when you say the hits that were found, were those the
15 hits that were found using the 20 search terms?

16 "A Some of them, no. But the majority of them, yes.

17 "Q Do you recall seeing issues with people slipping and falling?

18 "A Yes.

19 "Q Okay. And you don't know what happened to those?

20 "A I don't."

21 Q I skipped over a line. One line said:

22 "Q And people getting injured?

23 "A Yes."

24 Q And then finally he says,

25 "Q But you do know that the email was sent to you, and you

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1 reviewed it, and you're confident about that?

2 "A Yes."

3 So my question is, were you copied on the email that Mr.
4 Bachmeyer was referring to where there were hits included on an email
5 chain?

6 A Sir, I do not remember.

7 MR. ROBERTS: Objection to form, ambiguous, and
8 compound.

9 THE COURT: I agree with that, Mr. Cloward. Why don't you
10 ask it in a different way.

11 MR. CLOWARD: Okay.

12 THE COURT: All right, because there was -- please ask it in a
13 different way --

14 MR. CLOWARD: Understood.

15 THE COURT: -- to avoid the

16 MR. CLOWARD: I'll cure the --

17 THE COURT: -- the need for further objection on that.

18 MR. CLOWARD: I'll cure the defect.

19 THE COURT: Thank you.

20 BY MR. CLOWARD:

21 Q Mr. Demeritt, ultimately, Mr. Bachmeyer testified that when
22 the 20 search term was conducted, he was copied on the results or the
23 hits. Were you also copied on that email?

24 A I don't have any recollection of that. I don't believe so.

25 Q You were involved with that search though, true?

1 A I was involved in it to the extent that as part of my
2 deposition, I was told that I was going to probably be asked about it, and
3 I should familiarize myself with it. So I went down and talked to Jess
4 Castillo, who was in our IT department. I'm sure you've spoken to him.
5 And just had -- you're doing the search, yes, I am, you know, it's in
6 progress. And I was like, okay. That was pretty much the sum and
7 substance of my conversation.

8 Q So you don't recall testifying at the time of deposition, telling
9 me that you were following up with multiple people to ensure that they
10 completed their portions of the search?

11 A Well, I spoke with Jess. I mean, that conversation I
12 remember. I may have spoken to other people that I -- that I don't
13 remember. Ultimately, I was told that the search yielded no information
14 that was asked for by the search.

15 Q Okay. You don't disagree that you told me at the time of
16 deposition that you followed up not only in person, but by email with
17 additional people other than Jess Castillo regarding this search, true?

18 A I don't -- I don't have my deposition in front of me. But if I
19 said that, yes, that is accurate.

20 Q Okay. And that search was conducted prior to your May 24,
21 2018 deposition, correct?

22 A Correct.

23 Q And in your deposition you told me that each of the 20
24 search terms had documents that were responsive to the specific term,
25 true?

1 A I don't remember that. If it's in my deposition, I'd like to see
2 it. But I don't remember that.

3 Q Okay.

4 MR. CLOWARD: Ian, if you could pull up his deposition so
5 that we can show the witness.

6 And Brandon, if you want to pull up Exhibit 196.

7 THE COURT: Date of the depo?

8 MR. CLOWARD: Date of the depo, Your Honor, is May 24th,
9 2018.

10 THE COURT: Is there a request for official publication of the
11 hard copy of the transcript in open court, or is that waived?

12 MR. ROBERTS: We'll waive that, Your Honor.

13 THE COURT: Okay. Very good.

14 You may proceed.

15 BY MR. CLOWARD:

16 Q Okay. Mr. Demeritt, I'm going to refer you to page 23.
17 Actually, just so that there's no question whatsoever about the prior
18 testimony you gave about the other folks that you talked to, let's start
19 with 22. And I'm going to start on line 8. And it says -- you could follow
20 along. And Mr. Demeritt, are you there?

21 A I am here.

22 Q Okay. I just wanted to make sure that you'd had a chance to
23 retrieve that section.

24 A Yes.

25 Q So I'll start off on line 8.

1 "Q Okay. Fair enough. Thank you. So let's discuss some of the
2 -- I guess, what were the instructions that you gave Jess Castillo, Regina
3 Reyes, Kurt Bachmeyer?

4 "A I didn't give them any instructions. The instructions came
5 through counsel.

6 "Q Okay. You just follow up with them?

7 "A Yes."

8 Okay. So you agree that you followed up with those three
9 individuals regarding their searches, correct?

10 A Correct. Yes.

11 Q Now, let's go to page 23, starting off on line 5. Let me know
12 when you're there, Mr. Demeritt.

13 A I'm here.

14 Q Okay.

15 "Q Okay. So what were you informed by Mr. Castillo about
16 what he found?

17 "A That he had gathered the documents and provided them to
18 our corporate counsel.

19 "Q What documents did he gather?

20 "A Incident reports where the 20 words that you had provided
21 were found.

22 "Q How many incident reports?

23 "A I have no idea.

24 "Q Do you have an estimate?

25 "A No, I don't.

1 "Q I mean, was it more than --

2 "A I don't know.

3 "Q -- five?

4 "A If I had an idea, I would have told you. No, I don't have an
5 idea. I know that it was a voluminous amount, and each word that was
6 searched had different amounts."

7 So, Mr. Demeritt, you agree that -- or first off, did I read that
8 correctly?

9 A I believe so.

10 Q Okay. So you agree that in your deposition you told me that
11 each of the 20 search terms had documents that were responsive to the
12 specific term, true?

13 A True.

14 Q Okay. And you estimated that it was a voluminous amount,
15 true?

16 A True.

17 Q And you agree that the search had been conducted prior to
18 your deposition at least a couple of months, true?

19 A True.

20 Q Who other than Kurt Bachmeyer, Jess Castillo, and Regina
21 Reyes were involved in conducting the search?

22 A I don't know.

23 Q And you agree that it was corporate counsel that gave the
24 instructions regarding the search, true?

25 A That was my understanding.

1 Q And who was corporate counsel at the time?

2 A Ron Templar.

3 Q Was he working in conjunction with Anthony Lovallo?

4 A No. I -- you know, obviously we report to Lovallo, so he was
5 informed, I would imagine. But no, I don't think Mr. Lovallo was
6 involved on the day to day basis.

7 Q Okay. And you agree that Mr. Templer along with Mr. Cools
8 directed the individuals in what to search for, correct?

9 A That is my understanding.

10 Q And you agree that after Mr. Castillo conducted the search
11 and gathered the information, he informed you about the documents he
12 found, right?

13 A No.

14 Q Okay. If you want to read with me on line 23 -- page 23, line
15 5, we'll just read that again. It says:

16 "Q Okay. So what were you informed by Mr. Castillo about
17 what he found?

18 "A That he had gathered the documents and provided them to
19 our corporate counsel."

20 Did I read that correctly?

21 A Yes.

22 Q Okay. So did Mr. Castillo inform you of what he found?

23 A He informed me that he found documents, but he never got
24 specific as to what those documents were.

25 Q Okay. And Mr. Bachmeyer testified that he was copied on

1 the email with those search results. You don't have a recollection of also
2 being copied on those?

3 A No, sir, I don't.

4 Q Is that the type of a thing that the vice-president of risk
5 management would not be copied on, but a former customer service
6 manager would be?

7 A Well, that depends on what the vice-president and director of
8 risk management does. And I'm not trying to be smart; I'm just trying to
9 clear up this issue. My role with the company as director of risk
10 management was to manage the insurance program. If -- if the -- if the
11 incident did not directly impact the insurance program, I was not
12 intimately involved in the -- in the activity, in the facts.

13 So if it was a subrogation or property damage, I probably knew
14 about it. If it was anything else, I can't say that I definitely would have
15 known about it.

16 Q Well, you told me that any claim that comes in, or any
17 incident that comes in, you and Ron Templar discuss because you share
18 offices. How do you reconcile that testimony with what you're saying
19 now?

20 MR. ROBERTS: Objection to form. I think he said they
21 shared a wall, not an office, or offices.

22 THE COURT: All right. I understand that, but overruled.
23 Go ahead.

24 THE WITNESS: I -- I'm sorry, I don't understand the question.

25 BY MR. CLOWARD:

1 Q Okay. You remember at the deposition -- you've reaffirmed
2 that today, that you and Mr. Templar share a wall. Your offices are right
3 next to one another, correct?

4 A Right.

5 Q Okay. And at the time of your deposition you told me that
6 any time any incidents or claims of injury that come in, you and Ron talk
7 about it. And so I'm trying to reconcile that testimony that you gave in
8 your deposition versus the testimony you just gave, which seems like
9 you have, kind of, a hands-off approach.

10 A Well, I would've had a hands-off approach. Ron -- if Ron and
11 I discussed it, Ron would've probably said to me, listen, I'm going to
12 need the dec page off the insurance policy, or I'm going to need the
13 tower of all of the insurance coverages; not only the primary, but the
14 excess and the umbrellas. That would've been my involvement there.
15 He would've come to me to ask me for those documents.

16 Q Okay. Let's turn to the written discovery in the case. If you
17 would please turn to --

18 MR. CLOWARD: Ian, if you could pull up Exhibit 173. And
19 Ian, for your reference, this is Plaintiffs -- or Jacuzzi's response to
20 Plaintiffs' interrogatory number 11.

21 THE WITNESS: Can I walk over there and get a glass of
22 water?

23 BY MR. CLOWARD:

24 Q Do you need a glass of water, Mr. Demeritt?

25 A Yeah. Somebody's taking care of that. Thank you.

1 Q Okay.

2 A Okay. I'm looking at Ian's computer with the --

3 Q Okay. I'm going to reference you to interrogatory number
4 11, and just follow along with me. Where it says, "Please state whether
5 the Defendant has ever received notice either verbal or written from, or
6 on behalf of any person claiming injury or damage from his use of a
7 jacuzzi walk-in tub which is the subject of this litigation."

8 Do you see that? Did I read that --

9 A Yes.

10 Q -- correctly?

11 A I believe so.

12 Q Okay.

13 A Pretty small print.

14 Q Okay. Now, the question I have for you, Mr. Demeritt is, do
15 you see any specific limitation in that interrogatory to only look for
16 issues pertaining to, "the height of tub walls, doorway width, inward v.
17 outward opening door, and grab handles"?

18 A No, sir, I do not.

19 Q Do you agree that instead, Plaintiffs requested notice either
20 verbal or written from or on behalf of any person claiming injury or
21 damage from his use of a jacuzzi walk-in tub, true?

22 A Could you say that again?

23 Q I said instead of limiting it to just those four things, you agree
24 that Plaintiffs requested notice, either verbal or written, from or on behalf
25 of any person claiming injury or damage from his use of a jacuzzi walk-in

1 tub, true?

2 A Yeah. I don't understand what you're saying to me. I'm
3 sorry. You know, the -- I thought the response to the interrogatory was
4 what the response to the interrogatory was. So I'm -- am I trying to read
5 something into this that doesn't exist? Can you -- yeah, no, I understand
6 the section we're talking about. If so please the date, and such notice,
7 the name, and so forth.

8 And sir, just to pull a little color to this, you know, obviously, I
9 relied on a lot of other people to provide information. And then as the --
10 as the person who had to sign the interrogatory, I read it, I didn't see
11 anything that I knew was wrong, and so therefore I signed it. But I can't
12 tell you that I remember this specific incident. I was relying either on
13 counsel or one of the other employees who had provided this
14 information.

15 Q Okay. I appreciate that. Let me just -- let me try one more
16 time and see if I can maybe help you with this. Maybe I'm just asking --
17 not asking it in the best way.

18 So the first question I asked is that, did you see any limitation in
19 the interrogatory to only look for issues pertaining to the height of the
20 tub walls, doorway width, inward v. outward opening door, and grab
21 handles? And you agree with me there are --

22 A And what I'm telling you is the response to the interrogatory
23 was written by somebody else. I read it. I didn't see anything that I
24 thought was incorrect, so you know, agree to this. To the extent that I
25 signed the interrogatory, I agreed to it. Beyond that point, I didn't write

1 this.

2 Q Okay. And I understand you didn't write it, Mr. Demeritt.
3 And the normal procedure is almost -- it's always, kind of, difficult
4 because we have things that are being transcribed. And it even makes it
5 that much more difficult when we have this video conferencing.

6 So I would just ask if you could please allow me to finish the
7 question. And I'll try and give you the same courtesy, that way we have
8 a clean record of clean questions and clean answers. Can we have that
9 agreement going forward?

10 A Certainly.

11 Q Okay. Thank you. All right. We can move on. Why don't we
12 pull up Exhibit 197. And this is Bate stamped Privileged J000030. Okay.
13 Mr. Demeritt, you agree that this is an email sent from Ron Templar on
14 May 8th, 2017, to yourself, true?

15 A Yes.

16 Q Okay. And you agree that Mr. Templar tells you, "We are
17 going to limit claim issues to claims relevant to the claims made in the
18 Cunnison matter, i.e. height of tub walls, doorway width, inward v.
19 outward opening door, and grab handles. Only need to produce what
20 we have, so no need to contact FS; they are a separate defendant in the
21 case."

22 Did I read that correctly?

23 A Yes.

24 Q And you received that email, right?

25 A Yes.

1 Q When --

2 A I responded to it.

3 Q When Mr. Templar indicates we, is he referring to you and to
4 himself?

5 A I don't believe so.

6 Q Who would be the other we, the other person involved if not?

7 A The people who were doing the search.

8 Q Okay. Well, this is the direction for the search. So this is
9 before the search had gone out. So this is the decision making in
10 conducting the search, right?

11 A I don't know.

12 Q Well, the email is on May 8th, 2017. The discovery was sent I
13 believe on May 1st, 2017. And the answer was sometime later. I think it
14 was in June of 2017. So let me ask the question again. This is early on.
15 I believe this is before the search had even been conducted. Whose
16 decision is it to limit the claim issues to just those four things?

17 MR. ROBERTS: Objection. Foundation.

18 THE COURT: Sustained.

19 BY MR. CLOWARD:

20 Q Mr. Demeritt, do you know whose decision it was to limit the
21 claim issues to claims relevant to just these four issues?

22 A No.

23 Q Okay. Now, let's go back to Exhibit 173, page 10. Let's take a
24 look at Jacuzzi's response. Mr. Demeritt, let me know when you've had a
25 chance to review that.

1 A Starting at the top of page 10?

2 Q Yes, please, read that to yourself, and let me know when
3 you've had a chance to read the entire response.

4 [Witness reviewing document]

5 A Okay.

6 Q Do you see anywhere in that response, where Jacuzzi alerted
7 the Plaintiffs that Jacuzzi was limiting their response to only those four
8 types of issues?

9 A Not in their response.

10 Q Why didn't Jacuzzi tell Plaintiffs that it had limited the
11 discovery to only those four issues, so that Plaintiffs at least knew that
12 Jacuzzi had potentially withheld important information?

