

Case No. \_\_\_\_\_

**In the Supreme Court of Nevada**

JACUZZI, INC. doing business as JACUZZI  
LUXURY BATH,

Petitioner,

*vs.*

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

Respondents,

and

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

Real Parties in Interest.

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**PETITIONER'S APPENDIX  
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86	Plaintiffs' Reply in Support of Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21 and Opposition to Jacuzzi's Countermotion to Clarify Issues that the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial and FirstStreet for Boomers and Beyond, Inc. and AITHR Dealer, Inc.'s Joinder Thereto	06/01/21	32	7803–7858
9	Plaintiffs' Reply in Support of Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's Answer for Repeated, Continuous and Blatant Discovery Abuses on Order Shortening Time	01/29/19	4 5	922–1000 1001–1213
17	Plaintiffs' Reply in Support of Their Motion for Reconsideration Re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc.'s Answer and Motion for Clarification Regarding the Scope of the Forensic Computer Search	06/14/19	8	1779–1790
67	Plaintiffs' Reply to: (1) Defendant Jacuzzi, Inc. dba Jacuzzi Luxury Bath's Brief Responding to Plaintiffs' Request for Inflammatory, Irrelevant, Unsubstantiated, or Otherwise Inappropriate Jury Instructions; and (2) Defendant FirstStreet For Boomers & Beyond, Inc., AITHR Dealer, Inc., and Hale Benton's Objections to Plaintiffs' Demand for Certain Jury Instructions and Rulings on Motions in Limine Based on Court Striking Jacuzzi's	11/10/20	28	6906–6923

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

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

**CERTIFICATE OF SERVICE**

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

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

*Attorneys for Real Parties in Interest*

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

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

*Respondent*

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

1           87. Defendants knew of the heightened risk of having users like SHERRY fall down inside  
2 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing  
3 to alleviate that risk.

4           88. Defendants knew of the heightened risk of having users like SHERRY fall down inside  
5 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing  
6 to mitigate that risk.

7           89. Defendants knew of the heightened risk of having users like SHERRY fall down inside  
8 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing  
9 to reduce that risk.

10           90. In fact, Defendants knew of alternative designs for a walk-in bathtub that were much  
11 safer to users like SHERRY who were at a substantial risk of falling down inside the Jacuzzi walk-in  
12 bathtub and were unable to get back up or out of the bathtub but chose against implementing  
13 alternative designs for increased profitability.

14           91. Because of Defendants conscious choices to put profits before safety, the Jacuzzi walk-  
15 in bathtub is a deathtrap for nearly any elderly person who happens to fall down inside the bathtub  
16 because there are no grab bars positioned in a way that someone can get back up if they fall down and  
17 because the door opens inward and traps the elderly person inside the bathtub.

18           WHEREFORE, Plaintiffs respectfully pray that Judgment be entered as set forth below

19           1. General damages for Plaintiffs pain, suffering, disfigurement, emotional distress, shock  
20 and agony in an amount in excess of \$10,000.00;

21           2. Compensatory damages in an amount in excess of \$10,000.00;

22           3. Special damages for Plaintiffs medical expenses in an amount to be proven at trial;

23           4. For punitive damages in excess of \$10,000.00;

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the RICHARD HARRIS LAW FIRM and that on the 21 day of June 2017, I caused the foregoing **FOURTH AMENDED COMPLAINT** to be served as follows:

☒ pursuant to N.E.F.C.R. 9 by serving it via electronic service

to the attorneys listed below:

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INC. and AITHR DEALER, INC.*

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WILLIAM BUDD and BUDDS PLUMBING*

\_\_\_\_\_  
An employee of RICHARD HARRIS LAW FIRM



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## Pass the gift of safety on to your friends or family and get \$200.00!

We know it's hard to keep a good thing to yourself. So, we say, go right ahead and gossip! Tell a friend. Tell a neighbor. Tell a family member. Tell them all about your new Jacuzzi® Walk-In Tub and when they order theirs, we'll send you a check for \$200.00. Make sure they mention your name during the appointment. It's a win-win for everybody and our way of saying thank you for the referral. Call or mail us your referrals to:

888-926-8095  
AITHR Headquarters  
1460 W. Canal St.  
Littleton, CO 80120

JAC000001  
Some restrictions apply. Call for details.



LAS VEGAS NV 81122  
(702) 498-9012

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### How it all began...

In 1956, the Jacuzzi brothers responded to a family member's need for pain-relieving hydrotherapy. They developed a version of their pump to work in a bath tub.

Their ingenuity and knowledge of hydraulics led to the creation of a portable hydrotherapy pump. The J-300 turned any normal bathtub into a relaxing, rejuvenating hydrotherapeutic spa. Jacuzzi quickly became a household name, known to this day for quality products and reliable pain relief.

### Your own personal spa...

Jacuzzi provides you the safety and independence you would expect from this state of the art walk-in tub. No other Walk-In Tub features the patented Jacuzzi® PointPro® Jet system. These high-volume, low-pressure pumps feature a perfectly balanced water-to-air ratio to massage thoroughly yet gently. They are all arranged in precise locations designed to deliver a therapeutic massage, yet they are fully adjustable so that your bathing experience can be completely unique.

### American made and serviced...

Jacuzzi® Walk-In Tubs are made in America and are designed to easily fit in your existing tub space. They come with a limited lifetime warranty supported by a nationwide service network.



*The first Jacuzzi hydrotherapy pump*

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HALE GENTON  
 1176 Ponte De Leon  
 LAS VEGAS NV 89123  
 (702) 498-9012

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### How it all began...

In 1956, the Jacuzzi brothers responded to a family member's need for pain-relieving hydrotherapy. They developed a version of their pump to work in a bathtub.

Their ingenuity and knowledge of hydraulics led to the creation of a portable hydrotherapy pump. The J-300 turned any normal bathtub into a relaxing, rejuvenating hydrotherapeutic spa. Jacuzzi quickly became a household name, known to this day for quality products and reliable pain relief.

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Jacuzzi provides you the safety and independence you would expect from a state of the art walk-in tub. No other Walk-In Tub features the patented Jacuzzi® PointPro® Jet system. These high-volume, low-pressure pumps feature a perfectly balanced water-to-air ratio to massage thoroughly yet gently. They are all arranged in precise locations designed to deliver a therapeutic massage, yet they are fully adjustable so that your bathing



The first Jacuzzi  
 hydrotherapy pump  
 JAC000003





*Shore  
P.O. Electric*

## Your Jacuzzi® Walk-In Hot Tub



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# Jacuzzi® Walk-in Tubs

*We turn water into therapy*



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Your Customer Care Team can be reached at:  
888-926-8095

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## Welcome to the Family

### *You have made a smart choice.*

Remaining safe in one's home is a top priority for America's seniors. In fact, according to the CDC, one out of every three Americans over the age of 65 will experience a fall this year. And for those who suffer injury, most never fully recover. The fear of falling has made the simple act of bathing and its therapeutic benefits a thing of the past.

That is why so many proactive seniors have turned to the safety and independence gained by installing a Jacuzzi® Walk-In Hot Tub. And in doing so, those seniors are reporting benefits they never expected.

Jacuzzi Inc., the company that perfected hydrotherapy, have created a walk-in hot tub that offers more than just safe bathing, peace-of-mind and independence. It can actually help you feel better.

The Jacuzzi® Walk-In Tub features a leak-proof door that allows you to simply step into the tub rather than stepping precariously over the side.

Seniors are reporting that the safety of the tub has taken a back seat to the therapeutic value provided by the state-of-the art features. There is nothing like the simple pleasure of taking a warm bath. The cares of the day seem to fade away, along with the aches and pains of everyday life.

No other walk-in tub features the patented Jacuzzi® PointPro® jet system, low-pressure pumps with a perfectly balanced water-to-air ratio to massage thoroughly yet gently. Some swirl, some spiral, some deliver large volumes of water and others target specific pressure points. They are all arranged in precise locations designed to deliver a therapeutic massage, yet they are fully adjustable so that your bathing experience can be completely unique.

Congratulations on your purchase. Like thousands of seniors all over the U.S. you won't spend another day wishing you could enjoy the luxury and pain-relieving benefits of a safe, comfortable bath.

*—The Team at Jacuzzi® Walk-In Tubs*

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## What to Expect Next



Thank you for purchasing your new Jacuzzi® Walk-In Hot Tub. We strive to make this the best possible experience. Below is an outline of what you can expect from our team.

**STEP 1:** You will receive a call from our Customer Care Team confirming the details of your Jacuzzi® Walk-In Tub and welcoming you to the family of happy customers.

**STEP 2:** Shortly thereafter, you will receive a call from our production department and our electrical contractor to schedule your electrical appointment.

**STEP 3:** Our production department will call and let you know when your Jacuzzi will be received by our installation department.

**STEP 4:** Once received we will arrange your installation, depending on your schedule. The actual installation should take one to two days depending on the complexity. Once your install is complete you will be able to enjoy a lifetime of safety and luxury in your new Jacuzzi® Walk-In Hot Tub.

**DELAYS:** While we do not expect any delays, they can sometimes happen; if they do we will make sure you are aware and we will be in constant communication.



### WARRANTY:

Your Jacuzzi® Walk-In Tub has a limited lifetime warranty against defects, and we also provide a two-year labor warranty. Jacuzzi's warranty department can be reached at (800-288-4002).

Your Consultant's Name: HALE BELTON  
Info: 902-498-9012

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## Using & Caring

### Controls



**Light** Controls the chromatherapy lighting system. Each press of the button will cycle through the nine color sequences.

**Pure Air** Turns on the air injectors that mixes with the water to provide a wide plume.

**Whirlpool** Turns on the therapeutic whirlpool jets.

**Air Control** Adjusts the amount of air introduced into whirlpool jets. LESS AIR softer Hydrotherapy. MORE air more vigorous Hydrotherapy.

### Cleaning



Wipe the inside surface with any non-abrasive, non-ammonia spray cleaner. To clean the whirlpool bath system, use Jacuzzi® Systems Clean™ available at: [www.jacuzziaccessorystore.com](http://www.jacuzziaccessorystore.com) or call 866-313-0544

### Adjusting Jets



Each individual jet can be adjusted for more or less water by turning the outside ring clockwise and counter clockwise. Adjust the direction by simply moving the inner nozzle.

### Fixture Placement

1. Hand held Shower Wand
2. Hot Water
3. Drain Release
4. Cold Water
5. Tub Filler
6. Aromatherapy Container



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## Features & Benefits

Jacuzzi® Walk-In Hot Tubs not only provide a safe and enjoyable way to take a bath, but also provide health benefits that can greatly improve your quality of life. The air and water jets may help to improve circulation and ease the symptoms of arthritis, back problems, muscle cramps, osteoarthritis, and other various injuries. Plus, you'll have the independence and worry-free ability to enjoy bathing again safely.



### *Your New Jacuzzi® Walk-In Tub Includes:*

#### **1. Hydro & Air Therapy**

Featuring the patented Jacuzzi® PointPro® Jet System, a unique network of adjustable water jets and gentle air massagers with new improved jet locations positioned to target the most common pain points.

#### **2. Built-In Safety**

Now made with an even lower entryway and wider door to ensure a safer and easier entry & exit. Non-skid floor surface and side grab bar provides added safety and support. Anti-scald water valves protect you from extreme water temperature.

#### **3. Aroma & Chroma Therapy**

Add a calming fragrance to transform your bath into a spa-like experience. Gentle LED lighting enhances moods and promotes relaxation.

#### **4. Built-In Comfort**

Ergonomically designed chrome handle and grab bars. Sit back and relax on our ADA-compliant contoured seat design. Inline heater maintains desired water temperature throughout your bath experience.

### *Soaking in your Jacuzzi Walk-In Tub also helps to:*

- Relieve stress
- Create a relaxing environment
- Create a spa like experience with the aromatherapy fragrances
- Reduce aches and pains
- Improve blood circulation

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## For Your Children



*In the next 17 seconds, an older adult will be treated in a hospital emergency department for injuries related to a fall. In the next 30 minutes, an older adult will die from injuries sustained in a fall. Most falls occur in the bathroom, getting in and out of the tub.*

*Falls account for 65% of all home injury deaths for adults age 65-84.1 in 3 seniors will fall this year. Adults age 65 and older experience an average of 2.3 million nonfatal home injuries annually.*



### Cost of Assisted Living Facility:

\$900 per week  
\$46,800 per year

### Cost of Private Nursing Home:

\$1,300 per week  
\$82,000 per year

Providing your parents with a safe alternative to assisted living is our top priority.

That is why Jacuzzi Inc. developed a bathroom retrofit solution that will help keep your parents safe.

Over the years, many adult children of seniors have wrestled with the question: Is retrofitting my parent's bathroom worth it? But the real questions they should ask are:

- *Is retrofitting the bathroom more cost effective than paying the medical bills after a fall or paying to care for my parents if they're injured?*
- *Will this make my parents happy, and is their happiness important to me?*
- *Are my parents' independence and dignity worth it?*
- *Are my parents worth it?*

We know these are challenging questions. That is why we are here to help, every step of the way.

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## Testimonials

Gentlemen,

We recently purchased and installed your walk-in Jacuzzi tub. We can't begin to tell you how pleased we are with it. It is everything we expected and more!

Your sales people were friendly and helpful. The installers went out of their way to be neat and courteous. We had some minor adjustments after the initial installation and they were prompt in returning to take care of them.

We would highly recommend your product."

*-Laverne & Keith H*

I speak from my heart to your heart, as a severely disabled person confined to my home. I have only showered and not bathed for nine years. My search for pain relief ended with my first step into my walk-in bathtub."

*-Edward W*

My husband Tom had a stroke and is a diabetic. He had fallen out of our regular tub and with this walk in tub he is so safe. He loves to step in (much lower) and feels safe with all the grab safety bars that are included. Also with his diabetes of course he has a problem with blood flowing to his lower legs and feet. After he took his first bath his lower legs/feet were a beautiful pink color. Every night he comments how he loves his walk in tub.

I also love this tub for numerous reasons. First of all my arthritis is so painful and with my first bath with the jets (water & air) my pains were almost gone. I was expecting to have to use the tub many times before I felt any results. But after the first time I did leave the house with my husband and went shopping. I have not done any shopping for months. With the aromatherapy, which is so relaxing, and the lights to make me feel like I am not at home but on vacation somewhere, I can take a vacation anytime. With more and more uses I feel like a whole new person. My personality has even changed because of the atmosphere, the aromatherapy & less pain almost all of the time now. When in pain I jump into the Jacuzzi. This tub has been a real blessing to both of us.

We are thankful for our Christmas gift (Jacuzzi Walk-In Tub) the jets, aromatherapy, & colored lights that make us feel like humans again."

*-Tom & Joyce J*  
JAC000011





## Testimonials

For years, I have been suffering with a bad knee. I have wanted a walk-in tub but I was concerned about the expense and the difficulty of installing it in my own bathroom. A friend recommended you, and thank goodness. Your installer arrived on time, was quick, polite and neat, and in two days, my tub was in place. Not only is the tub good looking, I am amazed by the healing benefits. In the months since I have installed the tub in my home, the pain in my afflicted knee has diminished. I think the warm water and the force of the air jets circulating around my body and legs have had the greatest healing effect on me."

*-Roy W*

The installation of our Jacuzzi tub went extremely well, due solely to Jay and Dave. They are outstanding workers- polite, cheerful, skilled, and totally dedicated to the job. The weather was cool and rainy. Add to this: difficulty getting the tub through the bathroom door, and a plumbing problem. Many workers would be projecting negative vibes. Not these guys! They were unfailingly cheery and positive. They kept at it until it was done, careful not to damage anything, from start to finish. They gave us a feeling of trust and confidence. We would recommend their work to anyone."

*-Nancy & Jim L*

My husband is so pleased with the hydrotherapy. It relieves so much of the soreness he has after each therapy session, but even more importantly, it seems to be helping the circulation in his legs."