13 MR. ROBERTS: Objection, Your Honor.

14 THE WITNESS: I have no idea.

15 THE COURT: Hold on. Hold on. Hold on, Mr. -- yes.

16 MR. ROBERTS: Foundation.

17 THE COURT: Overruled. I think it's a valid question. He was
18 copied on the email indicating there was going to be a limitation to the
19 four issues. To the extent you know, Mr. Demeritt, please answer the
20 question. Why don't you repeat the question?

21 MR. CLOWARD: Sure.

22 BY MR. CLOWARD:

23 Q Mr. Demeritt, why didn't Jacuzzi tell Plaintiffs that it had
24 limited the discovery to only those four issues, so that Plaintiffs at least
25 knew that Jacuzzi had potentially withheld important information?

1 A I don't know.

2 Q You did sign the discovery responses, though, true?

3 A I did.

4 Q And you knew that they were under oath, true?

5 A I did.

6 Q Is there a reason why you didn't step up and say, hey, you
7 know, we've been asked for all injury claims, we should turn over what's
8 being requested?

9 A I was relying on the information that was provided to me by
10 the more knowledgeable people in this area. In reading the question and
11 the response, I didn't see anything that was -- what I felt -- well, not what
12 I felt, nothing that triggered me to say that, you know, this was
13 absolutely wrong. So -- I would never sign something that I knew was
14 absolutely wrong.

15 Q Okay. And, sir, you agree that all of this took place in May of
16 2017, so nearly two and a half years ago, right?

17 A Correct.

18 Q Okay. Now let's turn to Exhibit 172, and these are Jacuzzi's
19 responses to Plaintiffs' request for production of documents. We'll go to
20 --

21 THE COURT: I'm sorry. Which number are you on now?

22 MR. CLOWARD: 172, Your Honor.

23 THE COURT: Okay.

24 MR. CLOWARD: Exhibit 172.

25 THE COURT: All right. Yeah. All right.

1 BY MR. CLOWARD:

2 Q And we're going to look at Request number 18. So, Mr.
3 Demeritt, just let me know when you've had a chance to read request
4 number 18.

5 [Witness reviewing document]

6 A Okay.

7 Q Okay. You agree here that there is no limitation on Plaintiffs'
8 request, limiting it to just four types of failures or malfunctions of the
9 tub, true?

10 A Yes.

11 Q And you agree here that the Plaintiffs are asking for
12 documents that "may be in the form of direct complaints from customers
13 to the manufacturer, or incident reports, such as warranty claims
14 through dealers, " true?

15 A Yes.

16 Q And what was Jacuzzi's response?

17 A That we had no responsive documents.

18 Q Okay, now let's go to -- and importantly Jacuzzi says this
19 response is limited to failures and malfunctions related to Plaintiffs'
20 claims in this case. You agree that Jacuzzi did not tell Plaintiff that they
21 were being limited to just those four things that Ron Templer instructed
22 everyone to limit them to, true?

23 A I don't know that. But it's not here in the document that I'm
24 looking at, or the section of the document that I'm looking at.

25 Q Okay. Let's go to request for production 34.

1 THE COURT: Well, let me stop you for a second.

2 MR. CLOWARD: Yes, Your Honor.

3 THE COURT: I guess I have a two-part question.

4 MR. CLOWARD: Okay.

5 THE COURT: Which I don't want to spend time discussing it
6 now, but perhaps you can include it in the briefs.

7 MR. CLOWARD: Okay.

8 THE COURT: Number one, was there any discussion among
9 counsel, at or about the times these requests for productions and
10 responses as to what the term failures and malfunctions might have
11 meant. And second part of that is, is it Plaintiffs' position in this case
12 that the claims of the Plaintiff are related to or caused by failures and
13 malfunctions in the Jacuzzi. Right. And so because it's my
14 understanding that this is a slip case, due to an alleged product defect.
15 So address in any closing briefs whether that is a failure and
16 malfunction.

17 MR. CLOWARD: Okay. You got it, Your Honor.

18 THE COURT: Okay. Thank you.

19 MR. CLOWARD: Got it.

20 THE COURT: All right. Let's keep going.

21 BY MR. CLOWARD:

22 Q Okay. So let's go to 34. Request for production number 34.

23 A Okay.

24 Q Okay. Why don't you follow along with me. Plaintiffs
25 request, "Please produce all documentation, emails, memorandums,

1 technical data, and internal documents of any and all discussion,
2 communication, or otherwise, pertaining to safety considerations
3 regarding the inward opening door versus an outward opening door."

4 Do you see that?

5 A Yes.

6 Q Did I read that correctly?

7 A I believe so.

8 Q Okay. And do you agree that Jacuzzi's response is,
9 "Defendant does not have any responsive documents," true?

10 A Correct.

11 Q Now, let's go to request for production number 38.

12 A We're there.

13 Q All right. It says, "Please produce any and all documents
14 produced by any other claimant, who claimed injury or death, in any and
15 all tubs designed, manufactured, distributed, marketed, or sold by
16 Jacuzzi." Did I read that correctly?

17 A Yes.

18 Q Okay, you agree that's a pretty broad request, right?

19 A No, I'm not going to agree, but --

20 MR. ROBERTS: Objection. Ambiguous.

21 THE WITNESS: -- it seems to be --

22 THE COURT: Well, yeah, sustained, broad is --

23 THE WITNESS: You asked me for an opinion, do I believe it's
24 very broad. It's somewhat broad, but very broad, no. I'm not sure I
25 would agree with that.

1 BY MR. CLOWARD:

2 Q Okay. Okay. We can move forward. But you agree here that
3 Plaintiffs are asking for any and all documents produced by any other
4 claimant who claimed injury or death, true?

5 A Yes.

6 Q And what was Jacuzzi's response? "It was that Defendant
7 has no responsive documents related to injury claims substantially
8 similar to the vague defect claims that have been presented by Plaintiffs
9 in this action, which have changed over time, involving the subject
10 Jacuzzi walk-in tub, other than those produced by Plaintiffs and their
11 attorney." Did I read that correctly?

12 A Yes. Yes, you did.

13 Q So Jacuzzi's position at this time were that there were no
14 responsive documents, right?

15 A Correct.

16 Q Now, I want to take a look, just really quick, on some of the
17 search results and some of the documents.

18 MR. CLOWARD: And Your Honor, this may -- I may need to
19 seek the Court's guidance on this. There was an email that I saw in the
20 production that referenced two Salesforce cases. I didn't see that those
21 were produced in any of the stuff that was produced to us yesterday at
22 about 3:30. I don't know if Your Honor ordered that to be produced,
23 whether that was an oversight by Jacuzzi, or what, but I would like to
24 known what those documents say.

25 THE COURT: So was that -- how do you know about the

1 existence of those?

2 MR. CLOWARD: Because there was an email that was
3 forwarded from Mr. Templer to Audra and Mr. Roberts.

4 THE COURT: Okay, so you have that email, but it references
5 Salesforce documents.

6 MR. CLOWARD: Correct.

7 THE COURT: Which you don't have.

8 MR. CLOWARD: Correct.

9 THE COURT: Response?

10 MR. ROBERTS: Yes, Your Honor. I'll represent that the two
11 Salesforce reports which were identified by Mr. Cloward in his email to
12 me last night were 00336570. Jacuzzi would represent that this was an
13 installer First Street dealer asking for a new grab bar, because the grab
14 bar on the showroom model had become scratched and worn from
15 customers touching it.

16 Salesforce00287260 was a customer asking for a grab bar to
17 be replaced because it was flaking. The coating was flaking. The
18 Salesforce report is long on this one, as it appears the bar was difficult to
19 replace.

20 Mr. Cloward also referenced a notation in one of the emails
21 that more were coming from Regina. There was an email subsequent
22 with five more of those. Four were replacements due to peeling and
23 flaking. One of them does reference a customer cutting a hand, cleaning
24 the grab bar. And one was a customer of a walk-in tub asking -- excuse
25 me, of a non-walk-in tub, asking for a grab bar. Because they appear to

1 be irrelevant, not related to the claims in this case, Jacuzzi would object
2 to producing those, because they have confidential consumer
3 information. But we are willing to provide them to the Court for in-
4 camera inspection, so that you can confirm my representation of the
5 subject matter.

6 MR. CLOWARD: And may I respond?

7 THE COURT: Yes. Thank you, Mr. Roberts for studying those
8 documents, so you could put that on the record.

9 MR. ROBERTS: Thank you, Your Honor.

10 MR. CLOWARD: They've raised the issue of confidential
11 consumer information a number of times. They raised that with
12 Commissioner Bulla. She denied it. They raised it in their objection
13 with Your Honor. Your Honor adopted the report recommendation. And
14 then they filed a writ of prohibition to the Nevada Supreme Court, who
15 rejected their attempt to review that.

16 So I don't think that's a valid basis. And they continue to
17 relitigate that issue every time. I just -- I don't think that that's a good
18 faith argument. There's -- and it's -- additionally the big problem with
19 this case from the very beginning is that Jacuzzi has determined that it is
20 the gate holder of all -- any and all information. They say, well, it's not
21 relevant because of these reasons. We'd like to look into that. Okay, if
22 there's an injury, we should be entitled to look into that.

23 And the entire argument is that we didn't produce any of
24 these documents because we didn't think that any of it was relevant.
25 What we found from the binders up on the stand is that there is a

1 significant amount of relevant information. And a lot of times, it --
2 maybe it's not on just the first page, maybe it's on the seventh page, and
3 you've got to look at the fine print, and that's where you find out, this
4 person was hurt, and they're claiming something.

5 But the cursory review that Jacuzzi continues to make in
6 these -- on these issues and say, hey, you know, we don't think it's
7 relevant, so we shouldn't have to turn it over.

8 THE COURT: Understood. Of course, the Court accepts the
9 representation of Mr. Roberts, but to satisfy anybody's concerns if you
10 have them in front of you, I'll look at them right now. I don't like to keep
11 postponing review of things, because then it gets more difficult for the
12 Court to remember what you wanted me to do. If you have them right
13 now, I can take a quick look at them, and let you know if they're relevant.

14 Now, you would agree, Mr. Cloward, based on what Mr.
15 Roberts is representing to the Court that those documents are, they don't
16 appear to be relevant to the claims in this case.

17 MR. CLOWARD: Potentially not. But again --

18 THE COURT: Well, let me take a look at them.

19 MR. CLOWARD: Yeah.

20 THE COURT: And maybe I can -- you know, I can make a
21 quick determination. I know what --

22 MR. CLOWARD: Based on --

23 THE COURT: -- what's relevant in this case.

24 MR. CLOWARD: I would say this. Based on the limited
25 information that Jacuzzi has represented in open Court, I would agree.

1 But there's been a consistent pattern of representing one thing and then
2 finding --

3 THE COURT: Okay, but we can trust Mr. Roberts, right? I
4 mean -- let's take a look. Okay. So Mr. Roberts, are you --

5 MR. ROBERTS: Your Honor, first to the purpose of the
6 record, my objection is just not -- we shouldn't have to produce them
7 because they have confidential consumer information. We understand
8 that if the -- if they were responsive to discovery, or an order from the
9 Court, and they were -- then they need to be produced.

10 Our objection is that based on the content of these
11 complaints, they are not relevant or likely to lead to admissible evidence.
12 And the Supreme Court has rejected the idea that you can have
13 wholesale review of a Defendant's files regardless of potential relevance.

14 THE COURT: Of course, and we can -- we could -- absolutely
15 right. We could redact whatever we need to redact to protect the
16 confidentiality of individuals, and trade secrets, and anything else that
17 might need protection. But I mean at least I should look at them and see
18 -- because if there's relevance, then we got to turn to the redaction issue.

19 MR. ROBERTS: So, and I haven't had a chance to double-
20 check this for accuracy.

21 THE COURT: Okay.

22 MR. ROBERTS: I'll represent that to the Court. But I did have
23 Ms. Bonney make a -- sort of a guide for the Court.

24 THE COURT: Okay.

25 MR. ROBERTS: As you know we submitted documents to the

1 Court which you have not yet ordered to be produced to Mr. Cloward,
2 but we have here a chart with Bates number ranges, and where the
3 Salesforce records are referenced. And it may be that the Court needs
4 additional information other than what was attached actually to the
5 emails. But I believe just the documents already submitted to the Court
6 would be sufficient, and I can provide these to the Court, so the Court
7 can review the documents in your binders, to see if you believe anything
8 else should be produced to Mr. Cloward.

9 THE COURT: Do you -- do you have a copy of that for Mr.
10 Cloward, please?

11 MR. ROBERTS: Yes.

12 THE COURT: All right.

13 MR. ROBERTS: We can print one.

14 THE COURT: Great. Why don't you go ahead and approach,
15 and I'll write down on that document -- can I have that one or --

16 MR. ROBERTS: Yes, Your Honor.

17 THE COURT: -- you have a clean copy?

18 MR. ROBERTS: Actually, we'll make you a clean copy.

19 THE COURT: All right. And then just handwrite on there,
20 documents for Judge to determine relevance. All right. And then I'll
21 take a look at those --

22 MR. ROBERTS: Perfect.

23 THE COURT: -- as soon as I can.

24 MR. ROBERTS: Okay.

25 THE COURT: And then I'll let you know if I think they're

1 relevant, and then we'll move on to the next step. Is that okay, Mr.
2 Cloward? Does that sound like an appropriate procedure?

3 MR. CLOWARD: Yeah. Sure.

4 THE COURT: All right. Marshal, there's somebody standing
5 at the door. Why don't you see if there's something we could help them
6 with.

7 MR. ROBERTS: For Judge, not from Judge.

8 THE COURT: I mean, you can see I've already gone through
9 binder 1 of the in-camera stuff and gave you my --

10 MR. ROBERTS: Yes.

11 THE COURT: -- position on relevance. And I haven't finished
12 that on the other -- I think I did it on the first two binders. I don't know if I
13 gave you results of the second binder yet. And then I have one more
14 binder.

15 MR. ROBERTS: Very good, Your Honor. And we did comply
16 with the Court's directive.

17 THE COURT: I appreciate that.

18 MR. ROBERTS: We, of course, reserved objection and we're
19 not waiving attorney-client privilege in work product, but we did comply
20 with the Court's order and provided those documents to Ben. And some
21 of them have already been used in the hearing this morning with
22 Mr. Demeritt.

23 THE COURT: Very good. So noted as to all of that.

24 MR. ROBERTS: May I approach, Your Honor?

25 THE COURT: Yes, you may.

1 MR. ROBERTS: Thank you. Here's a copy of the
2 spreadsheet.

3 THE COURT: Thank you. Thank you. Very good. This is
4 helpful for me going forward. All right.

5 Mr. Cloward, did you want to continue that? I'll see if I can
6 look at these over lunch.

7 MR. CLOWARD: And we do have the resource -- or the
8 recess, Your Honor, in 20 minutes?

9 THE COURT: Right.

10 MR. CLOWARD: So that gives the Court another
11 opportunity --

12 THE COURT: You both need to be somewhere at 10:30.

13 MR. ROBERTS: Correct, Your Honor.

14 THE COURT: So how about will 10:25 work?

15 MR. CLOWARD: That would be good.

16 MR. ROBERTS: That will work. I'm going up to the 15th
17 floor. Mr. Cloward's just going down to Judge Williams.

18 THE COURT: Very good. Remind me when we get there.
19 Let's do 15 more minutes here.

20 MR. CLOWARD: You got it. Okay. Thank you.

21 MR. ROBERTS: We can go ahead, Your Honor. We may
22 need to correct a typo in this, but --

23 THE COURT: Okay.

24 MR. ROBERTS: -- we can go ahead. There's no need to do it
25 right now.

1 MR. CLOWARD: Ian, can you pull up privileged -- let's just
2 start, we'll go in sequence. That'll be easier. So let's just start with
3 privileged J000281.

4 THE COURT: Where can I find that?

5 MR. CLOWARD: That is Exhibit 197.

6 THE COURT: Very good. One of the new things you gave us
7 today.

8 MR. CLOWARD: Correct.

9 THE COURT: Got it. thank you.

10 MR. CLOWARD: And I apologize we don't have a binder.
11 We're working on getting you a binder.

12 THE COURT: I'm fine.

13 MR. CLOWARD: Okay.

14 BY MR. CLOWARD:

15 Q Mr. Demeritt, let me know when my associate there, Ian, has
16 pulled that up.

17 A Hello?

18 Q Mr. Demeritt, can you hear me?

19 A I can hear you. Can you hear me?

20 Q Yes. Are you there?

21 A Yeah. Ian has a question for you.

22 Q Okay.

23 THE COURT: Who's Ian?

24 MR. CLOWARD: He's my associate.

25 THE COURT: Oh, sorry.

1 MR. CLOWARD: He's assisting with the --
2 THE COURT: And he's there?
3 MR. CLOWARD: Yeah.
4 THE COURT: Okay.
5 MR. CLOWARD: He's with -- he's sitting next to Mr. Demeritt.
6 THE COURT: Okay.
7 MR. CLOWARD: Ian, we cannot hear you.
8 MR. ESTRADA: Page 281, right?
9 THE WITNESS: Page 281, right?
10 MR. CLOWARD: Correct. J000281.
11 THE WITNESS: Okay.
12 BY MR. CLOWARD:
13 Q All right. If you look down, it's the fourth name from the top,
14 Richard Vest. I believe that's an employee of Jacuzzi, correct?
15 A Fourth name from the top is Sonja Kelsey.
16 Q I'm sorry. Fourth name from the bottom. My mistake.
17 A Richard Vest. Okay. I see it. What was your question?
18 Q Now, if you look at that entry, it indicates that Atlas Installers
19 not helping. We do not sell the nonskid parts. And the inquiry was slips
20 in tub. True?
21 A That's what it says here. Yes, sir.
22 Q Okay. Did Jacuzzi do anything to determine whether this
23 person that was slipping in the tub was injured?
24 A I have no idea.
25 Q Okay. Let's turn to privileged 368. This is about the eighth

005429

005429

1 entry down.

2 A Okay.

3 Q Do you see where it says, "Just had tub installed. Wife is
4 handicapped and slips easily. Wants to know what to do. Seat slippery,
5 too. Tub is slippery at bottom." Do you see that?

6 A Yes.

7 Q Did Jacuzzi do anything to determine whether this individual
8 with the handicap who was slipping was injured when she was slipping?

9 A I have no idea.

10 Q Okay. Next, we'll go to Privileged00392. And this one's easy
11 to look at. You can just see the word outward in the middle of the page.
12 If you look to the right of that.

13 A Yeah.

14 Q It says, "Does not like door opening inward. Does not like
15 location of faucet. Advised we are not planning on a seat -- or on a
16 design change. She slipped. Does not like door opening inward. Does
17 not" -- oh, it's a duplicate there, but "Wants door to open outwards, not
18 inward."

19 Did Jacuzzi do anything to determine whether this individual who
20 slipped was injured?

21 A I have no idea.

22 Q Okay. Next, we'll go to Privileged532. It's the fourth entry
23 from the bottom.

24 A You got to be kidding me. This is microscopic print, sorry.
25 He's going to pull it up on the computer. Okay.

1 Q Okay. It says, "Floor is slippery. Was not that way when she
2 purchased the tub. She says Brenda told her to use Dawn soap to clean
3 floor. Talked to Megan and she said use Fantastik, that Dawn may leave
4 a residue." You agree this individual called Jacuzzi to complain about
5 this issue, true?

6 A I don't know the contact came in.

7 Q Okay.

8 A What is this document I'm looking at? Where does this come
9 from?

10 Q These are part of the search that Jacuzzi conducted prior to
11 answering written discovery.

12 A Okay. This is not something that we generate as part of our
13 systems, or how does this work? I'm totally unfamiliar with this
14 document, so --

15 Q Understood.

16 A I see where it says, "Slippery floor." Yes, I see that.

17 Q Okay. Understood. Now, if you'll next go to Jacuzzi533,
18 Privileged533. This is the fourth entry from the bottom.

19 A What is the name? Johnson? Okay.

20 Q And it says,

21 "Per Ms. Johnson, her husband got stuck inside the unit. She
22 could not open the door to get her husband out of the tub, so
23 she ended up calling the rescue team, 911, to help her
24 husband out of the tub. She does not feel the unit is safe,
25 and she wants the dealer to replace her tub with a hot -- or

1 with a tub that door swings out instead of into the bathtub."

2 Did you see that?

3 A I see it.

4 Q Did I read that correctly?

5 A I believe so.

6 Q Okay. You agree that this individual, Ms. Johnson, her
7 husband was actually stuck and required 911 to come and get him out?

8 A That's what it says.

9 Q Okay. Mr. Demeritt, we're going to shift our focus now.
10 We're going to go to Exhibit 10 in the binder.

11 MR. CLOWARD: So Ian, this is 10 in the master OSI. And if
12 you hit the bookmark view, you'll be able to see them quickly. And for
13 everyone's reference, this is going to be page Jacuzzi005717.

14 BY MR. CLOWARD:

15 Q Mr. Demeritt, just let me know when you've had a chance to
16 review that.

17 MR. ESTRADA: Hey, Ben, can you hear me?

18 MR. CLOWARD: Yes.

19 MR. ESTRADA: What specific part of the sheet do you want
20 me to go to?

21 MR. CLOWARD: Jacuzzi005717.

22 MR. ROBERTS: Did you decide to dress up for the hearing,
23 Ian?

24 MR. CLOWARD: Yeah, I mean --

25 MR. ESTRADA: I did not.

1 MR. CLOWARD: You know there is a local rule that --
2 MR. ESTRADA: I do not expect to be on camera.
3 MR. CLOWARD: -- there is a local rule that requires that, Ian.
4 We're going to have to talk, you know. I'm sorry.
5 THE COURT: That's okay.
6 MR. ROBERTS: Sorry, Your Honor.
7 MR. CLOWARD: Ian, it's tab 10, and it's towards the back of
8 the document. I believe it's the second or third page from the back.
9 Fourth page from the back.
10 MS. LLEWELLYN: Ben, is this a Salesforce record?
11 MR. CLOWARD: Correct.
12 MS. LLEWELLYN: Case 00190336?
13 MR. CLOWARD: No, it's -- oh, yes, correct. That's the case.
14 MS. LLEWELLYN: Okay.
15 MR. CLOWARD: But the Bate number is Jacuzzi005717.
16 MS. LLEWELLYN: We have it up here.
17 MR. CLOWARD: Okay.
18 BY MR. CLOWARD:
19 Q Okay. Mr. Demeritt --
20 THE COURT: Let's just for the record, are there -- other than
21 the three that are there, are there any other individuals present with the
22 witness in what location is he at?
23 MR. ROBERTS: This is a conference room at Regis Suites
24 about a mile from the Ontario Airport. The witness is working from his
25 home now, and this was convenient for the -- more convenient for the

1 witness.

2 THE COURT: Okay.

3 MR. ROBERTS: So we did reserve a conference room there.
4 It was my understanding that Mr. Templer was also going to be in the
5 conference room, but I have not yet confirmed it or heard his voice. But
6 Ron Templer, are you in the conference room?

7 MR. TEMPLER: Yes, I entered.

8 MR. ROBERTS: Okay. Is there anyone else there other than
9 the four people that have been identified?

10 MR. ESTRADA: No.

11 THE COURT: And is Mr. Demeritt looking at hardcopies of
12 the exhibits or computer copies of the exhibits? And does he have a set
13 of the --

14 MR. ROBERTS: I believe he's looking at the documents
15 which are being pulled up by Mr. Estrada on his computer screen.

16 THE COURT: Perfect.

17 MR. ROBERTS: And being shown to him. He does have a
18 hardcopy of the Privileged exhibits that reference him. So he does have
19 the ability to find those, probably, if there's a computer issue. But it's my
20 understanding he's looking at Ian's computer screen.

21 THE COURT: Thank you. Those logistics are helpful to the
22 Court. All right. Very well.

23 MR. ROBERTS: Thank you, Your Honor.

24 MR. CLOWARD: Thank you.

25 THE COURT: Let's get a few more questions in if we can.

1 MR. CLOWARD: You got it.

2 BY MR. CLOWARD:

3 Q And --

4 A I'm looking at Brittany's computer screen.

5 MR. CLOWARD: Okay.

6 THE COURT: Okay.

7 BY MR. CLOWARD:

8 Q Fair enough. Thank you. Okay. So Mr. Demeritt, if you look
9 at the bottom right-hand corner of Jacuzzi005717, it's about the fifth line
10 from the bottom. It says, "Agent did mention that Mr. Greenwell said he
11 slipped and fell in his tub and he had to call the fire department to get
12 him out." Do you see where that's written?

13 A Yes, sir.

14 Q And you were aware of that at the time you answered the
15 discovery, true?

16 A No.

17 Q Okay. We'll go over that in a minute. We'll just kind of
18 continue. But you agree that the incident on this June 19th, 2013
19 incident was before Ms. Cunnison's February 2014 incident, true?

20 A Yes. Yes.

21 Q Okay. So you agree that it was prior to Ms. Cunnison, true?

22 A Yes.

23 Q And you agree that this was not identified or turned over in
24 the written discovery responses we just went over, true?

25 A I don't know that.

1 Q Okay.

2 A I don't.

3 Q Okay. Now, if you'll take a look in that same list of
4 documents, if you look at 5623, this is some of the email correspondence
5 regarding this incident.

6 A Okay. Yeah, I see it.

7 Q You agree this is an email from Regina Reyes to
8 Mr. Bachmeyer, correct?

9 A Right.

10 Q And it lists three customers. First is, "Customer Irene Stoldt
11 [phonetic], installed 9/18/12, installer Kenneth Kotette [phonetic],
12 customer reported that unit would not drain. She got stuck in the tub
13 and had to crawl out of door." Did I read that correctly?

14 A Yeah.

15 Q And you knew about this incident at the time you answered
16 discovery, true?

17 A Probably. I may have had -- I may have seen this email. I
18 don't see myself on the email, but I may have seen this email. But did I
19 remember it at the time? Probably not.

20 Q Okay. And you see Mr. Greenwell, the second customer in
21 that chain? You see that?

22 A Yeah.

23 Q Okay. That's the one we talked about where he had to call
24 911, the fire department. Now, the third one is a, "Customer, C.
25 Lashinski [phonetic], Installed 12/29/12, installer Anthony Home

1 Improvement. Customer called to request we replace her door under
2 warranty. Partner slipped in tub. They had to remove the door to get
3 her out." Do you see that?

4 A Yes.

5 Q You were aware of that at the time you answered discovery,
6 correct?

7 A Same answer as the last one.

8 Q Which is what for the record?

9 A I don't have -- right now I can't say that I knew about it.

10 Q Okay.

11 THE COURT: So this is a good time for your break. I
12 understand you gentlemen have to get elsewhere. It's -- let's go off the
13 record.

14 THE COURT: Yes? Mr. Roberts, you're standing.

15 MR. ROBERTS: I don't know if you can direct someone not to
16 talk to their lawyer during the break. It's discoverable if we talk during
17 the break, but I have no objection to that.

18 THE COURT: Well, thank you. I appreciate that. So
19 Mr. Demeritt, I'm instructing you not to discuss the substance of the
20 testimony that you've provided so far in this case with anybody during
21 the break. Do you understand that, sir?

22 THE WITNESS: Yes, I do, Your Honor.

23 THE COURT: All right. You can still talk to your lawyer. You
24 can talk to Jacuzzi's lawyer. Just don't talk about the substance of the
25 testimony that you've given. All right? All right.

1 THE WITNESS: Okay.

2 THE COURT: All right. Thank you. Let's go off the record.

3 [Recess at 10:26 a.m., recommencing at 11:19 a.m.]

4 THE MARSHAL: Remain seated. Department 2. Back on the
5 record. Come to order.

6 THE COURT: Anything preliminarily from the parties before
7 we --

8 MR. ROBERTS: Yes, Your Honor.

9 THE COURT: -- because I have one thing, but why don't you
10 go first?

11 MR. ROBERTS: Okay. If you recall, I mentioned when I
12 provided the spreadsheet to the Court --

13 THE COURT: Yes.

14 MR. ROBERTS: -- regarding the Salesforce issues brought up
15 by Mr. Cloward, I indicated there may be an error.

16 THE COURT: Yes.

17 MR. ROBERTS: And I've got an errata. One of the Salesforce
18 record numbers was missing one numeral.

19 THE COURT: Okay.

20 MR. ROBERTS: It was the one related to Marie Fisher, and it
21 should have read 00336570, and I have a corrected spreadsheet for the
22 Court.

23 THE COURT: Could you put a C in the upper right-hand
24 corner so I --

25 MR. ROBERTS: Sure.

1 THE COURT: -- I don't get it confused with the other one?

2 MR. ROBERTS: I wrote errata in the bottom, but I will put a C
3 in the upper right-hand corner; is that correct, Your Honor?

4 THE COURT: Yeah. Just -- right. Very good. Thank you.

5 MR. ROBERTS: Thank you, Your Honor.

6 THE COURT: Thank you, Counsel.

7 All right. So when I was reviewing my records in this case
8 just over the last break I came across a binder that I remember receiving
9 at one point, but I don't recall what, if anything, I did with it. I got it from
10 Jacuzzi. But I think it was maybe three months ago or so or maybe
11 longer. Three, it says, "In-camera review. Confidential." And Mr.
12 Roberts, can you look at this and tell me what it was? And it says,
13 "Jacuzzi4727 through 5188."

14 And I don't remember why I have that. Maybe we discussed
15 it at a prior hearing, but I have a lot of things tabbed on it. I think I had
16 tabbed documents that I had an inkling to suggest production.