*-Linda M*

Our new tub has helped make our lives easier for us. The whirlpool has helped take lots of aches and pains away. It is like being on vacation all the time without all the travel. The best part is the safety of getting in and out of the bathtub. The tub has given back dignity to my husband, who has had a mild stroke, and was unable to get in the old tub without a lot of help. The peace of mind of knowing he is now able to get in and out of the tub by himself has made our lives easier."

*-Sheila & Roger C*

JAC000012

## firstSTREET National Dealer Conference

August 8-9, 2012

## Sales Presentation

John Roberge/ firstSTREET

- Hiring the Right Sales Person
  - Effective ad writing buzz words
    - Leads
    - No cold calling
    - Nationally advertised product
    - \$100.0 earnings/ base salary
    - No overnights
    - Sports minded
    - Veterans- train for a new career
      - Careerbuilder/ Monster hires have had low retention rate
  - What to look for
    - Aptitude
      - Testing
    - In home experience
    - Behavioral styles
      - Profiling
    - Gut feelings
    - One call close mentality
  - In home
    - Ask what to call them
    - Sell fear of loss- avoid pain rather than get pleasure
    - Let them feel in control
    - Let them off the hook
    - Build rapport/ trust
    - Ask permission
    - Purpose of needs assessment is to elicit pain
  - Follow up
    - Collateral
      - Business cards- what do they say?
      - Importance of CAPS certification
      - Jacuzzi Authorized Contractor
      - Name badges on lanyard

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## DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

No. A-16-731244-C

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

Defendants.

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 AND RELATED CROSS-ACTIONS.
 

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1 APPEARANCES:

2 For Plaintiffs:

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8 404/419-6674

9 callen@charlesallenlawfirm.com

10 -and-

11 RICHARD HARRIS LAW FIRM

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12 Videographer:

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16

17 Also present:

18 RON TEMPLER

19 (Corporate representative for Jacuzzi)

20

21

22

23

24

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1 COSTA MESA, CALIFORNIA

2 THURSDAY, MAY 24, 2018

3 1:35 P.M.

4 -oOo-

5

6 THE VIDEOGRAPHER: Good afternoon.

7 This is the videotaped deposition of Michael  
8 Dominguez. Today we're located at 600 Anton Boulevard,  
9 Suite 1400 in Costa Mesa, California.

10 Today is Thursday, May 24th in the year 2018.

11 We're here today in the matter of Robert Ansara  
12 vs. First Street for Boomers & Beyond, Incorporated with  
13 a case number of A-16-731244-C.

14 This case is being heard in the District Court  
15 of the State of Nevada in and for the County of Clark.

16 My name is Dean Jones with Oasis Reporting  
17 Services.

18 Today's deposition is now commencing at 1:35  
19 p.m.

20 Would all present please identify themselves  
21 beginning with the deponent.

22 THE WITNESS: Michael Dominguez.

23 MR. COOLS: Joshua Cools, attorney for Jacuzzi.

24 MR. TEMPLER: Ron Templer, corporate  
25 representative for Jacuzzi.

1 determine whether the combination of the seat as it is  
2 built and the location of the hot water across the  
3 footwell would make it easier for somebody to slide out  
4 of the seat and fall into the footwell?

5 A. It depends --

6 Q. Was there ever a test done like that, sir?

7 MR. COOLS: Object to form.

8 THE WITNESS: That's not -- that's not a test.

9 Q. BY MR. ALLEN: Okay. All right. Was there  
10 ever a test done by Jacuzzi to determine how big  
11 somebody can be before they are wedged into the base of  
12 the footwell?

13 MR. COOLS: Object to form.

14 THE WITNESS: I believe that's the  
15 responsibility of the user. We provide dimensional  
16 interior -- interior dimensions in the bathtub with our  
17 tech specs. And I think at that point you can determine  
18 if you're going to be able to use it or not.

19 Q. BY MR. ALLEN: So the responsibility of the  
20 user is to see how big they are compared to how big the  
21 tub is?

22 A. We get multiple requests from customers on  
23 finding out what's the angle, what's the interior  
24 dimensions of a bathtub to determine -- because it's a  
25 hydrotherapy bathtub, to see if you're going to fit or

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007274

1      "You need to decide whether this tub fits for you" and  
2      have a checklist?

3                    MR. COOLS:    Object to form.

4                    MS. GOODWIN:    Join.

5                    THE WITNESS:    We provide a technical  
6      specification sheet with the bathtub.

7            Q.      BY MR. ALLEN:    Do you provide a checklist that  
8      says, "If you're this type of a person, this tub may not  
9      be best for you"?

10                   MR. COOLS:    Object to form.

11                   MS. GOODWIN:    Join.

12            Q.      BY MR. ALLEN:    Do you have any kind of paper  
13      like that you give to the end user?

14            A.      All we provide is a manual and a technical  
15      specification sheet.

16            Q.      Okay.    We'll get to the manual and  
17      specification sheet in a minute.

18            A.      Okay.

19            Q.      Which exhibit are you in front of?    We've gone  
20      through --

21            A.      18.

22            Q.      -- 18 and 17; correct?

23                    Oh, yeah.    I wanted to ask you about the second  
24      page or the -- or page -1442 in Exhibit 17 before I get  
25      rid of this.

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1 installation and --

2 A. This is the "Installation and Operation  
3 Instructions."

4 Q. Gotcha. And is that the same that we're  
5 talking about here about the electronic versions of the  
6 owner or user manuals?

7 A. That is correct.

8 Q. Okay. And then "Images and videos when  
9 available," what is that?

10 A. Any type of collateral we have with any of our  
11 product, if they are available.

12 Q. What do you mean by "collateral"?

13 A. Collateral would be images of a bathtub in an  
14 installed setting or just the product stand-alone.

15 Q. And video would be the same?

16 A. Yes.

17 Q. Is there any instruction in the video?

18 A. No. I believe it's almost like just a  
19 pan-through of what the bathroom looks like -- or what  
20 the product looks like.

21 Q. How it would look?

22 A. Yes.

23 Q. Not how to use it?

24 A. That is correct.

25 Q. No. 4:

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1 (The record was read as follows:

2 "A. When it comes to their  
3 product, I don't think we make  
4 products that harm people.")

5 Q. BY MR. ALLEN: Okay. All right. And why do  
6 you believe that?

7 A. It's an inanimate object. I mean, it doesn't  
8 move. It doesn't do anything that can go out of its way  
9 that could possibly harm you.

10 Q. Is that your complete answer?

11 A. For now.

12 Q. Okay. Well, if it changes before I leave,  
13 please fill me in.

14 A. Okay.

15 Q. Is that fair?

16 A. That's fine.

17 Q. Okay. Now, I'm going to follow this  
18 parenthetical:

19 "Meaning claims based on tests,  
20 analyses, research, studies."

21 We'll stop right there.

22 Has Jacuzzi ever done any testing or analysis  
23 or research or studies that support your statement that  
24 your product does not harm people?

25 MR. COOLS: Object to form.

007277

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1                    MS. GOODWIN:    Join.

2                    THE WITNESS:    Our bathtubs are tested, analyzed  
3                    through third-party agencies that meet applicable  
4                    plumbing and electrical codes.    Those are the tests that  
5                    we conduct with our bathtubs.

6                    Q.     BY MR. ALLEN:    The ones that we've already gone  
7                    over?

8                    A.     That's correct.

9                    Q.     And that was the extent of what you rely on for  
10                   the fact that Jacuzzi's products do not harm people;  
11                   true?

12                   MR. COOLS:    Object to form.

13                   THE WITNESS:    I never said "do not harm."

14                   Q.     BY MR. ALLEN:    What did you say?

15                   A.     (No response from the witness.)

16                   Q.     "Jacuzzi products don't harm people."    What'd  
17                   you say?    We can read it back again.    Yeah.    You can  
18                   read it back.

19                   MR. ALLEN:    And I'll write it down.

20                   (The record was read as follows:

21                   "A.     When it comes to their  
22                   product, I don't think we make  
23                   products that harm people.")

24                   Q.     BY MR. ALLEN:    I don't believe we make products  
25                   that harm people.



1           Q.   Any expert in why people do things, you know,  
2           psychologists or psychiatrists?

3           A.   No.

4           MR. CLOWARD:   Human factors.

5           Q.   BY MR. ALLEN:   Any physiatrists?

6           A.   No.

7           Q.   Any human factors experts?

8           A.   No.

9           Q.   Any nurses?

10          A.   No.

11          Q.   Any people that have expertise in geriatric  
12          population?

13          A.   No.

14          Q.   Any people that have expertise with people with  
15          mobility issues?

16          A.   No.

17          Q.   Any professionals that have any experience with  
18          how the elderly think?

19          A.   No.

20          Q.   Any expertise -- any professionals in the area  
21          -- in the gullibility of the aging population?

22          A.   No.

23          Q.   What professionals do you believe are relevant  
24          in the area to design a Jacuzzi walk-in tub that will  
25          come out with a label "Designed for Seniors Walk-in

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1 Tub"?

2 MR. COOLS: Object to form.

3 THE WITNESS: Jacuzzi did not establish that  
4 tagline.

5 Q. BY MR. ALLEN: All right.

6 A. We produced --

7 Q. From Jacuzzi's standpoint, what professionals  
8 do you believe that you needed to do -- to produce a tub  
9 that would come out with that tagline?

10 MR. COOLS: Object to form.

11 MS. GOODWIN: Join.

12 THE WITNESS: This is a bathtub.

13 Q. BY MR. ALLEN: Okay. But Jacuzzi's -- the  
14 tagline, which has been sold, is not "This Is a  
15 Bathtub"; true?

16 A. That's true.

17 Q. Any accepted . . . never mind.

18 Now, paragraph G, the next paragraph:

19 "JI" -- Jacuzzi -- "will provide  
20 one 'no charge' sample of Product 1  
21 and one 'no-charge' sample of Product 2  
22 for testing and training to FS" -- which  
23 is First Street.

24 Did I read that correct?

25 A. That's correct.

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## 1 REPORTER'S CERTIFICATE

2  
3 I, Kathleen Mary O'Neill, Certified Shorthand  
4 Reporter No. 5023, RPR, duly empowered to administer  
5 oaths, do hereby certify:

6 I am the deposition officer that stenographically  
7 recorded the testimony in the foregoing deposition;

8 Prior to being examined, the deponent was by me  
9 first duly sworn;

10 Said deposition is a true, correct, and complete  
11 transcript of said proceedings taken to the best of my  
12 ability.

13 The dismantling, unsealing, or unbinding of the  
14 original transcript will render the Reporter's  
15 Certificate null and void.

16 Pursuant to Rule 30(e) of the Federal Rules of  
17 Civil Procedure, no request being made for review, the  
18 transcript was sealed and sent to the noticing attorney.  
19

20 Dated: May 29, 2018

21  
22  
23   
24 KATHLEEN MARY O'NEILL  
25 CSR 5023, RPR, CLR



1	DISTRICT COURT	
2	CLARK COUNTY, NEVADA	
3	ROBERT ANSARA, as Special	)
4	Administrator of the Estate	)
5	of SHERRY LYNN CUNNISON,	)
6	Deceased; MICHAEL SMITH,	)
7	individually, and heir to	)
8	the Estate of SHERRY LYNN	) CASE NO.
9	CUNNISON, Deceased; and	) A-16-731244-C
10	DEBORAH TAMANTINI,	)
11	Individually; and heir to	) DEPT NO. II
12	the Estate of SHERRY LYNN	)
13	CUNNISON, Deceased,	)
14		)
15	Plaintiffs,	)
16		)
17	-vs-	) Taken at 139
18		) Bitterroot Plaza Dr.
19	FIRST STREET FOR BOOMERS &	) Hamilton, Montana
20	BEYOND, INC.; AITHR DEALER,	) Thursday,
21	INC.; HALE BENTON,	) December 20, 2018
22	Individually; HOMECCLICK,	) 12:00 P.M.
23	LLC; JACUZZI INC., doing	)
24	business as JACUZZI LUXURY	)
25	BATH; BESTWAY BUILDING &	)
26	REMODELING, INC.; WILLIAM	)
27	BUDD, Individually and as	)
28	BUDDS PLUMBING; DOES 1	)
29	through 20; ROE CORPORATIONS	) VIDEOTAPED DEPOSITION
30	1 through 20; DOE EMPLOYEES	)
31	1 through 20; DOE	)
32	MANUFACTURERS 1 through 20;	) OF
33	DOE INSTALLERS 1 through 20;	)
34	DOE CONTRACTORS 1 through	) JERRE CHOPPER
35	20; and DOE SUBCONTRACTORS 1	)
36	through 20, inclusive,	)
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## A P P E A R A N C E S

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Brands, LLC.

Also appearing: Claudia Williamson and Candace  
Simonich, videographer.

1	I N D E X	
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1 THURSDAY, DECEMBER 20, 2018  
2 VIDEOGRAPHER SIMONICH: Today is  
3 Thursday, December 20th. The time is approximately  
4 12 p.m. The court reporter is Terra Rohlfs, and I  
5 am your videographer Candace Simonich. We are here  
6 on behalf of Oasis Reporting Services.

7 The witness today is Jerre Chopper. And  
8 we are here in the case of Robert Ansara, et al.  
9 versus firstSTREET for Boomers & Beyond,  
10 Incorporated, et al.

11 Will the counsel please state your  
12 appearances, and the court reporter will then  
13 administer the oath.

14 MR. CLOWARD: My name is Ben Cloward for  
15 the Cunnison family.

16 MR. GOODHART: Philip Goodhart on behalf  
17 of firstSTREET and AITHR Dealers.

18 MS. LLEWELLYN: Brittany Llewellyn on  
19 behalf of Jacuzzi, Inc.

20 MR. COOLS: Josh Cools on behalf of  
21 Jacuzzi, Inc.

22 COURT REPORTER: Okay. I'll have you  
23 raise your right hand.

24 Thereupon,

25 //

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1 JERRE CHOPPER,  
2 a witness of lawful age, having been first duly  
3 sworn to tell the truth, the whole truth and  
4 nothing but the truth, testified upon her oath as  
5 follows:

6 EXAMINATION

7 BY MR. CLOWARD:

8 Q. Good morning, Ms. Chopper. How are you  
9 today?

10 A. I'm my usual self. (Laughter.)

11 Q. All right. Now, have you and I met  
12 before?

13 A. Yes.

14 Q. When was that?

15 A. Yesterday.

16 Q. Okay. And did you provide me with  
17 anything?

18 A. Yes, I provided you with several  
19 documents.

20 Q. Okay. So I'm going to kind of go over  
21 the documents that you provided. And I made copies  
22 and gave all of the counsel involved copies of  
23 that. And I'll just ask you some specific  
24 questions about those documents, okay?

25 A. Okay.

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1           Q.   So the first one I will mark as  
2   Exhibit 1 --

3           MR. GOODHART:   Actually, before you  
4   continue on with this, I just want to interpose an  
5   objection that these documents have not been  
6   produced by plaintiffs' counsel.   This morning,  
7   about five minutes ago was the first time that they  
8   were provided to me to review.   There is a stack of  
9   documents approximately three-quarters of an inch  
10   thick, as well as some larger documents of what  
11   appears to be magazines.   And I just want to make  
12   sure that the record is very clear that this is the  
13   first time that either myself or Jacuzzi's counsel  
14   have had a chance to look at these or were even  
15   aware that they existed.

16           MR. COOLS:   I'd join in that.

17           MR. CLOWARD:   And for the record, these  
18   documents have been in the defendants' possession,  
19   all three defendants, Jacuzzi, firstSTREET and  
20   Aging In The Home's, for approximately six years,  
21   and they were never provided to me.   So I would  
22   actually have the same objection that unfortunately  
23   these documents that were in your clients'  
24   possession for the last six years never were made  
25   available to me.   Thanks to Ms. Chopper yesterday

1 providing me with a copy, I do now have a copy of  
2 those. And I stayed up until 2:00 last night  
3 trying to be as prepared as I could, given the  
4 circumstances. But it certainly would've been nice  
5 had these been produced in the regular course of  
6 litigation.