17 MR. ROBERTS: Your Honor, I hate to say this, I don't recall
18 the circumstances of this binder --

19 THE COURT: All right.

20 MR. ROBERTS: -- they produced.

21 MR. CLOWARD: What is the date?

22 MR. ROBERTS: Well, there --

23 THE COURT: I don't think it's -- there's a cover letter, right?

24 MR. ROBERTS: There -- the cover is Defendant Jacuzzi 17th
25 supplemental disclosure statement, which was electronically served on

1 July 2nd of 2019. And --

2 THE COURT: So this --

3 MR. ROBERTS: -- Ms. Llewellyn may be familiar with this
4 who's on the other end of the Bluetooth. But it appears that there are
5 perhaps unredacted versions of documents that were redacted in
6 Jacuzzi's 17th supplemental disclosure.

7 THE COURT: So I was supposed to -- do I have the
8 nonredacted sections there? Because I did see some pages that had
9 redactions in there.

10 MR. ROBERTS: Yes, Your Honor. The first section is the
11 redacted versions, which were produced in discovery. Jacuzzi4727 to
12 5188. The second tab has the same identical documents unredacted for
13 the Court.

14 THE COURT: How am I supposed to know what was the
15 redacted portions when I'm going through your section of the
16 unredacted? Is there -- I'm looking over kind of your shoulder here and I
17 see stuff in yellow. Maybe that's the stuff that was redacted? I hate to
18 take time on the record for this, but --

19 MR. ROBERTS: It's -- that is my understanding, Your Honor.

20 THE COURT: Okay.

21 MR. ROBERTS: The way my paralegal, Ms. Bonney, typically
22 does these.

23 THE COURT: Great. I'll double check.

24 MR. ROBERTS: Yes. And I've just confirmed, using the first
25 two pages, that what has been highlighted is what was redacted in the

1 copy that was produced.

2 THE COURT: Okay. And I'll take a look. I think I'll be able to
3 figure out if you redacted it based on attorney-client privilege or some
4 other basis.

5 MR. ROBERTS: You should.

6 THE COURT: Thank you.

7 MR. ROBERTS: And if there's any confusion, then we'll
8 clarify that, Your Honor.

9 THE COURT: Great.

10 MR. ROBERTS: Okay.

11 THE COURT: So what I probably will do, Mr. Roberts and
12 Mr. Cloward, is give you by Bates number, my preliminary assessment
13 of what I think should be produced. I'll give Mr. Roberts an opportunity
14 to review those pages, and then we can discuss any objections that he
15 might have on the record.

16 MR. CLOWARD: Okay.

17 THE COURT: We'll have to find a time for that. I apologize,
18 gentlemen, for taking your time right now on that.

19 MR. CLOWARD: It's okay. No, it's --

20 THE COURT: Let's continue then.

21 MR. CLOWARD: You got it.

22 THE COURT: Mr. Detweiler [sic], are you still in the room?
23 Please have a seat. Very well. You're still under oath. And I will now
24 allow Mr. Cloward to resume his examination.

25 MR. CLOWARD: Thank you, Your Honor.

1 THE COURT: Can you hear us okay, Mr. Detweiler [sic]?

2 MR. CLOWARD: Mr. Demeritt. It's okay.

3 THE COURT: I'm sorry, Mr. Demeritt. My last case right
4 before you had a Mr. Detweiler.

5 MR. CLOWARD: Detweiler.

6 THE COURT: You can hear me okay?

7 THE WITNESS: Yeah. I can hear you fine. And you'd be
8 amazed at the different ways people pronounce Demeritt or McDermot
9 or Dewitt or you know, so --

10 THE COURT: All right.

11 THE WITNESS: -- I'm used to it.

12 THE COURT: Well, all right. You'll know who we're referring
13 to then. All right.

14 THE WITNESS: Yeah.

15 Mr. Cloward, please proceed.

16 MR. CLOWARD: Okay, Your Honor.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. CLOWARD:

19 Q So, Mr. Demeritt, we were on page Jacuzzi005623, and we'll
20 just kind of --

21 A Yeah.

22 Q -- start off there. I believe we finished discussing the last
23 sentence where Ms. Lashinski's partner slipped in the tub and they had
24 to remove the door to get her out. Do you follow along with me now?

25 A He's pulling up the page, but yeah, I remember that.

1 Q Okay.

2 A Wait a minute, we need the page again.

3 Q Okay. It's Jacuzzi005623.

4 A Okay.

5 Q Okay. So --

6 A I'm there.

7 Q -- Mr. Demeritt, you agreed that this email from Regina to
8 Mr. Bachmeyer indicated that this customer, Lashinski, her partner
9 slipped in the tub and they had to remove the door to get her out, true?

10 A Yes.

11 Q And you were aware of that incident, true?

12 A I'd like to see the email chain, if I can.

13 Q Okay. And we'll get to that, if there is one, in a moment. But
14 I guess the first question I have is you remember these independently,
15 right?

16 A No.

17 Q Okay. So let's go to the email chain then. If you go to the
18 previous page it's Jacuzzi005622. Do you see at the bottom there it says,
19 Kurt Bachmeyer to Ray Torres, Audrey Martinez. Do you see that?

20 A Yes, I did.

21 Q Okay. So follow along with me. Kurt says, "Are you both in
22 this week? I've been tasked by Bill D. to get this group together and
23 discuss steps to resolve so we don't see these issues continually coming
24 up. Let me know. Thank you."

25 A Okay. Yeah, I see it.

1 Q Did I read that correctly?

2 A Yeah. Just a piece of it cut off here, and I'm asking Ian to get
3 it, so. But yeah, you read it correctly.

4 Q Okay. And you agree that the Bill D. that Kurt is talking about
5 is, in fact, you, Bill Demeritt, true?

6 A I would assume so.

7 Q Okay. So does that refresh your recollection about the
8 assignment that you gave Kurt Bachmeyer back in June of 2013
9 regarding these three individuals and the "continually coming up"
10 issues?

11 A No.

12 Q No refreshment of your recollection whatsoever?

13 A No, sir.

14 Q You have no memory of that?

15 A No, sir.

16 Q Sir, you agree that all three of these incidents were prior to
17 Ms. Cunnison's incident, true?

18 A Yes, sir.

19 Q And you agree that in your deposition you told me when I
20 was surprised that Jacuzzi didn't have any prior incidents, you told me
21 that you had done a good-faith search of the records, right?

22 A Yeah, but if my -- if my memory of the conversation is
23 accurate, and I apologize if it's not. But if it's accurate, in that record
24 search there were certain criteria that we were looking for or the
25 searcher was looking for. And it's my understanding that a number of

1 cases did not have -- did not meet that criteria. And so therefore, they
2 were excluded. And I'm doing this from memory, so if I'm wrong, I
3 apologize. But I think that there were certain things that came up that --
4 you know, though there was a -- there may have been a slip or whatever,
5 it did not meet the criteria that was established for the search.

6 Q What was your understanding, since you have a recollection
7 of this, what is your understanding of what that criteria was?

8 A I think that it was injury. There were -- I know that injury was
9 one of them. And I would be guessing if I came up with the other ones.
10 But -- you know, it was -- there was a specific group of we're looking for
11 these features. And those three cases does not have -- did not have
12 those features.

13 Q Okay. So you don't think that somebody getting stuck in the
14 tub and having to call 911 to get out would be somebody that would fit
15 the criteria for this case?

16 A Due respect, sir, I don't make those kind of decisions.

17 Q Okay.

18 A Okay. I was --

19 Q Go ahead, sir.

20 A -- I was told that the search was done based on a set of
21 criteria and that's what I was being deposed to.

22 Q Okay. So I guess I'm a little confused because earlier in the
23 testimony I believe that you said that you were not involved in the
24 process. And now it appears as though you might have been involved in
25 the process. So help me --

1 A No, I think that's an assumption on your part. I -- you know,
2 this was seven years ago or six years ago. I remember pieces of this,
3 and I do remember that in a conversation, and I don't know who with -- I
4 don't know who with, there was some question in my mind about the
5 fact that nothing had come up. And that's when I was told that there was
6 a -- please don't ask me by who, but that's the only way I would have
7 known that there were certain criteria, certain features that the search
8 was looking for, and it did not turn up any.

9 Q Okay. Well, we've already gone through the binder of
10 incidents. Have you been made aware that there are approximately 150
11 some odd incidents where people claimed -- you know, either injury or
12 they fell, or they were complaining about the safety aspects of the tub?

13 A Nobody has told me that, sir.

14 Q Okay. And Mr. Bachmeyer testified when we went through
15 individually many, many of the specific incidents, he testified that those
16 would have been forwarded to you and to the legal team; is that
17 accurate?

18 A I don't know if they were all forwarded to me. Kurt and I
19 communicate. Most of the time it's on property damage, so it would not
20 have surprised me.

21 Q Do you know why none of your emails have been provided in
22 this case other than -- you know, a random one here or a random email
23 there?

24 MR. ROBERTS: Objection. Vague.

25 THE COURT: Hold --

1 THE WITNESS: So I don't -- I have no idea.

2 THE COURT: -- why don't you hold on one second.?

3 Yeah. I'll sustain that. He may now know that. I don't know
4 that you've laid foundation as to how he would know whether anybody
5 searched for his emails and what they did with it. Maybe it was outside
6 counsel, I don't know. Why don't you see if there's some foundation for
7 that.

8 MR. CLOWARD: You got it, Judge.

9 THE COURT: There may or may not be.

10 MR. CLOWARD: Okay.

11 BY MR. CLOWARD:

12 Q Mr. Demeritt, you testified earlier, I believe, that to your
13 understanding, your emails were never searched other than about
14 maybe two months ago -- two or three months ago; is that accurate?

15 A Yeah, that -- I didn't know of any search before that. So if
16 there was one, it was without my knowledge.

17 Q Okay. And since that search, were you ever told by anyone,
18 hey, we need to turn over some of your emails. We're going to be going
19 through your emails. Were you ever told that?

20 A No.

21 Q Now, looking at the specific language on that email, 5622,
22 Mr. Bachmeyer indicated that these issues were, "continually coming
23 up." Do you see that part?

24 A Yes.

25 Q Okay. And so -- and you agree that back in June of 2013, the

1 issues with people getting stuck in the tub were continually coming up?

2 A No, sir. That is Kurt Bachmeyer saying that. I did not say
3 that.

4 Q Do you disagree with him that they were not continually
5 coming up?

6 A I didn't know of them. So I would have to say yes, I disagree.

7 Q Okay. You knew of this email, though, right?

8 A You just showed it to me here.

9 Q So you knew of the email, right?

10 A I was -- I don't see my name on the email. So I don't know
11 whether I knew about it or not. Can we go through the chain and see if
12 at any point I was copied?

13 Q Mr. Demeritt, I think we've established that you assigned --
14 you tasked Kurt Bachmeyer to get this group together and discuss steps
15 to resolve so we don't see these issues continually coming up. Are you
16 saying that you no longer -- you're retracting that testimony? That you
17 did not make that assignment to Kurt Bachmeyer?

18 MR. ROBERTS: Objection. To form. Mischaracterizes his
19 testimony.

20 THE COURT: Well, I don't recall specifically how that might
21 deviate from his testimony, but your objection is noted and let's see
22 what he recalls of that.

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

24 THE COURT: Did you hear the --

25 THE WITNESS: As I said earlier --

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1 THE COURT: I just want to make sure you heard the question
2 carefully. So you can ask it carefully -- answer it carefully. Okay. Go
3 ahead.

4 THE WITNESS: Okay.

5 BY MR. CLOWARD:

6 Q Okay. Mr. Demeritt, it's my understanding that before the
7 break you testified or I guess not before the break, it was still -- just five
8 minutes ago, you testified that the person that Kurt referenced in this
9 email of being Bill D. was, in fact, yourself, Bill Demeritt, true?

10 A Yes.

11 Q Okay.

12 A I assume so.

13 Q Okay. And you tasked Kurt Bachmeyer to get Audrey and
14 Ray together to discuss steps to resolve the issues continually coming
15 up, true?

16 A I have no recollection of that. That's why I'd like to see the
17 emails that show where I was copied on it or I was in some way involved
18 in the conversation. You know, I don't have firsthand knowledge of that
19 at this point.

20 Q Okay. Unfortunately, we don't have those. They haven't
21 been provided. Maybe we can seek leave to take your discovery
22 deposition and have those emails provided so that we can use those to
23 assist.

24 MR. ROBERTS: I object, Your Honor. This complete chain
25 has been provided and there's no evidence in those emails that

1 Mr. Demeritt --

2 THE COURT: Okay.

3 MR. ROBERTS: -- was copied on this particular language
4 from Mr. Bachmeyer.

5 THE COURT: All right. Well, the chain is not necessary here,
6 I guess to get the information that we all in this room might need. I
7 guess the bottom line is, Mr. Demeritt, do you recall whether you tasked
8 Mr. Bachmeyer to get together the group of documents that's referenced
9 in this email? Do you know one way or another without looking at the
10 email chain?

11 THE WITNESS: No, Your Honor. I do not.

12 THE COURT: Okay. Let's -- Mr. Cloward, look at the
13 discovery that you have to see if the email chain exists. There's been a
14 representation from Mr. Roberts that it has been produced. Double
15 check for us when you can.

16 MR. CLOWARD: The problem --

17 THE COURT: I can't do anything about it if there's a
18 dispute --

19 MR. CLOWARD: Sure. I understand.

20 THE COURT: -- from the parties now.

21 MR. CLOWARD: Yeah. The issue is is that Bill Demeritt's
22 emails have not been produced, other than the limited emails that we
23 got last night. Those are the only -- I mean, I think there's maybe -- you
24 know, and I'm estimating here, so don't hold me to it, Your Honor, but I
25 can search through the entirety of the production. I think there's maybe

1 five or six emails with Bill Demeritt even copied as a recipient. Okay.
2 And this email only references him as Bill D.

3 So that's part of the problem is that none of Bill Demeritt's
4 emails have been produced in this case. So for counsel to say they've
5 produced them, I'm sorry, but I don't think that's accurate.

6 THE COURT: Well, he said they've produced the email chain
7 for this document. Looking at these two pages you can't really tell if
8 there was prior documents that were part of this chain, you can't really
9 tell just looking at these two pages, so I don't know. So I suppose, Mr.
10 Roberts, you wouldn't know -- there were certainly some documents
11 produced where Mr. Demeritt was cc'd.

12 MR. ROBERTS: Yes.

13 THE COURT: All right.

14 MR. ROBERTS: Quite a few I believe, Your Honor.

15 THE COURT: Right. And you believe those were produced to
16 the extent you believe they were either relevant or ordered by the Court?

17 MR. ROBERTS: Or to the extent they weren't to or from
18 counsel, attorney/client work product, attorney/client communications.

19 THE COURT: Right.

20 MR. ROBERTS: In other words, a lot of the documents that
21 Mr. Demeritt would have been cc'd on were documents from or to Ron
22 Templer, which were originally withheld, which is why they were
23 produced in the privilege set, as directed by the Court yesterday. This
24 particular email chain I believe was one of the ones that has now been
25 produced as part of the Court order, but if my recollection is wrong --

1 THE COURT: Okay.

2 MR. ROBERTS: -- it's in your binder and it has not yet been
3 ordered that we provide to Mr. Cloward --

4 THE COURT: Right. Yeah.

5 MR. ROBERTS: But I can search for and try to come up with
6 the complete chain. I --

7 THE COURT: I looked at -- sorry to interrupt.

8 MR. ROBERTS: That's fine.

9 THE COURT: I did see several documents where Mr.
10 Demeritt's name were on them, either a cc or recipient, or a to, and there
11 are several I looked at, and I said, this has nothing to do with the issues
12 in this case.

13 MR. CLOWARD: Those were documents that I believe were
14 produced yesterday. I'm going to go --

15 THE COURT: There were some that he ordered produced.

16 MR. CLOWARD: Yeah.

17 THE COURT: There's a big chunk that he thought were not
18 relevant --

19 MR. CLOWARD: Yeah.

20 THE COURT: -- and didn't.

21 MR. CLOWARD: I might be mistaken, but I can tell you in my
22 review, Bill Demeritt's name just simply does not come up. And these --
23 by the way, this production, this 10, this was the production of Kurt
24 Bachmeyer's emails. So it wasn't a court ordered anything, this was a
25 production --

1 THE COURT: Okay.

2 MR. CLOWARD: -- that I got before Kurt Bachmeyer's
3 deposition, the Friday before --

4 THE COURT: Okay. Well, that --

5 MR. CLOWARD: -- and so --

6 THE COURT: -- could be, because Demeritt's name is not on
7 these pages.

8 MR. CLOWARD: And counsel has simply -- Jacuzzi has
9 simply not produced Bill Demeritt's emails.

10 THE COURT: So let me ask him a question.

11 So, Mr. Roberts, it appears from the testimony of Demeritt
12 that somebody reviewed all of his emails about two months ago, and the
13 question is, did somebody go through those to determine if they're
14 relevant to this case, and are you representing to the Court that not a
15 single page of those emails is responsive or relevant?

16 MR. ROBERTS: Your Honor, I would need to confer with my
17 associations, Ms. James and Ms. Llewellyn were involved. I did review
18 some Demeritt emails, and determined they were either privileged or not
19 relevant, but I would have to confer with my associates to represent that
20 everything was reviewed --

21 THE COURT: Do I have those?

22 MR. ROBERTS: -- and what those searches were.

23 THE COURT: Of course.

24 MR. ROBERTS: But certainly in your binders, produced at the
25 last evidentiary hearing session, that was where we went through and

1 looked for all documents which either dealt with Mr. Templer, or Mr.
2 Cools asking for searches to be run, and all of the responses to those
3 requests. And a lot of those things had Mr. Demeritt copied, and there's
4 one particular chain where he was directly asked for something and did
5 respond to it.

6 But as far as this witness, the reasonable explanation is in
7 what the witness has already testified to, is that his job was not as a
8 traditional enterprise risk manager involved in all aspects of safety, but
9 he was the insurance manger. And there's been no evidence that any of
10 these incidents ever were submitted to insurance, or any insurance
11 claim, or any insurance company was ever put on notice.

12 THE COURT: Well, that's --

13 MR. ROBERTS: Other than Cunnison and --

14 THE COURT: Yeah.

15 MR. ROBERTS: So there's a reasonable --

16 THE COURT: Well, there's no evidence --

17 MR. CLOWARD: Well, yeah --

18 THE COURT: -- because --

19 MR. CLOWARD: -- no, no, no.

20 THE COURT: Hold on, there's probably no evidence that Mr.
21 Cloward has, because those emails weren't produced.

22 MR. ROBERTS: But, Your Honor --

23 MR. CLOWARD: And --

24 MR. ROBERTS: -- what I'm saying is --

25 THE COURT: Let him finish, Mr. Cloward.

1 MR. ROBERTS: -- I don't believe that a single one of these
2 claims that Mr. Cloward has made a subject to this evidentiary hearing
3 that were not produced. No a single one of the was ever submitted to an
4 insurance company, and no one was ever put on notice, and Jacuzzi
5 never treated it as an insurance, claim.

6 And if so, the witnesses said he would not have had a file on
7 it, he would not have had emails about it. He may have been orally
8 informed about something, but if nothing was ever make part of an
9 insurance claim, and he never opened a file on it, there could be a
10 reason why none of these things are in emails to or from Mr. Demeritt.

11 THE COURT: I understand that. So let me ask one specific
12 question, then. Are you saying then, that if there was an email from Mr.
13 Demeritt to Mr. Bachmeyer, tasking him to get together a group of
14 documents in connection with this case, would that email have been
15 produced?

16 MR. ROBERTS: Yes. It would have been in the in-camera
17 documents provided to the Court --

18 THE COURT: So, I'm going to make --

19 MR. ROBERTS: -- originally withheld by Jacuzzi as attorney
20 work product.

21 THE COURT: I'll make a note to here, to take a look again to
22 see if there is such an email. You guys gave me a ton of stuff, a lot of it
23 very fine print.

24 MR. ROBERTS: I can --

25 THE COURT: Someone's going to have to pay for me to have

1 new glasses, or a magnifying glass.

2 MR. ROBERTS: I can give the Court a -- the Bates' ranges in
3 preparing for today's hearing. I had someone go through and identify
4 every time Mr. Demeritt's came up on email, and I can give the Court the
5 email chains that Mr. Demeritt is included in --

6 THE COURT: Okay.

7 MR. ROBERTS: -- with a caution, that although he's included
8 in the chains, he's not usually copied with the attachment that is before
9 him or after him in the chain. And so I'd ask the Court to exercise some
10 caution --

11 THE COURT: Of course.

12 MR. ROBERTS: -- there. But I can give the Court those Bates
13 ranges --

14 THE COURT: Do that as soon as you can.

15 MR. ROBERTS: Immediately up on return from lunch I can
16 provide those to the Court.

17 THE COURT: Perfect. Mr. Cloward, how would you like to
18 respond to that.

19 MR. CLOWARD: Yeah. Thank you very much. First --

20 THE COURT: I'm trying to get to the bottom of any relevant
21 information.

22 MR. CLOWARD: Certainly. First and foremost the standard
23 for the discovery in this case has never been this is an invention of
24 Jacuzzi to try and get out of the clear misconduct. It is an invention of
25 well, nothing was submitted to an insurance company, so apparently

1 that's going to be the argument, okay. Never did Commissioner Bulla
2 limit it to just claims that were submitted to an insurance company, or
3 incidents that were submitted to an insurance company. In fact, on the
4 record, multiple times she said, "It's everything that Jacuzzi knows about
5 this product." So --

6 THE COURT: Did he say that it was limited? I did hear him
7 say that one of his responsibilities was to communicate with insurers
8 about the claims, and they did check those documents. I'm also
9 assuming that if he was involved in email chains, Mr. Roberts, where in
10 those email chains there was discussion about slip and falls with the
11 relevant Jacuzzis, or injuries due to those slips and falls, that those
12 would have also either been produced in discovery or provided to me in-
13 camera?

14 MR. ROBERTS: Just in-camera, Your Honor, I don't believe
15 any of those would have been produced in discovery. But there --

16 THE COURT: Okay. So none insurance --

17 MR. ROBERTS: -- are two separate issues here.

18 THE COURT: I understand.

19 MR. ROBERTS: One is, why doesn't this witness know more,
20 and why aren't there emails about these incidents in his emails? The
21 separate issue is, what did Commissioner Bulla order to be produced
22 and did we comply; and I think those are very discreet issues. But to the
23 extent that he's trying to say that we've improperly withheld this
24 witness' emails, because there have to be emails to build a merit about
25 these incidents, that's simply not correct.

1 MR. CLOWARD: May I respond?

2 THE COURT: So whatever Bulla ruled, remember I
3 expanded that.

4 MR. ROBERTS: Yes.

5 THE COURT: So --

6 MR. ROBERTS: I remember, but not before his 30(b)(6)
7 deposition was taken --

8 THE COURT: Yeah.

9 MR. ROBERTS: -- and not before he signed the verifications
10 which are the subject of his cross-examination --

11 THE COURT: Yeah. The timing --

12 MR. ROBERTS: -- today by Mr. Cloward.

13 THE COURT: The timing I'm not really interested in, I just
14 want to make sure all relevant things have been produced to Mr.
15 Cloward. I'll leave it up to him to argue if you were late or not.

16 MR. CLOWARD: May I respond?

17 THE COURT: Yeah. Let's try to get --

18 MR. CLOWARD: Okay. On the one --

19 THE COURT: -- to the gist of it.

20 MR. CLOWARD: Certainly. On the one issue Mr. Roberts
21 says, why aren't there any emails from Mr. Demeritt? If the Court recalls,
22 Kurt Bachmeyer took the stand and said, as we walk through all of these
23 documents, and is this the type of a thing that you would send to Bill
24 Demeritt and to Ron Templer? Yes.

25 Oh, really? Well, that's funny, because Mr. Bachmeyer goes

1 through and says that he would have -- he would have afforded, you
2 know, 50, to 70, 80 of these things, because they're safety issues to Mr.
3 Demeritt, yet not one email has been produced.

4 THE COURT: No. I know what you argue. I can't order him
5 to -- well, I can order him, but I can't force him to create a --

6 MR. CLOWARD: Well --

7 THE COURT: -- document that doesn't exist.

8 MR. CLOWARD: The problem is, is they're claiming that the
9 documents don't exist. I don't think that they've looked for those
10 documents. And so what I'd like is an order for them to produce the
11 emails from Kurt Bachmeyer to Bill Demeritt, regarding any incident,
12 okay? So whether it's a slip/fall --

13 THE COURT: Any incident of what, and how do you define
14 incident? Now do you mean any incident involving somebody slipping
15 in the tub?

16 MR. CLOWARD: Yes.

17 THE COURT: Okay. All right.

18 MR. CLOWARD: The types of things --

19 THE COURT: Well, I think he was already ordered by me to
20 do that.

21 Mr. Roberts, I think you understand that my prior order
22 required Jacuzzi to produce any and all documents that are the subject of
23 any incident where somebody slipped and fell, I broadened it beyond
24 your definition of claim.

25 MR. ROBERTS: Yes, Your Honor, and that's what resulted in

1 our July production.

2 THE COURT: Okay.

3 MR. ROBERTS: Which included numerous emails, involving
4 Kruk Bachmeyer, involving slipping.

5 MR. CLOWARD: Now --

6 MR. ROBERTS: And so obviously you can't have an email
7 from Kruk Bachmeyer to Mr. Demeritt, that exists on Mr. Demeritt's
8 emails, but on Mr. Bachmeyer's emails. And so it's my understanding
9 we have already complied with that, but I will double check with my
10 associates who did the --

11 THE COURT: Do you need to double --

12 MR. ROBERTS: -- search and review, and --

13 THE COURT: You need to double check emails that you
14 searched from Mr. Demeritt's computer, two months ago, to see if
15 there's a possibility that he might have some emails that Mr. Bachmeyer
16 no longer had.

17 MR. ROBERTS: Yes. And --

18 THE COURT: It's a possibility, you know.

19 MR. ROBERTS: And, Your Honor, it's my understanding that
20 that has been searched for --

21 THE COURT: Okay.

22 MR. ROBERTS: -- and to the extent it was located, has been
23 produced.

24 THE COURT: All right.

25 MR. ROBERTS: But these processes are not flawless, but I

1 can tell you that --

2 THE COURT: Okay.

3 MR. ROBERTS: -- in going through this review with my
4 associates, asking them to confirm that everything had been produced;
5 you know how these email chains go --

6 THE COURT: Of course.

7 MR. ROBERTS: -- there are two or three different versions of
8 the same chain, but one of them might have one entry that's not on the
9 other one's for some reason.

10 THE COURT: I know there's substantive duplicating and we
11 don't want --

12 MR. ROBERTS: Correct.

13 THE COURT: -- more than we need to get.

14 MR. ROBERTS: And just yesterday when we produced the
15 in-camera documents ordered by the Court, we also produced a few
16 email chains in a different version, where the chain had been produced
17 one way, but we found a different version which had Mr. Demeritt on it,
18 that was not in the version that was produced.

19 And there were just a few of those, I believe, that were
20 produced yesterday that we found that nothing substantive, I don't
21 believe, different than what was previously produced, but --

22 THE COURT: Okay.

23 MR. ROBERTS: -- we are making that effort, Your Honor.

24 THE COURT: So let me ask Mr. Cloward, if, if we were to
25 accept as true everything Mr. Roberts just said about the process they

1 went through, because I have no reason to disbelieve that, but if we are
2 to assume all that's true, what is it still that you're asking me to do, that
3 they already haven't done?

4 MR. CLOWARD: Well, first and foremost, I hold Mr. Roberts
5 in high esteem, okay. But this eerily familiar to the conversation that Mr.
6 Cools stated to Commissioner Bulla, where Commissioner Bulla said, I
7 want you to go back and look with a set of fresh eyes. He comes back at
8 the hearing and says that he's done that, and we didn't find anything,
9 and interestingly there was a whole bunch of stuff still there that had not
10 been turned over.

11 So if Mr. Roberts will stand up in open court and say, I will
12 go and look with fresh eyes, through just Bill Demeritt's emails for any
13 issues that Kruk Bachmeyer testified that he would have forwarded.
14 Because the Court has to wonder, why would Kruk Bachmeyer testify on
15 the stand, I forwarded all of these things to Bill Demeritt? These are the
16 exact type of things that I would forward to Bill Demeritt.

17 Yet we don't have hardly any emails from Kruk Bachmeyer to
18 Bill Demeritt.

19 THE COURT: We'll argue that at the end, I think that might
20 be relevant in terms of the intent factor, for your motion. But I guess
21 what you're asking me to do is to order his firm -- you order him to
22 personally go look at the documents, where right now he's relying on
23 other people in his firm, at his direction, to look at those documents.

24 MR. CLOWARD: Well --

25 THE COURT: And I don't know that I should go that far and

1 order -- I mean, the partner at the firm to do what he delegated to others.

2 MR. CLOWARD: I'm asking for Mr. Roberts, if he is
3 assigning that, that's fine. I'm not saying he has to go personally do it,
4 but his firm, through his assistants need do that, not Jacuzzi.

5 THE COURT: I think I heard him say that they did that. They
6 went through the Demeritt emails for that purpose.

7 MR. ROBERTS: One of my --

8 THE COURT: Mr. Roberts, can you clarify that, please?

9 MR. ROBERTS: Yes. One of my associates, Ms. Emily
10 James, who is our IT Attorney for our national practice, I delegated to
11 her the job of trying to go through and search for things to try to make
12 sure everything responsive to any request by Mr. Cloward had been
13 produced.