7 MR. GOODHART: And just to quickly  
8 respond to that, Ben, in my quick review of these  
9 documents --

10 MR. CLOWARD: We can fight over the  
11 documents later, but --

12 MR. GOODHART: I'm just responding to  
13 your comment --

14 MR. CLOWARD: -- I don't want to waste  
15 her time.

16 MR. GOODHART: I think I need to do this  
17 on the record right now before we start the  
18 deposition or the trial, whatever you want to call  
19 this.

20 In review of these documents, none of  
21 them reference any type of injury that Ms. Chopper  
22 actually sustained. The only documents you have  
23 requested in this litigation relate to injuries  
24 sustained by people using the Jacuzzi tub, period.  
25 These documents reflect complaints about

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1 installation. And as of right now the installers  
2 in this particular litigation were dismissed by the  
3 plaintiffs; and I'm just talking about right now.  
4 I don't know why, I don't know what the  
5 circumstances are, and I'm not gonna hypothesize  
6 about what those are, I'm just stating a fact. As  
7 of today the installers are not in this litigation.  
8 And that is why none of these documents have been  
9 produced to you.

10 MR. COOLS: Additionally, not having had  
11 a chance to thoroughly review them, I don't know if  
12 what you say is accurate in terms of them being in  
13 the defendants' possession.

14 MR. CLOWARD: Okay. We'll go through  
15 that now.

16 EXHIBITS:

17 (Deposition Exhibit Number 1 marked for  
18 identification.)

19 Q. (BY MR. CLOWARD) Okay. So the first  
20 thing I will have you identify is Exhibit 1. Can  
21 you tell us what that stack of documents is.

22 A. Confirmation of online registration of  
23 your Jacuzzi product. Welcome to the Jacuzzi  
24 family, and it is with a description of the tub. I  
25 don't see a signature on here. Can I take this

1     apart?

2             Q.   Absolutely.

3             A.   Oh, here's the first one.   Welcome --  
4   Let's see, I'm writing to thank you for visiting  
5   with our Jacuzzi technician in your home in 2012,  
6   et cetera, et cetera, et cetera, signed by John  
7   Bassett, division manager, and it's on Jacuzzi  
8   letterhead, wholesale division.   Do you want me to  
9   read the P.S.?

10            Q.   If you -- if you would like, you don't  
11   need to.

12                    I'm just ultimately asking, I guess, if  
13   you recognize these documents?

14            A.   Yes.

15            Q.   Are these documents that you provided to  
16   me yesterday?

17            A.   Yes.

18            Q.   Okay.   Now, before we get any further,  
19   you also provided my office with a copy of  
20   documents last week, do you remember that?

21            A.   Yes, I mailed them after I talked to you  
22   on the phone.

23            Q.   Okay.   Approximately, can you estimate  
24   how many documents you mailed?

25            A.   I can't re -- I can't tell you how many,

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1 but when I put them in the envelope it was 5  
2 ounces.

3 Q. Okay.

4 A. So it was a fairly large --

5 Q. Okay. Was it as large as this stack of  
6 documents that we have before us today?

7 A. I don't know. Does that weigh 5 ounces?  
8 I think it might weigh a little more -- oh, yeah, I  
9 don't know how many, but like I say, it was 5  
10 ounces, and it was approximately this thick  
11 (indicating) when I got them in the envelope.

12 MR. GOODHART: Can I just for the record,  
13 verbal record, the court reporter record, when you  
14 say this thick, you used your fingers.

15 THE WITNESS: I would say maybe a little  
16 over an inch. All I know it is I put it on the  
17 scale and it weighed 5 ounces.

18 MR. GOODHART: Thank you. And again, I  
19 apologize for interrupting, the court reporter can  
20 only take down words.

21 THE WITNESS: Yeah.

22 MR. GOODHART: Even though there's a  
23 videographer and the video will show you saying  
24 "this much" --

25 THE WITNESS: Yeah.

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1 MR. GOODHART: -- the court reporter will  
2 just say "this much," and we're going to go, how  
3 much was that?

4 THE WITNESS: I wish you all would raise  
5 your voices a little bit because I'm hard of  
6 hearing. Did you get that, Ben?

7 MR. CLOWARD: Yes, I will try and raise  
8 my voice. (Laughter.)

9 THE WITNESS: I assume that this is  
10 supporting documents for this.

11 MR. CLOWARD: Yes. We're going to go  
12 through those. I'm going to actually attach a copy  
13 of this binder as Exhibit, we'll just do 16. And  
14 this is a copy of all of the documents that were  
15 provided last week, Madam reporter. If you want to  
16 just hand that to her. (Witness hands Exhibit 16  
17 to the court reporter.)

18 EXHIBITS:

19 (Deposition Exhibit Number 16 marked for  
20 identification.)

21 MR. GOODHART: Do you have another copy  
22 for us, Ben?

23 MR. CLOWARD: I don't.

24 MR. GOODHART: Have they been  
25 supplemented since last week?

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1 MR. CLOWARD: No, they have not.

2 MR. COOLS: Can we take a look at that  
3 binder first?

4 MR. GOODHART: Yeah, absolutely. (Hands  
5 Mr. Cools Exhibit 16.)

6 Q. (BY MR. CLOWARD) Okay. So why don't you  
7 go ahead and -- Exhibit 1 there, go ahead and look  
8 through that again, if you will, and just identify  
9 what that stack of documents are.

10 A. Okay. The first letter is dated  
11 August 24th, 2012 and it is addressed to Mr. Kurt  
12 Bachmeyer, director of customer relations for  
13 Jacuzzi.

14 Q. Did you author that letter?

15 A. I did.

16 Q. Is that a true and correct copy of the  
17 letter that you authored?

18 A. Yes.

19 Q. What is the next letter in line?

20 A. The next thing is from Jacuzzi survey,  
21 subject is Jacuzzi customer service survey, dated  
22 August 24th, 2012. And it says, We want to hear  
23 from you. Please participate in our customer  
24 service survey.

25 Q. Is that an email you received from

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1 Jacuzzi?

2 A. Yes.

3 Q. Is that a true and correct copy of an  
4 email that you received?

5 A. Yes.

6 Q. What is the next letter in line?

7 A. The next letter is to Mr. Kurt Bachmeyer,  
8 director of customer service at Jacuzzi, dated  
9 September 1, and the subject is, The Jacuzzi  
10 designed for seniors walk-in tub.

11 Q. Is that a letter you authored?

12 A. Yes.

13 Q. Is that a true and correct copy of the  
14 letter you sent?

15 A. Yes, it is.

16 MR. GOODHART: Object to form,  
17 foundation.

18 Q. (BY MR. CLOWARD) Okay. What is the next  
19 in line?

20 A. The next letter is also to Mr. Bachmeyer,  
21 dated September 12th, 2012, subject is Jacuzzi  
22 designed for seniors walk-in tub.

23 Q. Is that a letter you wrote?

24 A. It is.

25 Q. Is that a true and correct copy of the

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1 letter you sent?

2 A. That's correct.

3 MR. GOODHART: Objection, form,  
4 foundation and leading.

5 Q. (BY MR. CLOWARD) What is the next in  
6 line?

7 A. The next in line is a letter dated  
8 October 15th, 2012, also directed to Mr. Kurt  
9 Bachmeyer, director of customer service at Jacuzzi.

10 Q. Is that a letter you wrote?

11 A. Yes, it is.

12 Q. Is that a true and correct copy of the  
13 letter you sent?

14 A. Yes, it is.

15 MR. GOODHART: Objection, form,  
16 foundation and leading.

17 THE WITNESS: I didn't hear what you  
18 said.

19 Q. (BY MR. CLOWARD) He's going to object  
20 from time to time --

21 A. Oh.

22 Q. -- counsel will object. And on Court TV  
23 we see there's usually a judge there, and the judge  
24 will say, sustained or overruled or I'll allow it.  
25 We don't have the luxury of having a judge here

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1     today. We have a good judge, Judge Scotty, but  
2     he's not here, so he can't rule on those  
3     objections. So the way that works is we'll present  
4     those objections down the road and he'll rule on  
5     them at a later date.

6             A. Oh, I understand.

7             Q. And so it's okay -- if they make the  
8     objection, it's okay for you to just give the  
9     answer after they make the objection.

10            A. Okay.

11            MR. GOODHART: I would just request that  
12     you maybe pause for one second before you answer so  
13     if there is an objection, we can do the objection  
14     and we don't talk over each other.

15            THE WITNESS: Oh, okay.

16            MR. GOODHART: Thank you.

17            Q. (BY MR. CLOWARD) What was the next in  
18     line?

19            A. The next in line is another letter to  
20     Mr. --

21            Q. I think we -- I'm so sorry, I think we  
22     actually skipped the September 12th letter.

23            A. Oh, did we?

24            Q. Yeah.

25            A. Okay. September 12th, 2012, to

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1 Mr. Bachmeyer also, and the subject again is the  
2 Jacuzzi designed for seniors walk-in tub.

3 Q. Is that a letter you authored?

4 A. I did.

5 Q. Is that a true and correct copy of the  
6 letter you sent?

7 MR. GOODHART: Object, form, foundation,  
8 leading. You can answer the question.

9 Q. (BY MR. CLOWARD) Is that a true and  
10 correct copy of the letter you would've sent?

11 A. It is.

12 Q. Okay. Now, the next letter in line?

13 A. Is September 1, 2012, to Mr. Bachmeyer,  
14 same subject.

15 Q. Did you author that letter?

16 A. I did.

17 Q. Is that a true and correct copy of the  
18 letter you would've sent?

19 MR. GOODHART: Objection, form,  
20 foundation and leading. Go ahead.

21 A. It is.

22 MR. GOODHART: Thank you.

23 Q. (BY MR. CLOWARD) Now, are these your  
24 handwritten notes?

25 A. Yes.

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1 Q. Okay. And that's the Donaldson Brothers  
2 Readymix?

3 A. No, no, that's just the tablet I had.

4 Q. Okay.

5 A. These handwritten notes are mine that I  
6 just put in my file.

7 Q. Okay. We can move to the next -- the  
8 next in line.

9 A. Well, what I did is I talked to Carol at  
10 Jacuzzi in Daisy, Florida.

11 Q. Okay. So those are notes of phone calls  
12 that you would've made contacting Jacuzzi?

13 A. Yes, yes.

14 Q. And that would've been two different  
15 phone calls?

16 A. Well, it looks like --

17 Q. One to Carol -- I'm sorry, one to --

18 A. I don't know -- I don't know what the  
19 date is that I talked to Carol at Jacuzzi because I  
20 wrote down only the phone number and the price.  
21 Same with Mr. Bachmeyer, I didn't write -- I talked  
22 to Myra, but I don't remember what the date was.  
23 On the 30th of August of '12 I talked to Diane at  
24 Consumer Protection. And on 8/31/12, I talked to  
25 the secretary of state.

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1 Q. Okay. What is this document, this --

2 A. I sent certified mail, I think, but I  
3 don't remember which one.

4 Q. Okay.

5 A. The date on it is August 24th.

6 Q. Okay. This is another copy, I believe,  
7 of the letter to Mr. Bachmeyer that we already  
8 discussed.

9 A. Oh, okay, that's reasonable.

10 But here's the letter dated August 24th,  
11 so maybe this was one I sent certified mail because  
12 the stamp is August 24th, so I don't know. But it  
13 also is a letter to Mr. Bachmeyer.

14 Q. Okay.

15 A. It says, Your email survey arrived this  
16 morning, et cetera, et cetera.

17 Q. Okay. And after the letter, what is next  
18 in that packet?

19 A. Oh, this must be the receipt from the  
20 post office for the certified mail --

21 Q. Okay.

22 A. -- it's dated August 24th.

23 Q. Okay. And the next in line?

24 A. Is a letter from Jacuzzi, Jacuzzi Group  
25 World, it came -- I think it came via email, but

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1 I'm not sure. Yeah, it came -- reply is dated  
2 August 24th, 2012.

3 Q. Is this a true and correct copy of the  
4 email you received from Jacuzzi --

5 A. Yes.

6 Q. -- on the 24th?

7 A. Yes.

8 Q. Is this the survey that you referenced in  
9 your letter to Mr. Bachmeyer?

10 A. Yes. He wanted to -- he wanted to -- he  
11 wanted me to fill out the survey, and I didn't, I  
12 wrote the letter.

13 Q. Okay. And then the next --

14 A. Do you want to go back to that, what I  
15 wrote to him?

16 Q. We will, I'm just going to lay some  
17 foundation for the documents --

18 A. Oh, okay.

19 Q. -- and then we can discuss them  
20 afterwards.

21 A. Okay. The next document is an email from  
22 Jacuzzi, dated August 23rd, 2012, regarding the  
23 tub.

24 Q. And is that a true and correct copy of  
25 the email?

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007300

1 A. Yeah.

2 Q. Okay.

3 A. Next one is another email from Bachmeyer.

4 Q. What is the date?

5 A. November 5th, 2012. And he apologizes  
6 for not receiving a response from firstSTREET  
7 representative.

8 Q. And is this a true and correct copy of  
9 the email you --

10 A. Yes.

11 Q. -- received from Mr. Bachmeyer?

12 A. Yes.

13 Q. Okay.

14 A. Next one is another email dated  
15 November 6th, 2012, from Mr. Bachmeyer.

16 Q. Is this a true and correct copy of the  
17 email you received on November 6th?

18 A. Yes.

19 Q. Okay.

20 A. Next one is an email to Mr. Bachmeyer  
21 regarding the walk-in tub.

22 Q. Did you send that email?

23 A. Yes. And then Mr. Bachmeyer's -- let's  
24 see, this is November 6th.

25 Q. Is that a true and correct copy of the

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1 email you sent?

2 A. Yes, it is. And it records that the tub  
3 was removed from my premises on October 18th by the  
4 original installer from Bigfork, Montana, for which  
5 I paid \$700.

6 Next thing is the -- Let's see, oh,  
7 that's just a reply from Mr. Bachmeyer.

8 The next document is an email from me to  
9 Bachmeyer on November 5th.

10 Q. Did you draft that email?

11 A. Yes.

12 Q. Is that true and correct copy of the  
13 email you sent?

14 A. Yes.

15 The next document is from Kurt Bachmeyer,  
16 director of customer service, and it's -- I don't  
17 know the date here, I can't see a date on this  
18 particular one.

19 Q. I think it's actually --

20 A. Part of the other -- previous?

21 Q. Yeah, we already covered that, it was --

22 A. Okay. And it says, I have confirmed with  
23 our president of Jacuzzi that they will be  
24 responding to your concerns and issues as outlined  
25 in your letter.



1 Q. Did the president of Jacuzzi ever get  
2 with you?

3 A. No, not to my knowledge.

4 Q. Okay. And I think --

5 A. The last letter here is dated July 25th,  
6 2013, and it's directed to Mrs. Sarah Johnson,  
7 Aging In The Home advisor, Jacuzzi marketing  
8 department at Colonial Heights, Virginia.

9 Q. Is that a letter that you drafted?

10 A. Yes.

11 Q. Is that a true and correct copy of the  
12 letter you sent?

13 A. Yes.

14 MR. GOODHART: Object, form, foundation,  
15 leading.

16 Q. (BY MR. CLOWARD) Now, on the January 11  
17 letter from the wholesale division, that letter, I  
18 think that I asked you, but I just need to make  
19 sure --

20 A. January 11th, 2013?

21 Q. Okay. Is that a true and correct copy of  
22 the letter --

23 A. Yes.

24 Q. -- you received?

25 A. Yes.

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1 Q. Okay.

2 A. It's the one signed by John Bassett,  
3 division manager.

4 Q. Okay. So we will set those aside. Let  
5 me paper clip those for you. This stack will be  
6 Exhibit 1. And I forgot to --

7 A. Do I give these to Terry {sic}?

8 Q. You can just leave them.

9 A. Oh, just leave it as is?

10 Q. Yeah. I forgot to give you your  
11 paperclip remover. So there you go, there's that  
12 back.

13 A. I've got lots of clips at home that you  
14 gave me back.

15 Q. Okay. Now, if we can go through this  
16 next stack of documents.

17 EXHIBITS:

18 (Deposition Exhibit Number 2 marked for  
19 identification.)

20 MR. GOODHART: Ben, can you identify the  
21 first page of those documents, so I can find it in  
22 the ones you've provided?