14 I know that she represented to me that she has been given
15 access to Jacuzzi's email system to personally run searches, and I know
16 that she represented to me that she ran searches in Mr. Demeritt's email,
17 as available. What I need to confirm with her, is I don't recall the dates
18 that are available on Outlook 365 versus the prior email, so there may be
19 older emails that her -- she did not search.

20 I just need to clarify this to find out, and I will agree to --

21 THE COURT: I have a proposal --

22 MR. ROBERTS: -- do that, specifically with any emails
23 between Mr. Bachmeyer and Mr. Demeritt regarding anything that's
24 arguably an incident, such as that raise to the context of this hearing and
25 look at those with fresh eyes, and sign a declaration that there aren't

1 anything that come up in searches, or produce any additional documents
2 that we find either for in-camera review or to Mr. Cloward, because I'm
3 assuming that there are documents that are to or from Mr. Templer that
4 don't fit within the ones ordered for in-camera inspection by the Court.

5 So there's a hole there that are documents to and from Ron
6 Templer that may have been withheld on the basis of privilege --

7 THE COURT: Uh-huh.

8 MR. ROBERTS: -- but were not specifically related to the,
9 here's what I want to search for and here's the response that was
10 ordered for in-camera production by the Court. And that's sort of a hole
11 that I think may things may exist in, and so there may be more
12 documents that we could provide to the Court for in-camera review, if it's
13 your desire that we provide additional attorney/client privilege
14 documents, if it involves Mr. Bachmeyer, Mr. Demeritt and an incident.

15 MR. CLOWARD: Provided that there's a declaration of the
16 steps that were gone through, and the search criteria and terms, and so
17 forth, I'm fine with that. That's a --

18 THE COURT: So as long as --

19 MR. CLOWARD: -- reasonable proposal.

20 THE COURT: Of course with some protection if Mr. Roberts
21 finds that there's some compelling attorney/client privilege there --

22 MR. CLOWARD: Oh, certainly.

23 THE COURT: -- and he'll bring that to the attention of the
24 Court.

25 MR. ROBERTS: Sure.

1 THE COURT: So that's a reasonable suggestion and
2 proposal. Mr. Roberts, the Court appreciates that, and that is so ordered.

3 MR. ROBERTS: Thank you, Your Honor.

4 THE COURT: All right.

5 MR. CLOWARD: Thank you. Okay.

6 THE COURT: All right. Thank you. It was long-winded, but I
7 think we're on the right track here.

8 All right. Let's continue.

9 MR. CLOWARD: One very just minor -- I'm sorry, Your
10 Honor.

11 I just wanted to, for the record, clearly state that the
12 documents that were produced prior to Mr. Bachmeyer's deposition, we
13 are not conceding. I don't want to waive that issue, we believe that
14 that's reinventing history as to why those documents were produced.

15 So I just want to put that on the record, it's a minor point, we
16 can move forward.

17 THE COURT: Understood, you can move forward then.

18 MR. CLOWARD: Thank you.

19 THE COURT: Let's leave that to argument at the end.

20 MR. CLOWARD: Thank you.

21 THE COURT: But thank you.

22 MR. CLOWARD: Okay.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. CLOWARD:

25 Q Mr. Demeritt, are you still there?

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1 A Yes, I am.

2 Q Okay. So what I want to do next, is I'm going to read you a
3 deposition excerpt from a November 2017 deposition, and this is from
4 Officer Van Pamel, and this is on page 15, lines 19 through 24, and he
5 states:

6 "Q Okay. Now as you gain access to the bathroom, can you
7 walk us through that?

8 "A Basically, as soon as we walked in the bathroom we could
9 see her sitting in the tub. We -- I basically asked her, 'Oh, what
10 happened, are you okay?' I wanted to make sure, obviously we didn't
11 know a hundred percent."

12 And then following on the next page, page 16, lines 1
13 through 12:

14 "Q Yeah.

15 "A How long she had been there or what circumstances were.
16 So she -- her basic story was, 'I was -- I took a bath.' The tube that she
17 was in, she was sitting in like a seat. She said that she went to go turn
18 the water off and to drain the tub out and she slipped off the seat and
19 wedged herself between the seat and like the side of the tub.

20 "Q Okay. And she was able to vocalize all of that?

21 "A Yes. "

22 Were you made aware in November of 2017 that this first
23 responding officer had talked to Ms. Cunnison and obtained information
24 directly from her about how she became wedged in the bottom of the
25 tub?

1 A No.

2 Q Okay. And sir, you agree you were deposed on May 24th of
3 2012, right?

4 A 12?

5 Q Or 2018.

6 A 2012.

7 Q 2018?

8 A Yes.

9 Q Just making sure you were following along.

10 A I am. I'm doing my best.

11 Q All right. Okay. And you were designated as the corporate
12 representative pursuant to NRCP 30(b)(6), true?

13 A Yes.

14 Q And you had been provided the deposition notice a couple
15 months prior to your deposition, true?

16 A Yes.

17 Q And so, let's take a look at the deposition notice, which will
18 be Exhibit 194. In particular, let's take a look at topic 5. Okay. So, are
19 you there, Mr. Demeritt?

20 A I am.

21 Q Okay. Follow along with me. Number five. It says, "The
22 incident and quote, as further defined as the Plaintiff slipping off of the
23 seat and falling into the bottom of the tub of the Jacuzzi walk in tub and
24 being unable to get out of the tub afterwards." Did I read that portion
25 correctly?

1 A Yes.

2 Q Okay. So, you agree that at this point the Plaintiff is
3 communicating in the deposition notice that the incident was defined as
4 Plaintiff slipping off of the seat and falling into the bottom of the Jacuzzi,
5 true?

6 A Yes.

7 Q And you understood that that's what was set out in the
8 notice months before your deposition, true?

9 A No. I don't remember that. But if the document was sent to
10 me, then yes.

11 Q Okay. And you agree that the deposition was rescheduled a
12 couple of times, so you had the notice for several months before the
13 depo, true?

14 A I don't remember it being rescheduled. But okay.

15 Q Now let's take a look at topic 50. Do you agree here that the
16 topic says quote, "Testimony identifying all lawsuits, claims, dealer
17 bulletins, complaints, incident reports or other documents where
18 someone has alleged that a Jacuzzi walk in tub was not properly
19 designed, contributing to injury of the user."

20 Did I read that correctly?

21 A Yes.

22 Q And let's even take a look at the note. The Plaintiff set forth
23 in a note kind of some additional information to help Jacuzzi understand
24 exactly what was being requested. Quote "Note. Plaintiff seeks to
25 obtain information regarding prior incidents involving slips and falls

1 while using or while exiting or entering any Jacuzzi products, including
2 not only the fall itself, but also the inability of an end user to remove
3 themselves after having had fallen inside the tub." End quote.

4 Did read that portion correctly?

5 A Yes.

6 Q You agree that it's pretty straightforward here what Plaintiffs
7 were requesting; there was no confusion in your mind, right?

8 A Well -- no, there was no confusion. At the time, I'm
9 assuming there was no confusion.

10 Q Okay. And let's actually review your court deposition, or the
11 testimony that you gave. So, this is going to be Exhibit 196. And sir, I'll
12 refer you to page 90. So, Exhibit 196, page 90. And this is a little bit
13 long, but if you'll bear with me and follow along and make sure that I
14 read this correctly. Starting on line 4, it says:

15 "Q Okay, fair enough. Let's see, that's topic 48, now let's go to
16 topic 50 and just go ahead and read that if you would.

17 "A The witness reviews a document.

18 Mr. Cools: Do you want me to provide him the responses so
19 he can read along.

20 Mr. Cloward: Yeah, that's fine too.

21 The witness: Okay.

22 Mr. Cloward: I only have three or four more.

23 "Q 53 is already covered, same thing here. This was quote
24 'Testimony identifying all lawsuits, claims, dealer bulletins, complaints,
25 incident reports or other documents where someone has alleged that

1 Jacuzzi walk in tub was not properly designed, contributing to the injury
2 of the user.' End quote.

3 The response was limited to five years and substantially similar
4 incidents of injury or damage. But you've testified that regardless of
5 these -- of the time limits, regardless of the similarity of incidents you're
6 only aware of two incidents involving injury in a walk in bathtub which
7 we've discussed ad nauseam, Ms. Cunnison's case and the Smith
8 Family's case, true?

9 "A True.

10 "Q You're not aware of any others?

11 "A No."

12 Did I read that correctly?

13 A Yes.

14 Q And that was your testimony, that there were no other
15 incidents involving injury, other than Ms. Cunnison's case, which I was
16 the lawyer for, and Ms. Smith's case, or the Smith Family case, which I
17 was the lawyer for, true?

18 MR. ROBERTS: Objection to form. He left out part of his
19 answer.

20 THE COURT: What part?

21 MR. ROBERTS: He was aware of none, not there were none.
22 That's my recollection.

23 THE COURT: Okay. Proper clarification.

24 MR. CLOWARD: Do you want me to re-ask the --

25 THE COURT: Why don't you re-ask that.

1 MR. CLOWARD: Okay.

2 BY MR. CLOWARD:

3 Q Mr. Demeritt, first off, you were prepared as a Jacuzzi
4 30(b)(6) designee, true?

5 A Yes.

6 Q You knew that you had obligations to look for certain things
7 and that this was not relying solely upon Bill Demeritt's memory, true?

8 A No. It was -- I relied on information that was gathered by
9 others, that was passed on to me.

10 Q Okay. Do you remember at the very first of the deposition,
11 let's go to page 9. We're going to start with 11. Page 9, line 11. Follow
12 along with me and see if I read this correctly. I said, and I quote:

13 "Okay, one of the admonitions I like to give, and this is not meant
14 to be rude at all, we're not here -- we're not interested to know what Bill
15 has to say, we're interested to know what Jacuzzi has to say. So if, for
16 instance, you have a personal opinion, Bill has a personal opinion that
17 maybe differs from the policy or procedure or the way that Jacuzzi does
18 things, we're interested to know, again, like I said, what Jacuzzi
19 understands and knows, s that fair?"

20 And your response was "That's fair." True?

21 A Yes.

22 Q Okay. So, you knew at the very first of the deposition, one of
23 the very first admonitions that I gave you is, is look, we're interested --
24 you're a 30(b)(6), we want to know what Jacuzzi knows, not what you,
25 Bill Demeritt, knows, correct?

1 MR. ROBERTS: Your Honor, I'm going to object. This is
2 improper impeachment. The questions that Mr. Cloward just asked
3 were, despite Jacuzzi's objections, despite Jacuzzi's limitation on the
4 30(b)(6), you personally aren't aware of anything. So, now he can't
5 impeach him now that he's gone outside the 30(b)(6) with his knowledge
6 that it was a 30(b)(6).

7 THE COURT: I understand your argument. I'm going to
8 overrule it though. All right.

9 MR. ROBERTS: Thank you.

10 THE COURT: Yes, sir. And of course, I know what the
11 significance is of having someone designated as the corporate
12 representative and so I can make certain conclusions if I think they're
13 appropriate as to whether his statements in the deposition are
14 attributable to Jacuzzi. I can make that determination. You can certainly
15 ask him, as you did, whether that was his understanding, as well.

16 MR. CLOWARD: Well and I'd also like to just point the Court
17 out, if the Court wants to write this down. On page 90, line 22. I even
18 incorporated the response that Jacuzzi had narrowed the response to.
19 And that is -- and that says quote, "The response was limited to five
20 years and substantially similar incidents of injury or damage."

21 THE COURT: Right. I saw that. Thank you. I do have that
22 marked.

23 MR. CLOWARD: Thank you.

24 BY MR. CLOWARD:

25 Q Okay. And Mr. Demeritt, you agree that during the

1 deposition, Jacuzzi did not identify a single additional incident, other
2 than Smith and Cunnison, true?

3 A Yes.

4 MR. CLOWARD: And with regard to topic 51, let's go to topic
5 51. Brandon, that is Exhibit 194. So, Ian, 194, Exhibit 194, topic 51. Mr.
6 Demeritt, let me know when you have that up so that we can proceed.

7 THE WITNESS: We got it.

8 BY MR. CLOWARD:

9 Q Okay. So follow along if you will. Quote. "Testimony
10 regarding Jacuzzi's actions related to any customer complaint, lawsuits,
11 warranty claims, or incident reports wherein it was alleged that a Jacuzzi
12 walk in tub was not properly designed, contributing to injury of the
13 user."

14 Did I read that correctly?

15 A Yes.

16 Q And let me read the note where further clarification was
17 given as to what Plaintiff was asking for. Quote. "Plaintiff seeks to
18 obtain any information related to a claim made by an end user that a
19 Jacuzzi product was unsafe." End quote.

20 Did I read that correctly?

21 A Yes.

22 Q Okay. And you agree there was no confusion in your mind
23 as to what was being requested when you gave sworn testimony on this
24 topic as the 30(b)(6), true?

25 A Yeah. I was confident that anything that caused an injury, I

1 was aware of. And there was only two of them where an injury itself
2 was claimed.

3 THE COURT: Just a quick question. The objections that are
4 stated by Jacuzzi in Exhibit 195, were those ever ruled upon by the
5 discovery commissioner or me by accepting discovery commissioner
6 recommendations or by the petition to the supreme court; were they
7 ever ruled upon?

8 MR. CLOWARD: No. What happened was, and there's
9 actually dialogue in the deposition itself.

10 THE COURT: Okay.

11 MR. CLOWARD: The objections were served, you know, a
12 few days, a week, maybe, before the deposition and this was after a
13 meet and confer conference, after I amended the notice to cure any
14 defect. And when Mr. Cools started objecting in the deposition, I say,
15 hey look, you know, we went through this meet and confer process, I
16 tried to amend the notice to cure these defects.

17 THE COURT: Okay.

18 MR. CLOWARD: You know, so we just --

19 THE COURT: I'll have to read that portion. Where can I find
20 that discussion of the parties? Get it to me later if you can.

21 MR. CLOWARD: I will make a note and I will --

22 THE COURT: Make a note of that.

23 MR. CLOWARD: -- I promise.

24 THE COURT: Because it's all relevant on the issue of the
25 significance of the testimony of Mr. Demeritt to bind Jacuzzi. And also, it

1 might help me to understand if there were any limitations placed prior to
2 the deposition on the scope of his testimony.

3 MR. CLOWARD: Certainly.

4 THE COURT: All right. Thank you. Let's continue.

5 MR. CLOWARD: Okay.

6 BY MR. CLOWARD:

7 Q Now, Mr. Demeritt, let's shift focus now to the testimony you
8 gave with regard to that topic. That's on page 91 of your deposition,
9 lines 1 through 12. So, for the record, it is Exhibit 196, page 91, lines 1
10 through 12. Starting on line 7 and it's tailing in from the topic 51, but
11 line 7.

12 "Q Okay. 51, same thing here. This is pretty much the same
13 topic.

14 "A Okay.

15 "Q You're not aware of any other than Mr. Smith and Ms.
16 Cunnison, correct?

17 "A I am not."