23 MR. CLOWARD: Yeah it's the one that says  
24 from Jerre Chopper to Nick Fawkes, nick.fawkes, and  
25 the subject is Installation of tub. And it should

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007304

1 be clipped together, in front of that it might be a  
2 letter to Royce A. McCarthy {sic}, it should be the  
3 same documents. Look for that letter.

4 MR. GOODHART: Royce McCarthy?

5 MR. CLOWARD: Yeah, either Royce  
6 McCarthy -- or that one right there in your hand, I  
7 think, is that it or not?

8 MR. GOODHART: No.

9 MR. COOLS: This is the right one.

10 THE WITNESS: Terry, would you help me  
11 with my jacket, please? (Speaking to court  
12 reporter.)

13 MR. GOODHART: Let's go off the record  
14 for a second.

15 THE WITNESS: Just take it off my  
16 shoulders --

17 VIDEOGRAPHER SIMONICH: Let the record  
18 reflect a break was taken at 12:25.

19 THE WITNESS: -- and put it on the back  
20 of the chair.

21 (Discussion held off the record.)

22 VIDEOGRAPHER SIMONICH: The deposition is  
23 being resumed at 12:25 p.m.

24 MR. GOODHART: Just real quickly, it's my  
25 understanding, Ben, off the record we had a

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1 discussion about the next documents you're going to  
2 show to Ms. Chopper, it's my understanding they  
3 were not included in the packet of documents you  
4 provided to me this morning, through no fault of  
5 anybody's, it's you didn't have enough copies?

6 MR. CLOWARD: Correct. But my  
7 understanding is --

8 MR. GOODHART: I'm going to try to share  
9 them with Jacuzzi's counsel the best we can.

10 MR. CLOWARD: Because Jacuzzi's counsel  
11 has two copies.

12 MR. COOLS: You can have that one.

13 MR. GOODHART: Oh, you have two copies?  
14 It was Jacuzzi's counsel that stole it.

15 (Laughter.)

16 MR. CLOWARD: No, I meant to make sure  
17 that I alerted you or whoever got the S packet that  
18 it was short --

19 MR. COOLS: He made sure that you had the  
20 S packet.

21 MR. CLOWARD: -- one copy.

22 That is not true. That is not true.

23 MS. LLEWELLYN: We had an extra copy.

24 MR. GOODHART: Thank you.

25 Q. (BY MR. CLOWARD) Okay. So now I'm going

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1 to hand you what we've marked as Exhibit 2. And  
2 the front page of this stack is an email dated  
3 July 11 from Ms. Chopper to Nick Fawkes?

4 A. Yes, July 11th, 2012, directed to Nick  
5 Fawkes, general manager of firstSTREET and AIHR  
6 Remodelers --

7 Q. All right. Is that a --

8 A. -- references my visit with production  
9 person Tracy Dierkens.

10 Q. Is that a letter that you drafted -- or  
11 an email that you wrote?

12 A. Let's see, it was an email, I guess, an  
13 email addressed to Nick Fawkes at Aging In the Home  
14 Remodelers.

15 Q. Did you draft that email?

16 A. I did.

17 Q. Is that a true and correct copy of the  
18 email?

19 A. It is.

20 Q. What is the next in line?

21 A. The next in line is an email from Nick  
22 Fawkes to me, dated July 13th, 2012.

23 Q. Is that a true and correct copy of an  
24 email you received from Nick Fawkes?

25 A. Yes.

007307

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1 Q. Okay. What is the next?

2 A. And then my reply to that.

3 Q. What is the next?

4 A. August 15th, 2012, to AIHR at Littleton,  
5 Colorado.

6 Q. Is that a letter you drafted?

7 A. Yes.

8 Q. Is that a true and correct copy of the  
9 letter you would've sent?

10 A. Yes.

11 MR. GOODHART: Objection, form,  
12 foundation, leading.

13 Q. (BY MR. CLOWARD) What is the next?

14 A. The next is an invoice from Aging In The  
15 Home Remodelers at Littleton, Colorado, to me, and  
16 it is an invoice for designed for seniors Jacuzzi  
17 walk-in tub and installation, \$14,700.

18 Q. Okay. At the bottom I see it says Amount  
19 Paid, 5,000.

20 A. Well, the \$5,000 was what I gave the  
21 salesman when I signed the contract.

22 Q. Okay. And is this a true and correct  
23 copy of the invoice you received?

24 A. Right.

25 Q. And if you flip the next page, is this

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1 the 5,000 payment that you were referencing?

2 A. Yes.

3 Q. Is that a true and correct copy of that  
4 document?

5 A. Yes.

6 Q. Okay. Now, the next is?

7 A. Next is email from me to Nick Fawkes --

8 Q. Okay.

9 A. -- regarding the installer Mike Kirchner  
10 in Bigfork, Montana.

11 Q. What is the date of that?

12 A. July 11th, 2012.

13 MR. COOLS: Where are you at?

14 MR. CLOWARD: Oh, I think that's just  
15 another copy of the -- That's probably your copy,  
16 Phil, that's your copy. (Laughter.)

17 THE WITNESS: Do you want me to tear it  
18 out?

19 MR. GOODHART: I don't have that email.

20 MR. CLOWARD: Yeah, tear that out and  
21 let's give that to Phil. Because I don't have that  
22 in my stack, so that's probably where the extra  
23 copy went.

24 THE WITNESS: Just a minute.

25 MR. GOODHART: I'm confused, but that's

603700

007309



1     okay.

2                   MR. COOLS:   Is there one copy that has  
3     the additional documents and all the other copies  
4     don't, is that what it is?

5                   MR. CLOWARD:   His was the only one that  
6     did not have a copy of that email.   Because when I  
7     was putting everything together, I would put -- I  
8     had a stack from the copy center like this, and it  
9     was literally like making five -- one, two, three,  
10    four, five stacks, and I remember that one was the  
11    one that didn't --

12                  MR. COOLS:   Which email are we talking  
13    about?

14                  MR. CLOWARD:   You can have that, you can  
15    have that.

16                  MR. GOODHART:   But nobody else has it?

17                  MR. CLOWARD:   No, that's the first one  
18    that we talked about, July 11, that's a copy of  
19    that.

20                  MS. LLEWELLYN:   So just to be clear, we  
21    have the whole packet marked as Exhibit 2; is that  
22    right?

23                  MR. CLOWARD:   Yes.

24                  MS. LLEWELLYN:   And is it that the  
25    entirety of Exhibit 2 was not included with one of

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1 the packets, or was it just the one email that was  
2 at the front?

3 MR. CLOWARD: This one email was not  
4 originally in Phil's packet.

5 MR. COOLS: I see it got mixed in with  
6 another pile, so it was in the middle of hers and  
7 was not in Phil's at all?

8 MR. CLOWARD: Exactly --

9 THE WITNESS: And this --

10 MR. CLOWARD: -- it got mixed in with her  
11 pile. So this is the email, so now everyone has a  
12 copy of the email. I looked for that thing for  
13 half an hour last night and I was like, I know she  
14 made five copies of everything, where did it go?  
15 Well, problem solved.

16 A. Well, and the next one is the original  
17 invoice, whereas the one before was a copy of the  
18 invoice.

19 Q. (BY MR. CLOWARD) Okay. So what is  
20 the --

21 A. Oh, no, wait a minute, it's a different  
22 invoice, it says Final Invoice, dated August 21st,  
23 2012, and it is a demand for payment of \$4,850.

24 Q. Okay. And is that a true and correct  
25 copy of the invoice you received?

1 A. Yes.

2 Q. Okay. What is the next in line?

3 A. Apparently they sent me a paid invoice,  
4 paid \$4,850.

5 Q. And is that a true and correct copy of  
6 the document you received?

7 A. Yeah, yes.

8 Q. Okay. What is next in line?

9 A. Well, let's see, what is this? Oh, it's  
10 a stop payment request. And I can't read the date  
11 on it. Account number.

12 Q. I believe it's right there.

13 A. Date of request 8/16 of '12.

14 Q. Okay.

15 MR. COOLS: I think at least in my stack  
16 we skipped an email; right?

17 MR. CLOWARD: Is that the Nick Fawkes  
18 email?

19 MR. COOLS: Yeah, but it's a July 13,  
20 wasn't the other one a July 11 email?

21 MR. GOODHART: There's also a July 13th  
22 from Nick Fawkes.

23 MR. CLOWARD: His response.

24 MR. COOLS: I guess I just want to make  
25 sure that I know what's in her --

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1 MR. CLOWARD: At the very first of your  
2 stack there's a July 11 --

3 MR. COOLS: Right.

4 MR. CLOWARD: -- and then a July 13  
5 response, so that's probably just a duplicate of  
6 that.

7 MR. COOLS: Well, yeah, so -- here, just  
8 so you see my order, so we've got the invoice,  
9 we've got her payment authorization, then I have  
10 the July 13 email --

11 MR. CLOWARD: Okay.

12 MR. COOLS: -- which I don't believe she  
13 identified as she's going through her stack; right?

14 MR. CLOWARD: Yeah.

15 MR. COOLS: And then the stop payment, so  
16 I just want to make sure I know what's in her  
17 stack.

18 MR. CLOWARD: So that's page 2 of the  
19 missing email from your stack.

20 MR. GOODHART: It was just they were  
21 assembled out of order.

22 MR. CLOWARD: At 2 a.m., yeah.

23 MR. COOLS: Okay. So does she have -- I  
24 guess, does she have this email --

25 MR. CLOWARD: No, no.

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1 MR. COOLS: -- the July 13 one in her  
2 stack?

3 MR. CLOWARD: No. Well, she has it as  
4 the very first page of Exhibit 2. The first two  
5 pages are those, and those are the ones that Phil  
6 did not get.

7 MR. COOLS: Oh, I see, okay.

8 MR. CLOWARD: So if you rip that out and  
9 hand that -- now everybody's --

10 MR. GOODHART: We're getting there, okay.

11 (Parties speaking over each other,  
12 unintelligible.)

13 MR. GOODHART: We're getting there  
14 though. We're getting there.

15 Q. (BY MR. CLOWARD) Okay. And what is the  
16 blue document there, stop payment?

17 A. That's the stop payment request.

18 Q. Okay. And what is the next in line?

19 A. Well, it's a check dated -- on my account  
20 on 9/10/12 for \$4,850, but it's not signed, it was  
21 never sent.

22 Q. Okay. And what is the last in line?

23 A. The next is Aging In The Home Remodelers  
24 at Littleton, Colorado, addressed to me, dated 22nd  
25 of August of 2012.

007314

007314

1 Q. Okay.

2 MR. COOLS: Before I forget, can we just  
3 maybe put on the record that the exhibits be  
4 marked -- or be sealed as part of the -- under the  
5 confidentiality and protective order, since it has  
6 her bank account information?

7 MR. CLOWARD: I would not agree to seal  
8 the entirety of the documents under the  
9 confidentiality, but I would absolutely --

10 MR. COOLS: Well, I'm not suggesting the  
11 whole of the documents, but anything that has her  
12 personal identifying information should not be --

13 MR. CLOWARD: Absolutely, absolutely.

14 MR. GOODHART: Yeah, I agree with that as  
15 well.

16 MR. CLOWARD: I'm more than happy to  
17 protect those documents. As I see it, the two  
18 documents in that stack would be the check and the  
19 stop payment.

20 MR. GOODHART: There's also some banking  
21 information on the ACH debit withdrawal which has  
22 routing numbers.

23 THE WITNESS: Yeah, there's information  
24 on my check.

25 MR. GOODHART: Yeah. What we can do,

1 Ben, so I don't want to interrupt this, we'll go  
2 through this together and we can agree that any  
3 banking information be redacted from those pages in  
4 those documents.

5 MR. CLOWARD: That's fine.

6 Q. (BY MR. CLOWARD) Okay. Now the next  
7 letter?

8 A. The next letter is August 9th, 2013,  
9 addressed to Royce McCarty, Junior, PC, Attorney At  
10 Law in Hamilton, Montana.

11 Q. Is that a letter you drafted?

12 A. Yes.

13 Q. Is that a true and correct copy of the  
14 letter --

15 A. Yes.

16 MR. COOLS: Can I ask a question? Sorry.  
17 I've got this page before the letter, do we know  
18 what this goes to?

19 MR. CLOWARD: I believe that goes to the  
20 letter -- or the invoice dated August 21st, the  
21 final invoice that's coming from Aging in the Home  
22 out of Littleton.

23 MR. COOLS: Okay.

24 MR. CLOWARD: I believe that's where it  
25 comes from.

007316

007316



1 Q. (BY MR. CLOWARD) What is next in line?

2 A. Next in line is an email from Royce  
3 McCarty, addressed to me, August 22nd, 2013, and he  
4 apologizes for taking so long to respond to my  
5 letter of August 9th.

6 Q. And is that an email you received?

7 A. Yes.

8 Q. And that's a true and correct copy of the  
9 email you received?

10 A. Yes.

11 Q. Okay. What is the next in line?

12 A. The next in line is a letter addressed to  
13 Royce McCarty, dated September 16th, 2012, subject  
14 is Jacuzzi designed for seniors walk-in tub, and it  
15 says, Enclosed is my check owing for our time  
16 discussing, et cetera, et cetera.

17 Q. Is that a letter you drafted?

18 A. Yes.

19 Q. Is that a true and correct copy of the  
20 letter?

21 A. Yes.

22 Q. What is next in line?

23 A. The next one is on Boatwright Law Office,  
24 PC, Jennifer P. Lint, and it's a transmittal  
25 memorandum dated September 28th, 2012, regarding

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007317

1 the Jacuzzi tub, Attached please find the following  
2 letter to Aging In The Home Remodelers, signed by  
3 Jennifer Lint.

4 Q. Is that a true and correct copy of the  
5 document you received?

6 A. Yes, yes.

7 Q. Okay. Is the next in line the letter  
8 that you received?

9 A. No, the next one in my packet is from the  
10 Boatwright Law Offices, addressed to Monique  
11 Trujillo.

12 Q. Okay. If you see -- if you go back to  
13 the previous page, do you see where it says,  
14 Attached please find the following letter to Aging  
15 In The Home Remodelers, dated September 28th, 2012?

16 A. Yes.

17 Q. Was -- and then if you flip the page, is  
18 that the letter that was attached?

19 MR. GOODHART: Objection, leading, form,  
20 foundation.

21 A. No, I think something must be out of  
22 line out of -- oh, wait a minute, maybe there's two  
23 pages stuck together. No, I guess not. I don't  
24 think so anyway. My hand is dry. It doesn't --  
25 no, it's not.

1 Q. (BY MR. CLOWARD) Okay. Who is the  
2 letter -- the next letter addressed to?

3 A. Monique Trujillo.

4 Q. Of where?

5 A. Aging In The Home Remodelers at  
6 Littleton, and it's on Boatwright Law Office  
7 letterhead, Jennifer P. Lint.

8 Q. Okay. What's the date of that letter?

9 A. September 28th, 2012.

10 Q. Now go back one page.

11 A. Go back one page?

12 Q. Yeah. Okay.

13 A. Another one?

14 Q. Nope, right there.

15 So here they're referencing a letter  
16 provided to you that they sent, would you agree  
17 with that?

18 MR. GOODHART: Objection, leading, form  
19 and foundation, assumes facts.

20 MR. COOLS: Join.

21 A. This stationary is so thick.

22 Q. (BY MR. CLOWARD) Yeah, it is.

23 Okay. So do you see here where it says,  
24 Letter to Aging in the Home, and this says Attached  
25 please find... So would you agree that Boatwright

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1 offices wrote a letter to you attaching a letter  
2 that they wrote?

3 MR. GOODHART: Objection, leading,  
4 assumes facts, form and foundation.

5 MR. COOLS: Join.

6 A. Well, that's not -- oh, yes, yes, the  
7 next one is on Boatwright Law Office letterhead,  
8 dated September 28th, and it's addressed to Monique  
9 Trujillo, Aging In The Home Remodelers, referencing  
10 Jerre Chopper, 225 Hillcrest Drive, Hamilton,  
11 Montana.

12 Q. (BY MR. CLOWARD) Okay. So is the letter  
13 of September 28th addressed to Monique Trujillo --

14 A. Yes.

15 Q. -- a copy of the letter that was sent to  
16 you by Boatwright Law?

17 A. Yeah.

18 MR. GOODHART: Objection, leading, form  
19 and foundation.

20 Q. (BY MR. CLOWARD) Okay. What is the next  
21 document?

22 A. The next document is also on Boatwright  
23 Law Office letterhead, Jennifer P. Lint, addressed  
24 to me, regarding Jacuzzi tub, and it is signed by  
25 Jennifer Lint. It says, We received a telephone

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1 call from AIHR in response to our letter.

2 Q. What is the date of that letter?

3 A. October 5th, 2012.

4 Q. Okay. And is that a true and correct  
5 copy of the letter you received?

6 A. Yeah.

7 MR. GOODHART: Object to form,  
8 foundation.

9 A. It's an original.

10 Q. (BY MR. CLOWARD) Okay. What is the next  
11 in line?

12 A. The next letter is on firstSTREET  
13 letterhead, dated November 29th, addressed to me  
14 and signed by Stacey L. Hackney.

15 Q. Is that a true and correct copy --

16 A. Yes.

17 Q. -- of the letter you received?

18 A. Yes, it's the original.

19 Q. And next in line is an envelope?

20 A. Yes.

21 Q. And the stamp date on the envelope is  
22 November 30th --

23 A. November 30th, 2012. And it's addressed  
24 to me, and it came from firstSTREET at Colonial  
25 Heights.

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1 Q. And that's a true and correct copy of  
2 that?

3 A. Yeah.

4 Q. Okay. Now what is the next in line?

5 A. Next in line is the letter dated  
6 December 4th, 2012, addressed to Ms. Stacey L.  
7 Hackney at firstSTREET Boomers & Beyond at Colonial  
8 Heights, Virginia, subject is Jacuzzi tub.

9 Q. Did you draft that letter?

10 A. Yes.

11 Q. Is that a true and correct copy of the  
12 letter you sent?

13 A. Yes --

14 MR. GOODHART: Object to form,  
15 foundation --

16 A. -- it was a two-paged letter.

17 MR. GOODHART: I'm sorry, let me have my  
18 objections. That's just for the court reporter  
19 because she cannot take down what we're saying when  
20 we --

21 THE WITNESS: Well, I probably can't hear  
22 you.

23 MR. GOODHART: I apologize. I'll try and  
24 speak up. My objection was form, foundation and  
25 leading. And now you can answer the question,

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007322

1 ma'am.

2 A. Yes, I drafted the letter. There were  
3 copies sent to Royce McCarty, Jennifer Lint and  
4 Kurt Bachmeyer.

5 And the next is a hand-scribbled note to  
6 myself, I guess, message machine 9/12 -- oh, I  
7 guess I must've left a message, I don't know  
8 exactly. It's dated September 19th, 2012,  
9 addressed to Monique Trujillo, customer service  
10 manager.

11 Q. (BY MR. CLOWARD) And the next in line?

12 A. Next in line is a letter --

13 MR. COOLS: I don't have that on my --

14 A. -- on firstSTREET letterhead, dated  
15 September 12th, 2012, addressed to me and signed by  
16 Monique Trujillo, customer service manager.

17 Q. (BY MR. CLOWARD) Okay. And that's a  
18 true and correct copy of the letter --

19 A. Yes.

20 Q. -- you received from --

21 A. Yes.

22 MR. CLOWARD: Okay. Did everyone get a  
23 copy of that sticky note with the letter from  
24 firstSTREET? I have an extra one here.

25 MR. GOODHART: No, I didn't have the

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1 sticky note on mine.

2 MR. COOLS: That's this?

3 MR. GOODHART: I have a copy of that, but  
4 I don't have the sticky note.

5 MR. COOLS: He's just referring to this.

6 MR. GOODHART: Oh, okay, I got it, I got  
7 it.

8 MR. CLOWARD: So you have it?

9 MR. GOODHART: I have it.

10 MS. LLEWELLYN: I have received it  
11 earlier, but if you want to give me a copy, that  
12 would be great.

13 MR. CLOWARD: There you go.

14 Okay. So we're going to -- that entire  
15 packet will be Exhibit 2. You can just leave those  
16 right there.

17 THE WITNESS: Okay.

18 MR. CLOWARD: With the nice reporter,  
19 madam reporter. And then the next in line will be  
20 an email from Ms. Chopper to Camp Kirchner, the  
21 subject is Tub.

22 MR. GOODHART: Is it September 12th?

23 MR. CLOWARD: Correct.

24 MR. GOODHART: Okay.

25 MR. CLOWARD: This will be Exhibit 3.

007324

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1 EXHIBITS:

2 (Deposition Exhibit Number 3 marked for  
3 identification.)

4 Q. (BY MR. CLOWARD) Do you recognize that  
5 document?

6 A. Yes, it's addressed to Camp Kirchner,  
7 that's the email address, regarding the tub.

8 Q. Did you draft that email?

9 A. Yes.

10 Q. Is that a true and correct copy of the  
11 email --

12 A. Yes.

13 Q. -- you had sent?

14 A. Yes.

15 Q. Okay. What is the next in line?

16 A. The next in line is an email from Camp  
17 Kirchner, to me, dated September 14th, 2012, and  
18 there's no subject line, but it says, I have heard  
19 nothing, still have a tub in my storage.

20 Q. Is that a true and correct copy of the  
21 email --

22 A. Yes.

23 Q. -- you received?

24 A. Yes.

25 Q. Okay. And you're doing a really nice job

007325

007325

1 with making sure to give everybody an opportunity,  
2 but the court reporter, she has to type things down  
3 in sequence, so if I'm not finished with my  
4 question when you start to give your answer, on the  
5 transcript it'll actually give half of my  
6 question --

7 A. Oh.

8 Q. -- then your answer, then the latter part  
9 of my --

10 A. I'm sorry.

11 Q. It's okay.

12 A. I will speak slower.

13 Q. No, it's no problem. We just want to  
14 make her job as easy as possible because it's  
15 already tough enough.

16 Okay. Now what is the next in line?

17 A. It's an email from Camp Kirchner  
18 regarding tub, dated September 15th, 2012.

19 Q. Is this a true and correct copy of the  
20 email you received?

21 A. Yes, and then my reply is on the bottom  
22 of that.

23 Q. Okay. Or is his email a reply to yours?

24 A. I mean, it's a reply to Camp Kirchner.

25 Q. Okay. And then the next in line?

007326

007326

1           A. Is an email from me to Camp Kirchner,  
2           subject is AIHR.

3           Q. Is that a true and correct copy of the  
4           email you sent?

5           A. Yes.

6           Q. And the next in line?

7           A. It is an email from me to Camp Kirchner,  
8           the subject is, The continuing saga, dated  
9           September 18th, 2012.

10          Q. Is that a true and correct copy of the  
11          email you sent?

12          A. Yes.

13          Q. And then the next in line?

14          A. Is an email from Camp Kirchner to me,  
15          dated September 19th, 2012, and the subject, It was  
16          clear.

17          Q. And is that a true and correct copy of  
18          the email --

19          A. Yes.

20          Q. -- you received?

21          A. Yes.

22          Q. Okay. Next in line?

23          A. Next in line is a letter dated  
24          October 5th, 2013, addressed to Mr. Mike Kirchner  
25          at Bigfork, Montana.

007327

007327

1 Q. Is that a letter you drafted?

2 A. It is.

3 Q. And is it true and correct of the letter  
4 you sent?

5 A. Yes.

6 MR. GOODHART: Objection, form,  
7 foundation, leading.

8 Q. (BY MR. CLOWARD) And the next in line?

9 A. Is a letter dated -- Well, there's two  
10 copies of the same letter, so somehow you got them  
11 mixed up, I guess. Do you want me to cut this one  
12 out?

13 Q. Well, it looks like one is dated  
14 October 5th and one is October 7th and then another  
15 on October 5th --

16 A. Well, there's two copies of the  
17 October 5th letter, that's what I'm getting at.

18 Q. Oh, okay.

19 A. Do you want me to --

20 Q. Well, why don't you compare the first and  
21 the last one on October 5th, compare this letter --

22 A. Uh-huh.

23 Q. -- with this letter -- or no -- yeah,  
24 sorry, yeah. Which one of those would've been the  
25 one sent?

007328

007328

1 MR. GOODHART: Object to form,  
2 foundation --

3 A. Well, they're two copies --

4 MR. GOODHART: -- leading.

5 A. -- of the same letter.

6 Q. (BY MR. CLOWARD) Okay.

7 A. It's a duplicate.

8 Q. Okay. We can move on to October 7th.

9 A. October 7th is a letter from me to Mike  
10 Kirchner at Bigfork, Montana.

11 Q. Okay. And that's a letter that you  
12 would've drafted?

13 A. It is.

14 Q. And it's a true and correct copy of the  
15 letter you would've sent?

16 A. It is.

17 MR. GOODHART: Object to form,  
18 foundation --

19 MR. COOLS: Join.

20 MR. GOODHART: -- leading.

21 MR. COOLS: Join.

22 MR. CLOWARD: Okay. So now let's go to  
23 the next stack of documents, which will be the  
24 letters to the U.S. Consumer Product Safety  
25 Commission, which we'll mark as Exhibit 4.

007329

007329

1 Oh, man, I marked the wrong one.

2 MR. GOODHART: Do you want a clean copy,  
3 Ben?

4 MR. CLOWARD: No, I've got it over here.

5 EXHIBITS:

6 (Deposition Exhibit Number 4 marked for  
7 identification.)

8 Q. (BY MR. CLOWARD) Okay. This will be  
9 marked as Exhibit 4, this next stack. What do you  
10 recognize this document to be?

11 A. It's a letter dated October 10th, 2012,  
12 to the U.S. Consumer Product Safety Commission at  
13 Bethesda, Maryland.

14 Q. Is this a letter you drafted?

15 A. It is.

16 Q. Is that a true and correct copy of the  
17 letter you sent?

18 A. It is.

19 Q. And what is the next letter -- or the  
20 next thing in line?

21 A. Well, it's a hand-scribbled note, Federal  
22 Trade Commission -- it was an email addressed to  
23 the Federal Trade Commission. And then there's a  
24 note here from the BBB, Federal Product Safety  
25 Commission, I don't know, I talked to somebody

007330

007330

1 named Sandra.

2 Q. Okay. What is next in line?

3 A. It's a letter from the Federal Trade  
4 Commission protecting -- Federal Trade Commission  
5 report and general complaint, I don't see a date  
6 here.

7 Q. Looks like -- at the bottom right it  
8 looks like there's a date that maybe that's when  
9 you printed it.

10 A. Oh, yes, I don't know. It says it's  
11 October 9th, 2012, 11:23 a.m.

12 Q. Okay. What's the next in line?

13 A. It also is a Federal Trade Commission,  
14 and it's a -- it says Last Modified Tuesday,  
15 September 16th -- September 18th, 2012, but it  
16 must've been a phone call or it references a phone  
17 call and it's from area code 202, for RN and  
18 related information.

19 Q. Okay. Do you recognize the post  
20 office --

21 A. It went express mail.

22 Q. And where did that go?

23 A. To the U.S. Consumer Product Safety  
24 Commission in Bethesda, Maryland.

25 Q. And was that the postage for the letter

007331

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1     you sent on the 10th?

2             A.   Yes, October 10th, 2012 --

3             Q.   Okay.

4             A.   -- the postage for that letter.

5             Q.   And is the next in line a receipt that  
6     you paid?  Is that the receipt for the --

7             A.   Yeah, it's a copy of the receipt.

8             Q.   Okay.  Now, the next in line is a  
9     document, looks like it's date stamped or received  
10    by CPSC, October 12 at 4:46, by the office of the  
11    secretary.

12            A.   Yes.

13            Q.   Is this a letter that they sent back to  
14    you, stamping that they had received your letter?

15            A.   Uh-huh, yes.

16            MR. GOODHART:  Objection, leading.

17            Q.   (BY MR. CLOWARD)  Okay.  Is that a true  
18    and correct copy of the letter that you received  
19    from them?

20            A.   Yes.

21            Q.   And that's three pages?

22            A.   Yes.

23            Q.   And what is this next document?

24            A.   This is a copy of your report to the U.S.  
25    Consumer Product Safety Commission submitted on

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007332

1     October 17th, 2012. In order for this report to be  
2     included in the CPSC's database, the Publicity  
3     Available Consumer Product Safety Information  
4     database available on www.saferproducts.gov, you  
5     must complete the last page of the report and  
6     return it to CS -- CPSC.

7             Q. So is this a true and correct copy of a  
8     document you received --

9             A. Yes.

10            Q. -- from the U.S. Consumer Product Safety  
11    Commission?

12            A. Yes.

13            Q. All right. Did you in fact -- I guess  
14    we'll get there.

15            A. Yes, it's multiple pages here.

16            Q. So we'll just go page by page. Let's  
17    start on the 10/17 date.

18            A. Okay.

19            Q. Now, flip to the next page.

20            A. The next page is --

21            Q. Is that a continuation?

22            A. It's a continuation of this document.

23            Q. And at the top, for identification, the  
24    top of that document starts out saying --

25            A. On August 15th.

007333

007333

1 Q. Okay. Now, if you'll flip to the next  
2 page, is the next page a continuation?

3 A. Yes.

4 Q. And what does it say at the top of that  
5 page for identification?

6 A. An email with my email address, with my  
7 phone number.

8 Q. Okay. And then the next page, is there a  
9 continuation?

10 A. Yes, it's the -- at the top of the letter  
11 it says Explanation.

12 Q. Okay. Now, go to the next page.

13 A. The next page is a letter addressed --  
14 let's see, it's from CPSC at Bethesda, addressed to  
15 me, it's dated 10/18/2012, subject, My report  
16 pending your consent and validation, so that's the  
17 subject.

18 Q. Is this a document you received from  
19 CPSC?

20 A. Yes.

21 Q. A true and correct copy?

22 A. Yes.

23 Q. Is the next page a continuation of that?

24 A. It's a continuation of that.

25 Q. Okay. Now, what is this next document?

007334

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1           A. It's a consent and submit report  
2           regarding, then it gives the numbers there. Please  
3           let us know how you would like to handle your  
4           report. And I said, yes, you may include my report  
5           in the public database, and yes, you may release my  
6           name and contact information to the product  
7           manufacturer or private labeler.

8           Q. Okay.

9           A. It's dated 10/23, and I signed it.

10          Q. And did you return that to --

11          A. Yes.

12          Q. -- the CPSC?

13          A. Yes.

14          Q. Okay.

15          A. The next -- I don't know, this is a copy  
16          of an envelope addressed to them, but it's also  
17          from them, business reply mail.

18          Q. Okay. And what is the next in line?

19          A. The next one is addendum dated -- I guess  
20          it was an addendum dated to my -- my submission  
21          to -- because it goes to the U.S. Consumer Product  
22          Safety Commission.

23          Q. Okay. Is that -- did you draft that?

24          A. Yes.

25          Q. And you would've sent that?

007335

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1 A. Yes.

2 Q. Is that a true and correct copy of the  
3 letter you sent?

4 A. Yes.

5 MR. GOODHART: Objection, form,  
6 foundation and leading.

7 MR. COOLS: Join.

8 Q. (BY MR. CLOWARD) Now, the next in line?

9 A. The next in line is dated November 23rd,  
10 2012, the subject is CPSC, Notified the  
11 manufacturer about your report number, et cetera,  
12 et cetera. And it says, On Friday, November 23rd,  
13 2012, the U.S. Consumer Product Safety Commission  
14 sent your report number so-and-so to the  
15 manufacturer or the private labeler of the consumer  
16 product described in your report number. If you  
17 consented to give your contact information to  
18 the -- if you consented to give your contact  
19 information to the manufacturer, this information  
20 was also provided.

21 Q. Okay. Is that a true and correct copy of  
22 the --

23 A. Yeah.

24 Q. -- email you received --

25 A. Right.

007336

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1 Q. -- on November 23rd from the CPSC?