18 That was your deposition testimony, correct, sir?

19 A Yes.

20 Q Okay. So, now let's take a moment -- Ian, we're going to go
21 through the binder. And, Mr. Demeritt -- go ahead.

22 THE COURT: No, I'm just --

23 MR. CLOWARD: Okay.

24 BY MR. CLOWARD:

25 Q Mr. Demeritt, I want to make sure that we have your

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1 testimony crystallized. Your understanding of the things that you were
2 supposed to search and look for were injuries, is that the only parameter
3 that you're able to recall?

4 A Well, it had to be before Cunnison. And I know injuries were
5 one of them. Similar injuries, no. Those are the only ones I remember.

6 Q Okay.

7 MR. CLOWARD: Ian, why don't we start with tab 2. This is
8 Jacuzzi5286 and that's the email chain. This is the Excel spreadsheet
9 that was attached. It is Jacuzzi005287. Thank you. And then highlight
10 that.

11 [Pause]

12 MR. CLOWARD: I'm waiting for Ian to pull it up. Mr.
13 Demeritt, just let us know when you've got it up on your end and we can
14 move forward.

15 [Pause]

16 MR. ESTRADA: 5286 or 5287?

17 THE COURT: 87.

18 MR. CLOWARD: 5287.

19 THE COURT: I think that's what he said. It's what I have in
20 my notes.

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

22 [Pause]

23 MR. ESTRADA: We have it.

24 THE COURT: Just FY. It looks like it's the same thing as --
25 oh, I see. I have 5287 and then in my exhibit file here, it looks like the

1 same thing, just blown up a little.

2 MR. CLOWARD: Enlarged.

3 THE COURT: Good. Thank you. Let's go.

4 BY MR. CLOWARD:

5 Q Okay. Mr. Demeritt, follow along with me. It says, quote.
6 "Issue. Broken hip and says unit is too slippery. Feels we should have
7 more grab bars on both sides." Is that the type of thing that you were
8 looking for to turn over?

9 A Is this a walk in tub?

10 Q Yes.

11 A Well, that's the kind of thing that the person who physically
12 did the search was charged with.

13 Q So, you agree that's something that should have been turned
14 over?

15 MR. ROBERTS: Objection. On time frame.

16 THE COURT: I'm sorry, what?

17 MR. ROBERTS: Objection. It should have been turned over.
18 I believe that they're different periods of time when various things
19 should have been turned over, based on the rulings of the court in the
20 expansion of the relevant issues.

21 THE COURT: Well, Mr. Cloward, I suppose you need to
22 clarify to see is this the type of thing that --

23 MR. CLOWARD: Okay.

24 THE COURT: -- that he believes -- in connection with any of
25 the searches that he was involved in, if it was his understanding that this

1 is the type of thing that should have been produced.

2 MR. CLOWARD: Understood.

3 THE COURT: So, it's in connection with the searches that he
4 knew about or was involved in.

5 MR. CLOWARD: Understood.

6 THE COURT: Whenever those were.

7 MR. CLOWARD: Okay.

8 BY MR. CLOWARD:

9 Q And Mr. Demeritt, in preparing yourself for the testimony
10 you gave as the Rule 30(b)(6) designee, you understood that you had an
11 obligation to familiarize yourself with certain issues, true?

12 A My understanding was, that there were going to be people
13 who would inform me as to, you know, these various issues, and they
14 would educate me. Yes.

15 Q Okay. And your understanding was that you were to offer
16 testimony, if any, of what you said were injuries involving the walk in
17 tub, true?

18 A Yes.

19 Q Okay. So, this is an injury involving the walk in tub that
20 should have been brought to your attention, you agree, true?

21 A Based on the information I had in front of me, yes.

22 Q Okay. Now, let's move to tab 6. And we're going to go to
23 Jacuzzi005859. You see the date there as 12/18/2012?

24 A Yes.

25 Q So, you agree that was before Ms. Cunnison, true?

1 A Yes.

2 Q And this individual says "The wife slips on the seat and floor.
3 Nick would like to know if there is anything you could do to help the
4 customer out. They are not using the tub because they are afraid she
5 will fall."

6 Did I read that correctly?

7 A Yes.

8 Q You agree this would have been one of the things you would
9 be looking for, right?

10 A No. It does not state injury.

11 Q Okay. Let's thumb through it. So, did you confirm whether
12 this individual that slipped in the tub was injured or not?

13 A No, I didn't. But that wasn't what we were tasked with doing.

14 Q What were you tasked to do?

15 A I don't know. You'd have to ask the guy that did the search. I
16 was the --

17 Q Well, how do you know what you were tasked, if you don't
18 know, Mr. Demeritt? No disrespect.

19 A Because the statement -- the statement -- at the time there
20 were 20 items and there were injury. And that's what we were tasked
21 with doing. At least that is what I was told.

22 Q Okay. Let's turn to page 8, Exhibit 8, Jacuzzi005369. Follow
23 along with me.

24 A I'm here.

25 Q "Our service provider contacted Donald Raidt to set up

1 service and he notified them he did not want to set service because he
2 no longer wants the tub. He told them he slipped and fell causing him to
3 hurt his back."

4 You agree that's something that should have been discussed, and
5 turned over to you, right?

6 A I think we're arguing whether hurt and injury are the same
7 thing. But if you're saying that hurt and injury are the same thing, yes.

8 Q Okay. Well, did you, sir, make that distinction? We need to
9 know because that's pretty important?

10 A No, sir. You know, I don't know how many times I have to
11 answer this question for you. I was informed by other people of what
12 the results were of the search. So, I would not have seen this firsthand.

13 Q Were you aware of this incident with Mr. Raidt?

14 A No.

15 Q We've already covered Mr. Greenwell, Ms. Lashinsky, and
16 Ms. Stoldt, so we won't go over them.

17 MR. CLOWARD: But let's turn to tab 11, lan. 5320.

18 BY MR. CLOWARD:

19 Q Let me know when you're there, Mr. Demeritt.

20 A We're there.

21 Q Okay. Follow along. It's the fourth line down -- the third line
22 down. It starts:

23 "Also he says the bottom of the tub is extremely slippery. He
24 has slipped and also a friend has slipped while using it --
25 slipped in using it. We get this complaint a lot. We have

1 two customers right now that have injured themselves
2 seriously and are threatening lawsuits."

3 Did I read that correctly?

4 A Yes.

5 Q So, is this the type of thing that you would have expected to
6 be turned over and to discuss during your deposition?

7 A Yes.

8 Q I mean it says injure, right?

9 A I said yes.

10 MR. CLOWARD: Ian, let's go to 15. We're going to start with
11 -- we'll start with Jacuzzi5303.

12 BY MR. CLOWARD:

13 Q Let me know when you're there.

14 A We're there.

15 Q Okay. So, Mr. Demeritt, Mr. Bachmeyer testified that when
16 folks would call in and they had a safety concern like saying that a tub is
17 dangerous because they're slipping on it, that would be something that
18 he would forward on to you, is that accurate?

19 A Not necessarily. And I don't know why he would have said
20 that. Because slipping is something that is -- I would think would be an
21 engineering design issue, rather than something he had said to me. But
22 I don't necessarily agree with that.

23 Q So, when this person, Ms. Howard, called and she called the
24 tub dangerous, you were not made aware of that?

25 A No.

1 Q Okay.

2 A Not to the best of my knowledge. Once again, this is six
3 years ago. So, to the best of my knowledge, no.

4 Q Okay. Were you ever made aware of Jerre Chopper's
5 situation?

6 A I don't know who Jerre Chopper is.

7 Q Okay.

8 [Pause]

9 MR. CLOWARD: Brandon, if you'll go to Exhibit 32.

10 THE COURT: So, question. Was Mr. Demeritt, the risk
11 manager, the only person designated to speak on behalf of the company,
12 with respect to all these items?

13 MR. CLOWARD: Yes.

14 THE COURT: Subject, of course, to the objection raised?

15 MR. CLOWARD: Yes.

16 THE COURT: He was the only individual.

17 MR. CLOWARD: There were other issues that Mike
18 Dominguez was set to discuss. But those had to do with design issues.

19 THE COURT: All right.

20 MR. CLOWARD: It was very clear on the record, you know,
21 this witness will identify X, Y, Z, this witness will identify 1, 2, 3.

22 THE COURT: All right. Okay.

23 MR. CLOWARD: There were no partials. Sometimes you'll
24 have a partial, where this person will identify the first half of the
25 question, this one.

1 THE COURT: It just seems a little odd to me why the risk
2 manager would be the one designated for all of this. But I suppose you
3 can deal with this, if you think it's important in your closing argument.
4 All right.

5 MR. CLOWARD: Okay. I'm sorry, Ian, go to 35, please.

6 MR. ESTRADA: It's easier for me with the bate number.

7 MR. CLOWARD: What was that?

8 MR. ESTRADA: It's easier for me with the bate number.

9 MR. CLOWARD: Oh, okay. Go to Jacuzzi005315.

10 MR. ESTRADA: We're here.

11 BY MR. CLOWARD:

12 Q Okay. Mr. Demeritt, you agree that this individual called and
13 left a voice message saying that she slipped in her tub and hit her arm
14 on the grab bar, and she was requesting a mat to be put at the bottom of
15 the tub, true?

16 A It's what it says, yes, sir.

17 Q You agree that's the type of thing, because this is prior to Ms.
18 Cunnison, this is in September 23, 2013, with the person slipping and
19 hitting her arm, that that's something that should have been produced
20 and discussed?

21 A Once again, we're getting into, you know, words. Does hit
22 mean injury. I wouldn't think so.

23 Q Who made that determination, Mr. Demeritt?

24 A Whoever was actually, physically doing the search. If they
25 were searching for the word injury, this would not have come up.

1 Q Who prepared you for your deposition?

2 A Counsel.

3 Q What counsel?

4 A Our in-house counsel and our outside counsel. I think his
5 name was Cools.

6 Q And it's your testimony that you're not aware of any of these
7 incidents that we've gone over?

8 A That is my testimony, sir.

9 Q Do you remember any incident at all, ever, other than the
10 Cunnison and Smith and Pullen matter?

11 A I don't remember the Pullen. Cunnison and Smith.

12 Q That's the only -- those are the only two incidents that you
13 know?

14 A To the best of my knowledge, yes, sir.

15 Q What did you actually do to prepare for your deposition
16 anyway?

17 A Talked to the people who had done the work. Got whatever
18 information they provided me. Talked to our attorneys.

19 MR. CLOWARD: Your Honor, Court's indulgence one
20 moment.

21 THE COURT: It sounds like a good time for our lunch break.

22 MR. CLOWARD: Okay.

23 THE COURT: Would you agree?

24 MR. CLOWARD: Sure.

25 THE COURT: All right. Let's take an hour. Let's come back

1 at 1:35.

2 MR. CLOWARD: You got it, Judge.

3 THE COURT: Mr. Demeritt, same admonishment. You are
4 directed not to discuss the testimony you've provided with anybody. Do
5 you understand, sir?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: All right. Very good. We're going to take our
8 lunch recess and be back about 1:35. Thank you. All right. I'll see
9 counsel back.

10 [Recess at 12:34 p.m., recommencing at 1:40 p.m.]

11 THE MARSHAL: Remain seated. Department 2 back on the
12 record. Come to order.

13 THE COURT: All right. We need Mr. Demeritt back on the
14 video, right?

15 Mr. Demeritt, you're still sworn. Are you ready to go, sir?
16 Hello? Mr. Demeritt, are you ready to go, sir?

17 THE WITNESS: Yes, Your Honor. I am. We are finally
18 getting the microphone open.

19 THE COURT: Very good. Thank you. All right. Let's
20 proceed.

21 MR. CLOWARD: Okay. Your Honor, I just have a few more
22 things and then I'll be finished.

23 THE COURT: Thank you.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. CLOWARD:

1 Q Mr. Demeritt, I'd like to refer you to tab -- Exhibit 41. This is
2 going to be Jacuzzi005327.

3 A Okay.

4 Q Now, if you'll follow along with me, the third line, it says,
5 "There is another email trail going around that Megan is going to be
6 adding you to in the distribution list. We have a big issue, and we are
7 only pointing finger, per se, but due to the circumstances involved with
8 timeline and slip injuries, this needs to be settled, so I am keeping you in
9 the loop."

10 What is that regarding?

11 A I have no idea. I'm not listed on that email.

12 Q Okay.

13 A At least I can't see it on this page.

14 Q Okay. You agree that if there were injuries that were going
15 around, there was an issue with injuries, that that would've been
16 something that you should've been prepared to talk about at your
17 deposition, true?

18 A Yes.

19 Q Okay.

20 MR. CLOWARD: Your Honor, at this time, I'm going to rest. I
21 do have some matters --

22 THE COURT: Why don't we see if --

23 MR. CLOWARD: -- after Mr. --

24 THE COURT: -- there's cross-examination before you rest
25 your case.

1 MR. CLOWARD: Got it, Judge.

2 THE COURT: Thank you.

3 MR. ROBERTS: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. ROBERTS:

6 Q Mr. Demeritt?

7 A Yes, sir.

8 Q This is Lee Roberts, Jacuzzi's counsel.

9 A Hello, Lee.

10 Q I have a few follow-up questions for you, sir.

11 A Yes, sir.

12 Q Mr. Cloward asked about what you did to prepare for your
13 30(b)(6) deposition; do you recall that?

14 A Yes.

15 Q And I was listening to your answer. Let me ask you to clarify
16 something for me. Prior to your 30(b)(6) deposition, did you consult
17 your own files?

18 A Yes.

19 Q Okay.

20 A I believe I did.

21 Q The various emails that were shown to you today involving
22 people who slipped or claimed to have gotten stuck in a Jacuzzi tub, but
23 did not mention an injury or made no specific claim for money damages,
24 is that the type of thing that you would've opened a file for in your
25 practice -- standard practice, even if you had been informed of it?

1 MR. CLOWARD: Object. Leading.

2 THE COURT: Overruled.

3 THE WITNESS: I would only open a file if there was a
4 demand that impacted the insurance policy. If there was just a normal
5 complaint or something, it would either go to customer service or it
6 would go to First Street, but it's only if the -- whatever the issue was
7 required, potentially the insurance carrier, would I have opened a file.

8 BY MR. ROBERTS:

9 Q Let me ask you about the Pullen matter that Mr. Cloward
10 inquired into. Did you open a claim file in connection with the Pullen
11 matter, at any time, prior to today?

12 A No. No.

13 Q Did you give notice to any insurance carrier of the
14 correspondence and claim from the Pullen -- from Robert Pullen that his
15 mother had died as a result of a Jacuzzi walk-in tub?

16 A No.

17 Q At the time of your 30(b)(6) deposition, had you given notice
18 of any personal injury or death claim other than Cunnison and Smith to
19 any insurance carrier?