2 A. Yes.

3 Q. Okay. Now, it looks like the next page  
4 is a duplicate of that --

5 MR. GOODHART: Object to form.

6 Q. (BY MR. CLOWARD) -- is that accurate?

7 MR. GOODHART: Object to form.

8 MR. COOLS: Join.

9 A. I think it is. Yes, it's a duplicate.

10 Q. (BY MR. CLOWARD) And the next page I  
11 believe is also a duplicate?

12 MR. GOODHART: Object to form.

13 MR. COOLS: Join.

14 A. Yes, it's a duplicate. But apparently --  
15 apparently they sent an email to  
16 www.saferproducts.gov.

17 Q. (BY MR. CLOWARD) Okay. What is the next  
18 in line there?

19 A. The next in line is an email from  
20 December 19th, 2012, and the subject is, Report  
21 number, and it's all that regarding the tub.

22 Q. Is this an email that you received from  
23 the CPSC?

24 A. Yes.

25 Q. A true and correct copy of the email you

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1 received?

2 A. Yes.

3 Q. Is the next in line just a duplicate?

4 A. It appears to be.

5 Q. Okay. Do you know what this document is?

6 A. Federal Product Safety Commission, and  
7 I -- it's -- I don't know whether it was an email  
8 or what it was, it was -- I don't know, it says  
9 here the same thing, www.saferproducts.gov.

10 Q. Okay. And the next in line?

11 A. Is a copy of an envelope that I received  
12 from the Consumer Product Safety Commission in  
13 Bethesda.

14 Q. And what was the date of that stamp?

15 A. October 19th, 2012.

16 Q. Okay. And that's a true and correct copy  
17 of the envelope?

18 A. Yes.

19 EXHIBITS:

20 (Deposition Exhibit Number 5 marked for  
21 identification.)

22 Q. (BY MR. CLOWARD) All right. So the next  
23 exhibit will be Exhibit 5, and it is a letter to  
24 Michael Shin -- or a stack with the first letter in  
25 the stack addressed to Michael Shin.

007338

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1           A. The letter is dated September 5th, 2012,  
2 addressed to Mr. Michael Shin, Department of Elder  
3 Fraud, U.S. Attorney General in Billings, Montana.  
4 The subject is Jacuzzi designed for seniors walk-in  
5 tub. It's signed by me. And I don't know, here's  
6 a phone number or -- apparently I talked to  
7 somebody named Laurie.

8           Q. Okay. Is this -- did you draft this  
9 letter?

10          A. Yes.

11          Q. And it's a true and correct copy of the  
12 letter you would've sent?

13          A. Yes.

14               MR. GOODHART: Object to form,  
15 foundation, leading.

16               MR. COOLS: Join.

17          Q. (BY MR. CLOWARD) All right. What is the  
18 next in line?

19          A. The next in line is a letter dated  
20 September 26th, addressed to Michael Shin, Subject  
21 is Jacuzzi designed for seniors walk-in tub, and I  
22 sent that letter.

23          Q. And that's a true and correct copy of the  
24 letter you sent?

25          A. Yes.

007339

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1 Q. Okay. And the next in line?

2 MR. GOODHART: Object to form,  
3 foundation, leading.

4 MR. COOLS: Join.

5 Q. (BY MR. CLOWARD) And what is the next in  
6 line?

7 A. The next in line is a letter dated  
8 September 10th, 2012, addressed to Steve Bullock,  
9 Attorney General of Montana, in Helena, Montana.  
10 Attention offices of consumer protection and elder  
11 fraud, subject is Jacuzzi designed for seniors  
12 walk-in tub. And it is -- I drafted it.

13 Q. And is that a true and correct copy of  
14 the letter you drafted?

15 A. Yes.

16 MR. GOODHART: Objection, form,  
17 foundation, leading.

18 MR. COOLS: Join.

19 Q. (BY MR. CLOWARD) Okay. What is the next  
20 in line?

21 A. The next in line is a letter from the  
22 State of Montana Department of Justice, Office of  
23 Consumer Protection, and it is from Steve Bullock,  
24 Attorney General, dated September 13th, 2012, it's  
25 signed by Marcus Myer, Office of Consumer

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1 Protection.

2 Q. Okay. And that's a true and correct  
3 copy --

4 A. Yes.

5 Q. -- of the document --

6 A. Yes.

7 Q. -- you received?

8 A. Yes.

9 Q. And next in line is the consumer  
10 complaint form?

11 A. Form, yeah, but I didn't fill it out, not  
12 that form.

13 Q. Okay. So you did not return that form?

14 A. No.

15 Q. Okay.

16 A. No, what I did is I think I wrote them a  
17 letter. Next --

18 Q. Next is --

19 A. -- next is a copy of an envelope that  
20 came from the Department of Justice, Office of  
21 Consumer Protection, State of Montana, Helena,  
22 Montana, and the date on that is September 13th,  
23 2012.

24 Q. Okay. And that's a true and correct copy  
25 of that?

007341

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1 A. Yes.

2 Q. Okay. What is the next in line?

3 A. The next in line is a letter dated  
4 September 17th, 2012, addressed to Ms. Janet  
5 Eranblett, Office of Elder Fraud, Montana Attorney  
6 General, Helena, Montana, subject is Jacuzzi  
7 designed for seniors walk-in tub, it was a letter I  
8 drafted and sent.

9 Q. That's a true and correct copy of the  
10 letter you would've sent?

11 MR. GOODHART: Objection, form,  
12 foundation, leading.

13 MR. COOLS: Join.

14 Q. (BY MR. CLOWARD) And finally the last  
15 document?

16 A. The last document is a letter dated  
17 October 24th, 2012, it's addressed to Mr. Matt  
18 Volz, Associated Press in Helena, Montana, and it's  
19 a letter that I drafted and sent.

20 Q. And that's a true and correct copy of the  
21 letter you would've sent?

22 A. Yes.

23 MR. GOODHART: Objection, form,  
24 foundation, leading.

25 MR. COOLS: Join.

007342

007342

1 MR. CLOWARD: The next stack of documents  
2 will be the installation check sheet, which will be  
3 Exhibit 6. Crap, I did it again.

4 EXHIBITS:

5 (Deposition Exhibit Number 6 marked for  
6 identification.)

7 MR. COOLS: Did she identify -- my stack  
8 has the Janet Eranblett letter and then a letter to  
9 Matt Volz, did she identify those?

10 MR. GOODHART: Yeah, she identified a  
11 letter to Matt Volz.

12 Q. (BY MR. CLOWARD) So the next will be  
13 Exhibit 6.

14 A. This is an installation check sheet from  
15 Facilities Management Services, and it's -- the  
16 things are checked off, and then it's dated  
17 August 20th, 2012, signed by Mike Kirchner, and my  
18 signature.

19 Q. And the next document?

20 A. A completion certificate from Facilities  
21 Management Services, dated October -- no, dated 8,  
22 that would be August 20th, 2012. And apparently  
23 they had asked for my signature because I signed it  
24 and dated it, so I must've returned it to them.

25 Q. Okay. The next stack of documents, do

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1     you recognize what --

2             A.   Yes.

3             Q.   -- those are?

4             A.   It's an advertisement that says the  
5     lead-safe certified guide to renovate right.

6             Q.   Okay.

7             A.   It's multiple pages.

8                     And then the next --

9             Q.   Fair to say that is four pages  
10    double-sided?

11            A.   One, two, three -- one, two -- yes, four  
12    pages double-sided.

13            Q.   Okay.   And the next document?

14            A.   The next document has got a letterhead of  
15    AIHR, and it says Install independent and  
16    dignity -- independence and dignity.   And it is  
17    dated -- well, I don't know when it's dated, it  
18    came from the Littleton, Colorado address.   And it  
19    says, Thank you for purchasing new design.   And  
20    down at the bottom it's got the information,  
21    General Manager Nick Fawkes, Production Tracy  
22    Dierkens, and the electrical is Jamie, USA  
23    Services, and then John Brown's name was added in  
24    cursive.

25            Q.   Okay.   Do you recognize the next

007344

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1 documents -- or the next document?

2 A. Well, it says Metro News, and it's got an  
3 area code of 303, but that's my scribble. And  
4 then delivery confirmation receipt for something,  
5 John -- it's dated September 1, 2012. And then it  
6 has a copy of John Brown's business card with the  
7 regular number scratched out and then a number put  
8 in of 651-368-5945.

9 Q. Okay. And then what is the next in line?

10 A. Home improvement agreement, notice of  
11 cancellation, dated June 28th, 2012. You may  
12 cancel this transaction without penalty or  
13 obligation within three business days of the above  
14 date. Came from Littleton, Colorado.

15 Q. Okay. Do you recognize the next  
16 document?

17 A. Well, at the top it says Jacuzzi Warranty  
18 Registration Card. And somebody has written -- oh,  
19 Mike Kirchner has written in, warranty information,  
20 once regular, one something the tub on Jacuzzi.com,  
21 you are covered under the warranty as in your  
22 owners manual. And, I did not fill out the  
23 questions to the left, they don't need to know all  
24 your personal and -- info.

25 Q. Is that something that Mike Kirchner --

1 A. He filled it out.

2 Q. Okay. And then the next document, do you  
3 recognize that?

4 A. It's the warranty information.

5 Q. Okay. And at the top of that, just for  
6 reference, it says, Warranty information, model  
7 number, it's two-sided?

8 A. There's no information, there's no model  
9 number on it.

10 Q. Okay. And then the next in line, do you  
11 recognize that?

12 A. Well, it's the same thing only it's in  
13 another language.

14 Q. Oh, on the back?

15 A. Yeah --

16 Q. Okay.

17 A. -- on the back.

18 Q. And then what's the next in line?

19 A. Model -- this is Wilkins, a Zurn company,  
20 model ZW1070, Auqa-Gard Thermostatic Mixing Valve.  
21 And that's all it is is installation instructions,  
22 nobody wrote anything.

23 Q. Okay.

24 A. Oh, on the back of it -- no, nothing on  
25 the back of it either.

007346

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1 Q. Then two more to go. Do you recognize  
2 this document?

3 A. This next one is a document from Jacuzzi,  
4 Certificate of Quality. It came from corporate  
5 headquarters Jacuzzi Whirlpool Bath, 14525 Monte  
6 Vista Avenue in Chino, California. Proudly  
7 manufactured in Valdosta, Georgia.

8 Q. And the next in line?

9 A. The next is a Jacuzzi, it came from  
10 Jacuzzi Technical Specifications, and all it is is  
11 installation information.

12 Q. Okay. Was this -- this stack of  
13 documents in Exhibit 6, were these documents that  
14 were left behind by the installers?

15 A. Yes, I think they -- yes, they were in a  
16 packet that Mike Kirchner signed when he installed  
17 the tub.

18 MR. CLOWARD: Okay. Now, the next in  
19 line will be Exhibit 7, and it's -- for counsels'  
20 reference, it's a yellow sticky note from -- that  
21 says Troy Brown, Denver, dated June 18, 2012, with  
22 what was a magazine cutout or a paper.

23 EXHIBITS:

24 (Deposition Exhibit Number 7 marked for  
25 identification.)

007347

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1 Q. (BY MR. CLOWARD) What is this document,  
2 Ms. Chopper?

3 A. Well, I cut out the copy of the page that  
4 came out in the Parade magazine inserted in the  
5 paper. And it's Jacuzzi firstSTREET for Boomers &  
6 Beyond. And I called this number -- the number  
7 given was 866-986-5156, and on -- I called that  
8 number, and as I recall, I didn't get an answer  
9 until the next day. But anyway, I got an answer  
10 from Troy Brown in Denver, and he said that my  
11 installer would be Larry something,  
12 C-i-n-q-u-e-m-a-n-i, and he was the installer for  
13 Montana and Idaho. Design senior rebate, I don't  
14 know what that's about. 11:30 the 28th, Thursday,  
15 oh, he was supposed to come to my house at 11:30 in  
16 the morning on the 28th.

17 Q. Okay. So this is a note that you made  
18 regarding your phone call with firstSTREET?

19 A. Yes.

20 Q. Or the number --

21 A. Troy Brown, it turned out it was a call  
22 center in Denver.

23 Q. Okay. And the next page is the paper  
24 clipping that -- from Parade --

25 A. Yes.

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1 Q. -- that alerted you to Jacuzzi --

2 A. Right.

3 Q. -- the walk-in tub?

4 A. Right.

5 MR. COOLS: Object to form.

6 MR. GOODHART: Join.

7 Q. (BY MR. CLOWARD) Okay. Is this a true  
8 and correct copy of the ad that you cut out of the  
9 paper?

10 A. Yes.

11 Q. And this is the ad that you --

12 A. It's what I responded to, this 866  
13 number.

14 Q. Okay. And that's a true and correct copy  
15 of that ad that you cut out?

16 A. Yeah.

17 Q. Is that a yes?

18 A. Yes.

19 Q. Okay.

20 MR. CLOWARD: Okay. Now, next is just  
21 some kind of miscellaneous documents that were in  
22 your file, we can kind of go through those. That  
23 will be Exhibit 8, and that's a document -- the  
24 first page of the document says Saturday, Hi Mike  
25 and Teri.

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1 EXHIBITS:

2 (Deposition Exhibit Number 8 marked for  
3 identification.)

4 Q. (BY MR. CLOWARD) I'm going to actually  
5 include these two behind.

6 A. Behind?

7 Q. Yep.

8 A. Well, I -- it's something that I drafted  
9 that says, Saturday, Hi Mike and Teri, the enclosed  
10 is to give you a heads-up as to what is going on  
11 with me. I am completely dissatisfied with the  
12 tub, et cetera, et cetera. My prediction about  
13 Nick Fawkes and his posse is that one of two things  
14 is gonna happen, either they will grab the cash and  
15 head for a country without reciprocity, or they  
16 will crash and go to jail.

17 Q. What did you mean by that?

18 A. (Laughter.) That he's crooked.

19 Q. Okay. Do you know where -- who you sent  
20 this to or --

21 A. Mike Kirchner.

22 Q. Okay. All right. What is the next in  
23 line there?

24 A. Well, it's written on a pad that I had  
25 with my name at the bottom, but I don't know who I

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1 sent it to.

2 Q. Okay.

3 A. Their claim of getting in and out of a  
4 warm bath is impossible. So I don't know who I  
5 made it to, if I mailed it at all; I must've.

6 Q. No problem. If you don't know, that's  
7 okay.

8 MS. LLEWELLYN: Object to foundation.

9 A. The next is a note dated Friday,  
10 August the 24th. Hi, Jerre, Mike and I both wanted  
11 to take a moment to thank you for having an  
12 opportunity to work for you, et cetera, et cetera.  
13 And it's signed by Teri K.

14 Q. (BY MR. CLOWARD) Do you know who that  
15 is?

16 A. It's Mike's wife.

17 Q. Okay. That was a note that Mike  
18 Kirchner's wife wrote to you on August 24th?

19 A. Uh-huh.

20 Q. All right. And that's a true and correct  
21 copy of that note?

22 A. Yes.

23 Q. All right. Now, the next we just have --  
24 do you recognize --

25 A. It's just stuff that I wrote down for my

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1 own.

2 Q. Just notes with addresses and so forth?

3 A. Yeah, firstSTREET for Boomers & Beyond,  
4 Colonial Heights, I talked to Simona Robertson.  
5 Dealer representative --

6 Q. Okay.

7 A. -- Littleton, Colorado, John Brown.  
8 Installer Mike Kirchner. Production manager Tracy  
9 Dierkens. Shipping Sebastian. Secretary of State  
10 of Montana. Secretary of State Colorado. Attorney  
11 General Colorado. Consumer Protection. City of  
12 Littleton. I talked to a Joanne Ricca. Steve  
13 Miller. And that's when I got the name Janet  
14 Eranblett, it must've have been a phone call when I  
15 got the name of her for the elder fraud.

16 Q. Okay.

17 A. And the next is just some miscellaneous  
18 for my own information. FirstSTREET for Boomers &  
19 Beyond. AIHR Dealer, Inc. Nick Fawkes, general  
20 manager. Installer Mike Kirchner. Secretary of  
21 State -- secretary of Montana, Secretary of State  
22 Colorado. Attorney General of Colorado. City of  
23 Littleton. I talked to Joanne Ricca, and she  
24 reported on 7/26/12, First report does not show  
25 subject at address given, is going to instruct

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1 police to check with building manager to see who  
2 rents that office. Later it was reported that they  
3 do rent the space, but whether they maintain an  
4 office or use a -- use it as a warehouse is not  
5 determined. In any event, they are a legitimate  
6 tenant. It is reported that they are not  
7 registered with the city and therefore, have not  
8 been paying business tax.

9 Q. Those are notes of your investigation?

10 MR. GOODHART: Objection to form,  
11 foundation, leading.

12 MR. COOLS: And hearsay.

13 A. Things -- notes to myself, mostly.

14 Q. (BY MR. CLOWARD) Okay.

15 A. Next is a firstSTREET for Boomers &  
16 Beyond that I pulled off of the internet, it's one,  
17 two, three -- and I pulled this off on July 15th of  
18 2012, and it goes on to give the names of the  
19 management team.

20 Q. It looks like there's actually two,  
21 one -- the first two pages are dated July 25th, and  
22 then the next two pages -- or the next few pages  
23 are July 15th.

24 A. Right, that's right.

25 Q. So fair to say --

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1 A. So they're out of order, I guess.

2 Q. Okay. But those are documents that you  
3 printed and --

4 A. I pulled off of the internet.

5 Q. Okay.

6 A. That was two pages long. And then  
7 there's note to myself that's called, Scoundrels  
8 involved in practice to deceive and fleece the  
9 American public.

10 Q. Okay.

11 A. Next is -- Oh, do you want me to  
12 continue?

13 Q. Yeah. After the Scoundrels one, what is  
14 the next?

15 A. The next document is what I pulled off of  
16 the internet for the Better Business Bureau in  
17 Denver and Boulder, Colorado. And it says, This  
18 business is not BBB accredited, First Source Home  
19 Improvements, that's the first page.

20 Then the second page, Additional  
21 information, BBB file opened 6/9/88, Licensing,  
22 Type of -- corporation incorporated in May 1998 in  
23 Colorado. Principal contact was Jonathan Nick  
24 Fawkes, owner. Business category was windows.  
25 Alternate business names was Pure Platinum

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1 Enterprises, Front Rage -- Front Range Mechanical  
2 Company. Industry tips when a business closes or  
3 goes bankrupt.

4 Q. What was the -- what was this document  
5 for? This was the First Source Home Improvements,  
6 what were you researching this document for?

7 A. What was I searching for? I don't know  
8 why I was searching for First -- I don't know why I  
9 was searching for improvement business review in  
10 Littleton. Home -- home improvement business  
11 review in Littleton.

12 Q. I see in page 2 of that is Nick Fawkes'  
13 information --

14 A. Yes.

15 Q. -- were you trying to research him,  
16 potentially?

17 A. Yes, I guess.

18 MR. GOODHART: Objection, form,  
19 foundation, leading.

20 MR. COOLS: Join.

21 A. I was trying to find out some history  
22 about Nick Fawkes.

23 Q. (BY MR. CLOWARD) Okay. And what is the  
24 next in line?

25 A. Well, apparently this is something that I

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1 pulled off the internet, New England Facilities  
2 Management, LLC. And it said, Todd Stout updated  
3 his company profile on August 27th, 2012.

4 Q. And do you know why you were --

5 A. Because I wasn't sure about Stout. New  
6 England Facilities Management at 5 Scary Street,  
7 Salem, Maine.

8 Q. So you were trying to find additional  
9 information?

10 A. I was getting a -- I was Googling it.

11 Q. Okay. All right. So that's I think the  
12 last thing -- or just the last page of that, what  
13 is that; just your notes?

14 A. These are just notes to myself, I guess.  
15 I wrote, July 26th, and then I wrote firstSTREET  
16 for Boomers, Samora Robertson dealer liaison, Nick  
17 Fawkes, John Brown, Tracy Dikerson {sic}, Mike  
18 Kirchner. Order came from New England Facilities  
19 Management somewhere in Massachusetts, I think it  
20 was Maine, but -- Secretary of State, Secretary of  
21 Montana. Secretary of Colorado.

22 I think this must be a dupli -- well, no,  
23 because Steve Bullock, Attorney General for  
24 Montana. And then I wrote in here 2225 11th  
25 Avenue, Marcus 9/13/12. Attorney General of

1 Colorado. City of Littleton. Joanne Ricca. Those  
2 are just notes to myself of what I'd been doing.

3 Q. Okay. So if you want to hand me the clip  
4 back.

5 A. I've still got some stuff here.

6 Q. Oh, yeah, two more documents.

7 MR. GOODHART: These are going to be part  
8 of Exhibit 8?

9 MR. CLOWARD: Actually we'll do -- we'll  
10 just do these -- the next ones as Exhibit 9.

11 Q. (BY MR. CLOWARD) Okay. So --

12 A. Oh.

13 Q. -- if you can hand me the clip.

14 A. I handed you the clip.

15 Q. Oh, you did, sorry it's right there.  
16 Okay.

17 Now we'll look at these, these will be  
18 Exhibit 9.

19 EXHIBITS:

20 (Deposition Exhibit Number 9 marked for  
21 identification.)

22 MR. COOLS: Can you show me what they  
23 are?

24 MR. CLOWARD: It's a draft to Mark Gordon  
25 and then the subpoena.

1 MR. COOLS: Okay.

2 Q. (BY MR. CLOWARD) Let me see your copy  
3 there.

4 Okay. Exhibit 9, do you know what that  
5 document --

6 A. This is a draft of a letter that I never  
7 sent. It was dated sometime in September of 2012,  
8 but like I said, it's a letter that I never sent,  
9 but it was addressed to Mr. Mark Gordon, CEO of  
10 firstSTREET for Boomers, in Colonial Heights,  
11 Virginia.

12 Q. Okay. And then what is the next document  
13 there?

14 A. The next document is the subpoena that I  
15 received.

16 Q. Okay. And that's the subpoena for your  
17 appearance today?

18 A. Yes.

19 Q. All right. Now, a few more documents.  
20 It's actually only I think three --

21 A. They kept sending me stuff --

22 Q. -- three main ones.

23 A. -- day after day after day.

24 Q. Okay. Let's see, I'm going to do this  
25 whole stack as one --

007358

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1 MR. COOLS: These are the firstSTREET  
2 magazines?

3 MR. CLOWARD: Yeah, let me -- I'll just  
4 do those first.

5 MR. COOLS: There are two stapled  
6 documents; is that right?

7 MR. CLOWARD: Yeah.

8 MR. COOLS: One yellow, one green.

9 MR. CLOWARD: Yep. So we will mark the  
10 green one Exhibit 10 and the yellow one Exhibit 11.

11 EXHIBITS:

12 (Deposition Exhibit Numbers 10 and 11  
13 marked for identification.)

14 Q. (BY MR. CLOWARD) There's Exhibit 10,  
15 what do you recognize that document to be?

16 A. Well, it's a magazine that was addressed  
17 to me that came from firstSTREET, Colonial Heights,  
18 Virginia, and it's for -- it's a catalog.

19 Q. Okay. And what is the date of that  
20 publication? I believe it might be --

21 A. It says early fall of 2012.

22 Q. Okay. So we'll attach that as  
23 Exhibit 10. And then the next will be Exhibit 11,  
24 the yellow one.

25 And I guess, is that a true and

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1 correct -- is Exhibit 10 a true and correct copy --

2 A. Yeah.

3 Q. -- of the catalog you received --

4 A. Yes.

5 Q. -- back in the fall of 2012?

6 A. Yes.

7 Q. Okay. Now, the next is Exhibit 11, what  
8 is that document?

9 A. It's also a magazine firstSTREET for  
10 Boomers & Beyond, late summer 2012, it was  
11 addressed to me, came from Colonial Heights,  
12 Virginia, firstSTREET.

13 Q. Is that a true and correct copy of the --

14 A. Yes.

15 Q. -- magazine you received in the summer of  
16 2012?

17 A. Yes.

18 EXHIBITS:

19 (Deposition Exhibit Number 12 marked for  
20 identification.)

21 Q. (BY MR. CLOWARD) Okay. All right. The  
22 next in line will be Exhibit 12, which will be the  
23 owners manual for the 5230 walk-in tub series. Do  
24 you recognize this document?

25 A. Yes, it's instructions that came with the

1 tub for installation designed for seniors walk-in  
2 bathtub series, installation and operation  
3 instructions. It came from Jacuzzi Luxury Bath at  
4 Chino, California.

5 Q. Is that a true and correct copy of the  
6 manual you received?

7 A. Yes.

8 Q. All right.

9 A. Oh, and on the second page it says here,  
10 Product Information, and it was filled out on  
11 June 28th, 2012, Attention: IAHR, installed by Mike  
12 Kirchner, P.O. Box 635, Bigfork, Montana, then it's  
13 got the serial number and the model number.

14 EXHIBITS:

15 (Deposition Exhibit Number 13 marked for  
16 identification.)

17 Q. (BY MR. CLOWARD) Okay. And then the  
18 next in line will be Exhibit 13, which is the  
19 Customer Agreement, that's the yellow and pink page  
20 document. What do you recognize that to be?

21 A. That's the contract I signed with John  
22 Brown, it's dated 6/28/12.

23 Q. Okay. And it --

24 MR. GOODHART: Can we stipulate that this  
25 was not this size?

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1 MR. CLOWARD: I think it actually was.

2 MR. GOODHART: Oh, it's multiple pages,  
3 got it.

4 MR. COOLS: It's folded.

5 MR. CLOWARD: I think that it actually --  
6 I don't even think it was folded. It was -- you  
7 know how you peel them? It actually was connected  
8 at the top of the document and I had to undo it to  
9 send it through the scanner, but I'm like 99  
10 percent positive that's the actual size of the  
11 document.

12 MR. GOODHART: Do you have the original?

13 MR. CLOWARD: She has the originals.

14 MR. GOODHART: Are they here today?

15 MR. CLOWARD: No. Did you bring all the  
16 documents, the package that I copied?

17 THE WITNESS: No, I didn't.

18 MR. CLOWARD: Okay.

19 THE WITNESS: I had it laid out and then  
20 I thought, well, no, I don't need to take all of  
21 that stuff because it was this thick (indicating).

22 MR. CLOWARD: Okay.

23 MR. GOODHART: So as I understand it,  
24 then, everything we've been looking at so far are  
25 photocopies of the originals?

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1 MR. CLOWARD: Correct.

2 MR. GOODHART: And it's my understanding  
3 as well that you took the photographs of the  
4 originals --

5 MR. CLOWARD: UPS did.

6 MR. GOODHART: -- or took photocopies of  
7 the originals?

8 MR. CLOWARD: UPS did.

9 MR. GOODHART: Okay. But you provided  
10 the originals to UPS to photocopy?

11 MR. CLOWARD: Yes.

12 MR. GOODHART: And then Ms. Chopper is  
13 still in possession of the original documents?

14 MR. CLOWARD: Correct.

15 MR. GOODHART: But the original documents  
16 are not here with her today?

17 MR. CLOWARD: Correct.

18 MR. GOODHART: Okay.

19 THE WITNESS: I laid them out and then I  
20 thought at the last minute, well, why do I need to  
21 take those, because they were so big and bulky.

22 MR. CLOWARD: Yeah, it's okay. We  
23 would -- we'll just -- would it be okay if you  
24 worked with the nice court reporter to get those --  
25 a copy of those and she can just make a copy and



1 attach a copy of the file?

2 THE WITNESS: Claudia?

3 MS. WILLIAMSON: Yes?

4 THE WITNESS: Claudia, would you drive to  
5 my house and -- Come here.

6 MS. WILLIAMSON: I can do that, Mom.

7 VIDEOGRAPHER SIMONICH: They're laid out  
8 by my desk. There are three packets, there's a  
9 yellow folder that's called Jacuzzi, and then  
10 there's another manila envelope that called  
11 Jennifer Lint, and then there's another package  
12 that has the -- anyway, there's three packets, if  
13 you would gather those up and bring them down here.

14 MS. WILLIAMSON: Certainly. When do you  
15 need them?

16 THE WITNESS: Now.

17 MR. GOODHART: How far away do you live?

18 THE WITNESS: Ten minutes.

19 MR. GOODHART: I know there's probably a  
20 lot to mail to the court reporter, I don't want to  
21 inconvenience either you or your daughter to get  
22 them here.

23 It's up to you, Ben.

24 MR. CLOWARD: Well, I just don't want to  
25 get an objection down the road that I somehow

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1 manipulated the documents or that they're not true  
2 and correct or anything like that, so if you -- for  
3 your comfort, if you want to make a copy and have  
4 it attached to the record, then I think that's what  
5 we need to do.

6 But I can tell you, as an officer of the  
7 court, I took three stacks of documents directly to  
8 UPS, gave them to the lady and said, I need five  
9 copies of all of these documents. She gave them  
10 back and I took them straight back to Ms. Chopper.  
11 And I actually -- in this box over here, I'm going  
12 to attach this box as an additional exhibit because  
13 there are a whole bunch of duplicates in that box.

14 MR. GOODHART: Yeah, I guess -- I guess  
15 we're -- it's not that I don't trust you, Ben --

16 MR. CLOWARD: More than happy to have  
17 them attached.

18 MR. GOODHART: Yeah, I think we need to  
19 because some were missed, weren't put together  
20 properly, you have multiple copies of certain  
21 things. I know from past experiences dealing with  
22 people that go in and photocopy medical records and  
23 things get missed and things like that, so I think  
24 we would need to have the originals attached, just  
25 to make sure, a) you're covered, and that we have

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1 everything that we -- everything that has been  
2 represented to us as being here together.

3 MR. CLOWARD: Okay. I would just ask,  
4 since I spent 500 bucks yesterday copying all of  
5 this, that you bear the cost of that.

6 MR. GOODHART: Yeah, I think that's fair,  
7 the defendants will bear the costs of the originals  
8 being photocopied.

9 MR. CLOWARD: Okay. Would you mind doing  
10 that for us?

11 MS. WILLIAMSON: I do not mind. May I  
12 ask a question?

13 MR. CLOWARD: Sure.

14 COURT REPORTER: Does all of this need to  
15 be on the record?

16 MR. GOODHART: No. Let's go off the  
17 record, then, the video record.

18 MS. WILLIAMSON: Are you planning on --

19 COURT REPORTER: Hold on, hold on, let's  
20 let her get us off the record.

21 VIDEOGRAPHER SIMONICH: So let the record  
22 reflect we are going off at 1:45.

23 (Discussion held off the record.)

24 VIDEOGRAPHER SIMONICH: The deposition is  
25 being resumed at 1:48.

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1 EXHIBITS:

2 (Deposition Exhibit Number 14 marked for  
3 identification.)

4 Q. (BY MR. CLOWARD) Okay. So now the next  
5 in line we will mark as Exhibit 14, and what do you  
6 recognize that document to be?

7 A. Well, it's from firstSTREET, designed for  
8 seniors, and it's an advertisement for the tub.  
9 And so I must have received it in the mail. I  
10 finally either called or wrote or something and  
11 said, quit sending me all this stuff.

12 EXHIBITS:

13 (Deposition Exhibit Number 15 marked for  
14 identification.)

15 Q. (BY MR. CLOWARD) Okay. And then the  
16 next will be Exhibit 15, do you recognize that  
17 document?

18 A. Yes, it was part of the package.

19 Q. Okay.

20 A. Mike brought it with him, Mike Kirchner  
21 brought with him.

22 Q. Is that a copy of the envelope that  
23 contained the owners manual?

24 A. Yes.

25 Q. Okay. Now, I am going to just attach --

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1 so that's Exhibit 15, so as Exhibit 16 --

2 COURT REPORTER: 17.

3 MR. CLOWARD: Oh, that's 17?

4 COURT REPORTER: No, the binder.

5 MR. GOODHART: 16 is the binder.

6 MR. CLOWARD: Oh, the binder is 16. 17,  
7 thank you, will be that entire box of essentially  
8 duplicate emails and so forth.