20 A No.

21 MR. ROBERTS: That's all I have, Your Honor. Thank you.

22 THE COURT: Okay. One second, please.

23 THE WITNESS: Thank you.

24 THE COURT: One second.

25 [Pause]

1 THE COURT: Mr. Roberts, I want to ask him the question,
2 why he never opened a claim for the Pullen matter. Any objection to that
3 question?

4 MR. ROBERTS: No objection, Your Honor.

5 THE COURT: All right. All right. So why don't you ask him
6 then? And you can ask him follow-up. Understanding it's the Court
7 that's requiring you to ask the question. I want you to put it in your own
8 words.

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

10 BY MR. ROBERTS:

11 Q Mr. Demeritt?

12 A Yes.

13 Q Can you explain to the Court why a claim file was never
14 opened on the Pullen matter?

15 A Because until Ron Templer came and asked me if I would be
16 available at a date in the near future -- this was three or four weeks ago --
17 for a phone call, and he said the matter was Pullen, I had never heard of
18 it, or I don't remember ever hearing about it.

19 THE COURT: All right. Thank you.

20 THE WITNESS: The first I --

21 MR. ROBERTS: Thank you, Mr. Demeritt.

22 THE COURT: Thank you. Appreciate it. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Is there any redirect?

25 MR. CLOWARD: Just very briefly, Your Honor. I should've

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1 kept the microphone on. It's okay. I'll talk loud.

2 REDIRECT EXAMINATION

3 BY MR. CLOWARD:

4 Q Okay. Mr. Demeritt, do you remember me talking to you at
5 your deposition regarding when you would, I guess, report things to the
6 insurance carrier and when you wouldn't report things to the insurance
7 carrier?

8 A Yes.

9 Q Okay. I'd like to direct you to page 46 of your deposition. In
10 particular, line 10, and I'm going to just read this for you. So page 46,
11 line 10, and it says:

12 "Q So once you gather the information for a claim with a
13 material amount for bodily injury, what systems are there in place with
14 regard to those? So for instance, let's say you get a call from somebody
15 in Pennsylvania, and they say, you know what, I slipped and fell and hurt
16 myself in one of the walk-in Jacuzzi tubs, and that makes its way to your
17 desk, what happens then?

18 "A I would report it to the insurance carrier if I felt the injury was
19 significant. A fatality, like in this case, we would report immediately. "

20 So first off, I guess, why, if you found out three weeks ago or four
21 weeks ago from Mr. Templer that the claim for Mr. Pullen was that the
22 fatality was caused by the Jacuzzi tub, why didn't you report that
23 immediately to the insurance?

24 A Because at that point, I knew nothing about it.

25 Q Well, you've known about it now for about a month, so why

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1 haven't you reported it to the insurance company?

2 A Because I don't have any specifics. All Ron came in and said
3 to me is do you -- would you be available. I said, yes, I would. He said,
4 okay, we're going to have a phone call on a case by the name of Pullen.
5 I looked in my emails. I had nothing on Pullen, so I was going to wait
6 until I had something to tell the insurance company.

7 Q So you weren't made aware that we flew out and actually
8 took Mr. Pullen's deposition?

9 A No.

10 Q You weren't aware that on October 30th, Mr. Pullen called
11 and said the Jacuzzi tub killed my mom?

12 A No.

13 Q Okay.

14 A Not at the time.

15 Q Okay.

16 A Not at the time.

17 Q Well, have you since been made aware of that?

18 A I have since been made aware that there's a claim out there,
19 but it's my understanding, we don't believe it's our fault.

20 Q Okay, so --

21 A So no, I have not told the insurance carrier yet.

22 Q Oh. Oh, so you did tell the insurance carrier that?

23 A No. That's not what I said. I said, no, I had not told the
24 insurance carrier.

25 Q Okay. So your position is right now you still -- you maintain

1 you have not contacted the insurance company regarding the Pullen
2 matter, in any form, shape, or fashion, true?

3 A Correct.

4 Q Okay. Now, continuing along, sir, on page 46, line 21, it says:

5 "Q What if it was something that wasn't, I guess, a fatality?

6 There was an injury, but not a fatality.

7 "A I can't give you a blanket answer to that. Each one of them is
8 different. I'd have to know what the magnitude is, when they asked for
9 medical records or whatever, and I'm talking in general, not specific to
10 walk-in tubs, but you know, you'd have to get -- I'd have to like -- each
11 one of these is different. There's no cut and dry this is the way it's going
12 to be handled. If there's an injury, either legal or risk management is
13 brought into the picture.

14 "Q And if there is an injury but you don't consider it serious, do
15 you still refer that to legal?

16 "A Yes."

17 Did I read that correctly, Mr. Demeritt?

18 A Yes.

19 Q So you agree that if there's an injury, even if it's not serious,
20 legal is involved, true?

21 A Yes. If it comes to me. I can only speak for the things that
22 come to me.

23 Q Okay, and --

24 A My knowledge of -- go ahead.

25 Q I'm sorry. I didn't mean to cut you off. I apologize.

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1 A That's okay. I was just referring back to the fact that Pullen
2 did not come to me. I think it went to legal first, to be honest with you.

3 Q Okay, understood. And continuing reading there, line 11:

4 "Q So you're always going to refer to legal no matter what if
5 there's an injury?

6 "A If there's an injury, yes."

7 Did I read that correct?

8 A Yes. Ever since Ron Templer joined the company; yes.

9 Q Okay. Now, let's talk about when Ron Templer would
10 involve you in incidents. Why don't we turn to page 52, and we're going
11 to start on line 12.

12 A Okay.

13 Q And just following along, please.

14 "Q Did you actually do a search to determine -- to look for other
15 claims other than these two?

16 "A Well, first off, they would've come up in the search that we
17 talked about in question four, but Ron and I, or corporate counsel and I,
18 share a wall. Our offices are right next to each other, and we talk about
19 these cases every day. So I can say with a high degree of certainty that if
20 there was a bodily injury that exceeded someone getting their finger
21 pinched in a door or something like that, something that was really de
22 minimis, we would know about it."

23 Did I read that correctly?

24 A Yes.

25 Q You were assuring me in the deposition that you could tell

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1 with a high degree of certainty that you had given me all the information,
2 true?

3 A All the information that I had, yes.

4 Q Okay. Now if we go to page 61, line 15:

5 "Q So as I understand it, if a complaint comes in, whether that
6 be by email, phone call, fax, regular mail, whatever, that if it involves
7 personal injury or injury, that is routed to you, the risk manager, correct?

8 "A Either myself or corporate counsel.

9 "Q Are there times when it's only referred to corporate counsel,
10 and you have no involvement, or are you made aware of all claims?

11 "A I believe I'm made aware of all claims."

12 Did I read that correctly?

13 A Yes.

14 Q And you believe that all claims you're made aware of, true?

15 A Yeah, that's what it says.

16 MR. CLOWARD: Your Honor, no further questions at this
17 time.

18 THE COURT: Recross?

19 MR. ROBERTS: Thank you.

20 RECROSS-EXAMINATION

21 BY MR. ROBERTS:

22 Q Last time, Mr. Demeritt. When you testified that you believed
23 you were made aware of all claims, what did you mean by claims?

24 Could you explain that to the Court? What were you thinking a claim
25 was when you made that statement?

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1 A Well, claims that involve property damage would be areas
2 that I would handle. Claims that involved a bodily injury or things of that
3 nature, Ron would handle, but in any instance, if it was a material case or
4 at least if we believed it was a material case, and we were going to put
5 the insurance carrier on notice, Ron would ask me for the insurance
6 policy, or the dec page, or whatever, and by doing so, I would become at
7 least aware, if not knowledgeable.

8 MR. ROBERTS: Thank you, sir.

9 THE COURT: All right. Mr. Demeritt, we appreciate your
10 time, and we hope this wasn't too much inconvenience for you, but you
11 are --

12 THE WITNESS: No.

13 THE COURT: -- excused, sir.

14 THE WITNESS: Okay.

15 THE COURT: Thank you very much, sir.

16 THE WITNESS: Thank you very much for your patience, Your
17 Honor.

18 THE COURT: Of course. Take care. We can turn the video
19 off now and -- okay. All right. Now you may present your statement, Mr.
20 Cloward.

21 MR. CLOWARD: Sure, thank you, Your Honor. I just have
22 seven matters, I guess, that I wanted to I guess bring up with the Court
23 prior to closing the hearing.

24 THE COURT: Okay. Very well.

25 MR. CLOWARD: The first is that we wanted to make sure

1 that they -- I understood that the search that Mr. Roberts is going to do
2 his emails from Mr. Demeritt to anyone regarding incidents. You know,
3 it was limited to -- I just want to make sure that it's not limited to Kurt
4 Bachmeyer, because I believe Regina Reyes and Audrey Martinez talked
5 about Demeritt. I haven't had a chance -- I tried to research that over the
6 break, but I do know that Mr. Demeritt, in his deposition, did talk about
7 how Regina Reyes was a higher up, and that she was kind of in the chain
8 of command that when things would get forwarded to her, then she
9 would potentially forward those up. So I think --

10 THE COURT: All right. Well, let's ask -- is anybody regarding
11 incidents as the term incidents was defined?

12 MR. ROBERTS: Your Honor, here's the problem we get in
13 expanding it. I was prepared to look at every email between Kurt
14 Bachmeyer and Mr. Demeritt to determine if it talked about an incident,
15 but if we're going to expand that to Mr. Demeritt and anyone, then we're
16 back in a situation where we need search terms agreed on. We need
17 some way to -- I can't possibly look at every email that Mr. Demeritt sent
18 to anyone for the last eight years, over eight companies, to determine if
19 it involved an incident. I can do that with Mr. Bachmeyer. If he wants to
20 expand it to Regina Reyes and -- who was the other one?

21 MR. CLOWARD: I would think Deborah Nuanes. I think
22 those --

23 MR. ROBERTS: And Deborah Nuanes.

24 MR. CLOWARD: Those three.

25 MR. ROBERTS: I can do that, but I can't --

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1 THE COURT: How --

2 MR. ROBERTS: -- look at every email that Mr. Demeritt sent.

3 THE COURT: Do you know the quantity of stuff that is
4 involved here, approximately?

5 MR. ROBERTS: I have no idea of the quantity of emails
6 between --

7 THE COURT: What about just the Bachmeyer stuff? Just the
8 one person. Do you know how --

9 MR. ROBERTS: I believe that that would be a doable
10 quantity.

11 THE COURT: That one's manageable?

12 MR. ROBERTS: That would be manageable. I don't know
13 that expanding it to Regina and Deborah Nuanes would make it
14 unmanageable because --

15 THE COURT: Do you --

16 MR. ROBERTS: -- just as a practical matter, I don't believe
17 Mr. Demeritt is going to receive emails unless they involve serious
18 bodily injury or property damage, and I don't think those things are that
19 numerous. So I can contact the Court and counsel if expanding it to
20 three people looks like it's going to be challenging, but I don't think it
21 would be, but I would object to looking at every email that Mr. Demeritt
22 sent to anyone.

23 THE COURT: Well, of course I wouldn't want you to, number
24 one, have to redo something you've done, or to do something that is
25 very marginally relevant --

1 MR. ROBERTS: Right.

2 THE COURT: -- of course. Would this have been something
3 covered by my -- I guess it was my -- was it my July order where all
4 documents were there as a slip, and a customer complained, and it
5 involved injury or not injury? Is that --

6 MR. ROBERTS: Is it something, yes, Your Honor --

7 THE COURT: Okay.

8 MR. ROBERTS: -- that should've been covered by that and
9 that did result in the additional supplemental productions we did in July,
10 but again, I think as Mr. Cloward defined it, I think if he wants me to look
11 with a fresh eye it, necessarily by definition --

12 THE COURT: I see.

13 MR. ROBERTS: -- involves redoing something.

14 THE COURT: Yeah. Well, Mr. Cloward, perhaps you could
15 just -- I mean, Regina and Bachmeyer, perhaps that's a reasonable way
16 to go here. It sounds like it was done before, and you have some serious
17 concerns, and maybe we could focus on Bachmeyer and maybe just one
18 other person.

19 MR. CLOWARD: I think that's fair.

20 THE COURT: His redoing it with fresh eyes.

21 MR. CLOWARD: I think that would be a fair compromise with
22 Regina Reyes and Kurt Bachmeyer.

23 THE COURT: What do you think about that, Mr. Roberts?

24 MR. ROBERTS: I think that's doable, Your Honor.

25 THE COURT: Okay. Great. How much time would you need

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1 to do that?

2 MR. ROBERTS: Two weeks, Your Honor.

3 THE COURT: Okay. That sounds fine. If you need more
4 time, given your good faith start of the review process, let Mr. Cloward
5 know.

6 MR. ROBERTS: Okay. I'll do that.

7 THE COURT: And whatever you two agree upon is fine with
8 the Court.

9 MR. CLOWARD: Thank you, Your Honor.

10 THE COURT: Yes, of course.

11 MR. CLOWARD: And I misspoke. I said there were seven
12 issues. There's actually only six.

13 THE COURT: Okay. Well that's one, so we have five left.

14 MR. CLOWARD: Five more. I wanted to formally move into
15 evidence the Guild survey, as well as the Guild selected survey. We've
16 had an opportunity to look into that in the last couple weeks. Mr.
17 Goodhart was good enough to contact his client, and it's my
18 understanding that Audrey Martinez was given access to the Guild
19 surveys in approximately June of 2015. I'll allow Mr. Goodhart to
20 address the particulars, but that would've meant that Jacuzzi necessarily
21 had access to those surveys, so he would've had the information.

22 THE COURT: I remember that was the main issue. And Mr.
23 Goodhart, I don't think you were under court order to do that, but the
24 Court said we would greatly appreciate it if you could check. And what
25 would you like to report on that, sir?

1 MR. GOODHART: And pursuant to this Court's request, I did
2 contact my client over the last few days -- last week, and I have been
3 advised that with respect to the Guild surveys, in late June of 2015, Ms.
4 Martinez was provided with her own separate login information that
5 would have allowed her to access those customer surveys directly from
6 the Guild company, which is a third-party vendor, which my client has no
7 control over, to look at the customer surveys. And I indicated this to Mr.
8 Cloward yesterday. The surveys would have looked different than what
9 has been produced in the Excel spreadsheet.

10 What Guild did for First Street, because they no longer have
11 a business relationship, is Guild was willing to provide First Street with
12 just an Excel spreadsheet, which included the information in the format
13 that I produced to Mr. Cloward, which I think even helped him search
14 that as opposed to trying to go through and read 700 or 800 individual
15 surveys that were completed.

16 So I believe the information would have been in the surveys.
17 It just would not have been in the format that was produced by First
18 Street in response to the request for production of documents.

19 THE COURT: Perfect. Do you believe that that would
20 necessitate any kind of redacting of information?

21 MR. GOODHART: No, no.

22 THE COURT: Okay.

23 MR. GOODHART: Mr. Cloward's request for production of
24 documents specifically said and asked us to produce all customer
25 surveys with respect to the walk-in tub, regardless of the comments or