9 So where do you want me to put the  
10 sticker?

11 COURT REPORTER: Just leave it there.

12 MR. CLOWARD: Okay.

13 MR. GOODHART: And then just so we can  
14 clear this up, Exhibit 18, as we discussed off the  
15 record, are going to be photocopies of the original  
16 documents that Ms. Chopper is going to provide to  
17 the court reporter, and they're going to be copied  
18 by the court reporter and the court reporter is to  
19 send the original documents back to Ms. Chopper,  
20 and that will be Exhibit 18.

21 MR. CLOWARD: Correct.

22 MR. GOODHART: Okay.

23 MR. CLOWARD: Okay. So we can go off.

24 MR. GOODHART: Yeah, let's go off the  
25 record.

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1 VIDEOGRAPHER SIMONICH: Okay. Let the  
2 reflect a break is being taken at 1:50.

3 (Whereupon, the proceedings were in  
4 recess at 1:50 p.m. and subsequently reconvened at  
5 2:03 p.m., and the following proceedings were  
6 entered of record:)

7 VIDEOGRAPHER SIMONICH: Let the record  
8 reflect the deposition is being resumed at 2:03  
9 p.m.

10 EXHIBITS:

11 (Deposition Exhibit Numbers 17 and 18  
12 marked for identification.)

13 Q. (BY MR. CLOWARD) Okay. Ms. Chopper  
14 we've gone through and laid some foundation  
15 regarding the documents in front of you.

16 Can you just tell us -- tell the jurors  
17 what were your concerns with the tub and why, I  
18 guess, you were writing all of the letters, as  
19 outlined in Exhibits 1 through 17?

20 A. Well, as soon --

21 MR. GOODHART: Objection, leading.

22 A. As soon as the tub was installed, I  
23 looked at that and I thought, my God, if I pass out  
24 in here, in this tub -- honestly I thought it was a  
25 death trap because it took 75 gallons of water

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1 before you could run the jets. And the tub was  
2 high, and I thought, you know, if you had an  
3 attendant, it would be a different story, but the  
4 attendant would have to have the strength of  
5 Goliath to lift a person out of that tub, because  
6 there was so much stuff that went under that tub  
7 that it was no longer a walk-in, I mean, it was a  
8 step-in.

9 And I just -- as soon as I -- it was  
10 installed and I used it a couple of times, I never  
11 used it more than twice. Like I told my attorney,  
12 after I figured out that it was a death trap, I  
13 would run 10 inches of water in the bottom of the  
14 tub and take what I called a spit bath.

15 (Laughter.)

16 Q. (BY MR. CLOWARD) Okay.

17 A. So I was anxious to get the tub out and  
18 get something that was safe.

19 Q. All right. Did any of the parties that  
20 you wrote letters to, meaning AIHR or AITHR or  
21 firstSTREET, or Jacuzzi, did they ever refund your  
22 money?

23 A. No.

24 MR. GOODHART: Object to form,  
25 foundation, assumes facts, and leading.

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1 A. No.

2 MR. COOLS: Join.

3 Q. (BY MR. CLOWARD) Okay.

4 A. But then I stopped payment, they got  
5 \$5,000 and then I stopped payment on the check that  
6 I sent them, plus any paperless transactions that  
7 they tried to slip through.

8 Q. Okay. Do you still have the opinion that  
9 this tub is a death trap --

10 A. Yes.

11 Q. -- and it's unsafe?

12 A. Definitely.

13 MR. GOODHART: Objection -- objection,  
14 leading, form and foundation, and argumentative.

15 MR. COOLS: Join.

16 Q. (BY MR. CLOWARD) And I saw in the  
17 letters that you wrote to I believe Jacuzzi as well  
18 as firstSTREET, that you actually informed them of  
19 your views of the safety -- lack of safety of the  
20 tub; is that correct?

21 MR. GOODHART: Objection, form,  
22 foundation, leading.

23 MR. COOLS: Join.

24 A. Yes, when I got this transmittal from  
25 Bachmeyer wanting me to fill out the survey --

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1 survey, I didn't fill out the survey, I wrote him a  
2 letter and outlined all of the reasons --

3 Q. (BY MR. CLOWARD) Okay. So --

4 A. -- that I was --

5 Q. You were concerned about the tub?

6 A. -- that I was concerned.

7 Q. Matter of fact, you were concerned enough  
8 that you wrote to the U.S. Consumer Product Safety  
9 Commission, informing them of your concerns with  
10 the product; true?

11 A. Yes.

12 MR. GOODHART: Objection, form,  
13 foundation, leading.

14 MR. COOLS: Join.

15 Q. (BY MR. CLOWARD) You also informed the  
16 Department of Elder Fraud of the U.S. Attorney  
17 General of the problems?

18 MR. GOODHART: Objection, form,  
19 foundation, leading.

20 MR. COOLS: Join.

21 Q. (BY MR. CLOWARD) Correct?

22 A. Yes, I -- yes.

23 Q. And that's Exhibit 5. Can you refresh  
24 the jury's memory --

25 A. Yeah, Mr. Michael Shin, Department of

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1 Elder Fraud, Attorney General, U.S. Attorney  
2 General in Billings, Montana. The Jacuzzi designed  
3 for seniors walk-in tub in no way benefits the  
4 elders who are looking for a comfort -- the comfort  
5 and convenience of a nice, warm bath.

6           You will note the dates of the enclosed  
7 letters to Jacuzzi, and they have been given  
8 opportunity to respond. To date I have heard  
9 nothing from them. Although I have no concrete  
10 facts, it is my suspicion that AIHR is continuing  
11 to hire salesmen, tutor them in high-pressure  
12 tactics to go out and blanket multiple states, sell  
13 tubs to seniors, collect down payments with no clue  
14 as to how these tubs are going to be installed.  
15 But that's not the worst-case scenario. These tubs  
16 do not deliver what seniors are expecting.

17           This is I believe some investigation. I  
18 know nothing about firstSTREET, other than they are  
19 a mail order company. How their partnership with  
20 Jacuzzi evolved and hence their partnership AIHR, I  
21 have no idea. What I believe is they are  
22 perpetrating a fraud. Since my first encounter  
23 with them, they have changed their identity and  
24 started answering their phones as Jacuzzi, which is  
25 a deception. And additionally they have been

1 harassing me daily by phone.

2 I want them stopped before other seniors  
3 are sucked in like I was. All I can say is  
4 normally I am smarter than that, but I do concede  
5 that my faculties have been declining as I have  
6 aged, and attendant physical -- and discomforts due  
7 to aging.

8 What I want is for the tub to be removed  
9 and my money refunded. With those funds I can hire  
10 a contractor to come in and install a custom  
11 walk-in shower and a bath truly designed for  
12 seniors.

13 Respectfully submitted for your  
14 consideration, and my name.

15 MR. GOODHART: Objection and move to  
16 strike the answer as nonresponsive to the question  
17 that was posed.

18 MR. COOLS: Join.

19 Q. (BY MR. CLOWARD) Okay. So that was the  
20 letter that you wrote to U.S. Attorney General,  
21 Department of Elder Fraud, based on the concerns  
22 that you had with the tub?

23 A. Yeah.

24 MR. GOODHART: Objection, form,  
25 foundation, leading.

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1 MR. COOLS: Join.

2 Q. (BY MR. CLOWARD) And next in that same  
3 packet, Exhibit 5, is a letter dated to Steve --  
4 dated September 10, 2012, addressed to Steve  
5 Bullock, the Attorney General of Montana.

6 A. He's now governor.

7 MR. GOODHART: Objection, lacks  
8 foundation, form, leading.

9 Q. (BY MR. CLOWARD) And in that letter you  
10 indicate you're also wanting an investigation and  
11 you're wanting the tub company's, quote, stopped  
12 before other seniors are sucked in like you were --

13 MR. GOODHART: Objection --

14 Q. (BY MR. CLOWARD) -- end quote.

15 MR. GOODHART: Objection, form,  
16 foundation, leading.

17 MR. COOLS: Join.

18 A. I don't find a letter in this packet  
19 dated -- dated what, September 12th?

20 Q. (BY MR. CLOWARD) September 10.

21 A. Oh, yeah, okay.

22 Q. Let me just read it for you and just see  
23 if I read this correctly. It's starting the second  
24 paragraph, quote, Although I have no concrete  
25 facts, it is my suspicion that AITHR is continuing

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1 to hire salesman, tutor them in high practice -- or  
2 high-pressure tactics, who go out, blanket multiple  
3 states, sell tubs to seniors, collect down payments  
4 with no clue as to how these tubs are going to be  
5 installed. But that's not the worst-case scenario.  
6 These tubs do not deliver what seniors are  
7 expecting. This I believe bears some  
8 investigation, end quote.

9 Did I read that correctly?

10 A. Yes.

11 MR. GOODHART: Objection, form,  
12 foundation, leading, and is a wholly improper  
13 question.

14 MR. COOLS: Join.

15 Q. (BY MR. CLOWARD) And that's something  
16 that you wrote to Steve Bullock?

17 A. Yes.

18 MR. GOODHART: Objection, form,  
19 foundation, leading.

20 MR. COOLS: Join.

21 Q. (BY MR. CLOWARD) Was that a yes?

22 A. Yes. Steve Bullock is now the governor  
23 of our state.

24 Q. Okay. And then the second paragraph --  
25 or third paragraph of that letter, September 10,

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1 2012 addressed to Steve Bullock, says, quote, I  
2 know nothing about firstSTREET, other than they are  
3 a mail order company. How their partnership with  
4 Jacuzzi evolved, and hence their partnership with  
5 AIHR, I have no idea. What I believe is they are  
6 perpetrating a fraud. Since my first encounter  
7 with them they have changed their identity and  
8 started answering their phones as Jacuzzi, which is  
9 a deception. And additionally, they have been  
10 harassing me daily by phone, end quote.

11 Did I read that correctly?

12 MR. GOODHART: Object --

13 A. Right.

14 MR. GOODHART: Objection to the form of  
15 the question, leading.

16 A. Right.

17 THE WITNESS: I need to wait for him,  
18 don't I? (Speaking to court reporter.)

19 COURT REPORTER: (Nods head.)

20 MR. COOLS: Join.

21 Q. (BY MR. CLOWARD) And that's what you put  
22 in the letter to Steve Bullock on September 10,  
23 2012?

24 A. (Witness nods head.)

25 MR. GOODHART: Object to form,

1 foundation, leading.

2 MR. COOLS: Join.

3 Q. (BY MR. CLOWARD) Is that a yes?

4 A. Yes.

5 Q. Okay. Now, next, September 17th 2012, so  
6 a couple pages back, is to Ms. Janet Eranblett.

7 This is a letter --

8 A. Yes.

9 Q. -- and I'm going to read it -- Actually,  
10 why don't you just read the letter that you wrote  
11 to Janet Eranblett, if you would?

12 MR. GOODHART: Object to form,  
13 foundation, leading.

14 MR. COOLS: Join.

15 A. Do you still want me to read the letter?

16 Q. (BY MR. CLOWARD) Yes.

17 A. It's dated September 17th, 2012, To  
18 Ms. Janet Eranblett, Office of Elder Fraud, Montana  
19 Attorney General, Helena, the subject is the  
20 Jacuzzi.

21 Dear Mrs. Eranblett, enclosed are copies  
22 of documents sent to 215 North Sanders, along with  
23 copies of emails I neglected to send. It is only  
24 after two and a half months of distress over the  
25 purchase of this tub that realization dawned on how

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1 dangerous this piece of equipment is. I should  
2 never have been targeted -- it should never have  
3 been targeted to seniors or anyone else with  
4 disabilities. Anyone experiencing a medical  
5 emergency would have a hard time exiting this tub  
6 alive unless they had an attendant with the  
7 strength of Goliath.

8 The overflow is at the top of the tub.  
9 The tub door opens inward. Someone without the  
10 strength to turn off the water could never unlock  
11 the door and open it, the pressure from inside  
12 would be too great.

13 I am most anxious to have this tub  
14 removed so that I can get started installing  
15 something is -- I can safely use. Please help me  
16 in any way you can.

17 P.S. A message on my answering machine a  
18 few days ago was from Nick Fawkes, who identified  
19 himself as Jacuzzi walk-in tubs, so the deception  
20 continues. He also sent a threatening letter, see  
21 enclosed, the handwriting on the envelope was his.

22 Q. Okay. So you were trying to -- is it  
23 fair to say you were trying to raise the flag of  
24 the dangerousness of this tub?

25 MR. GOODHART: Objection, form,

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1 foundation, leading --

2 MR. COOLS: Join.

3 MR. GOODHART: -- and assumes facts.

4 A. Yes, I was.

5 Q. (BY MR. CLOWARD) Why don't you tell the  
6 jurors, why were you writing letters to Mr. Shin,  
7 Mr. Bullock and Ms. Eranblett?

8 MR. GOODHART: Objection, form,  
9 foundation, leading.

10 A. Well, I think -- I think my description  
11 describes why, because I felt that anybody with a  
12 physical disability of any kind was in danger if  
13 they got into the tub and filled it up.

14 Q. (BY MR. CLOWARD) Okay. And is that the  
15 same reason you wrote the letter to the U.S.  
16 Consumer Product Safety Commission?

17 A. Yes, yes, I didn't want to get anybody  
18 else sucked in like I was.

19 Q. Okay. And did you notify firstSTREET,  
20 AIHR, otherwise know as AITHR, and Jacuzzi of these  
21 concerns?

22 MR. GOODHART: Objection, form,  
23 foundation, leading.

24 MR. COOLS: Join.

25 A. I think my first contact to Mr. Bachmeyer

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1 would do that, because he sent me this survey and I  
2 didn't fill out the survey, but I wrote him.

3 Q. (BY MR. CLOWARD) And that is -- what you  
4 sent to Mr. Bachmeyer is contained in Exhibit 1,  
5 true?

6 MR. GOODHART: Objection, leading.

7 MR. COOLS: Join.

8 A. What -- what -- what exhibit is that?

9 Q. (BY MR. CLOWARD) Here is Exhibit 1.

10 A. Well, let's see, from Jacuzzi,  
11 continuation -- Confirmation of online registration  
12 of your Jacuzzi product. August 24th of 2012, I  
13 wrote Mr. Kurt Bachmeyer, director of customer  
14 service, in Chino -- for Jacuzzi, in Chino,  
15 California.

16 And I said, Your email survey arrived  
17 this morning. It in no way describes my unpleasant  
18 experience with the people representing your  
19 product. Mine is buyer's remorse. I wish I had  
20 never heard of them.

21 This all began in late June, when  
22 firstSTREET ran a full-page add in Parade magazine  
23 that is inserted in the Sunday paper of almost all  
24 publishers. It gave an 800 number, which I called  
25 and got a recording to leave a message; I didn't.

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1     However, early Monday morning I received a call  
2     from Troy Brown in Denver, that I later learned was  
3     a call center. He made an appointment with me to  
4     be called on by Larry -- I don't know how to  
5     pronounce that name -- Cinquemani, who said he was  
6     the dealer rep for Montana and Idaho, for 11:30 on  
7     Thursday, June 28th.

8             On that day he called to tell the rep --  
9     tell me the rep who would be arriving would be John  
10    Brown, and he would be delayed beyond the appointed  
11    time, as he was coming from quite a distance.

12            At 5:30 John Brown arrived. He was a  
13    likeable fellow who told me all about his family  
14    and showed me pictures of them. He said his normal  
15    territory was five states in the upper midwest, but  
16    that Cinquemani had quit the company, and he had  
17    agreed to cover the territory. He gave me the  
18    pitch and I told him I'd have to sleep on it. Then  
19    came the hard sell.

20            Q. What did you mean by "then came the hard  
21    sell"?

22            MR. GOODHART: Objection, form --

23            A. When I told him I had to sleep on it,  
24    that I wasn't going to sign the contract that day.

25            MR. GOODHART: Objection, form,

1 foundation, and leading.

2 MR. COOLS: Join.

3 Q. (BY MR. CLOWARD) So you told him that  
4 you wanted to sleep on it, did you feel that he  
5 pressured you into buying that tub?

6 A. Oh, yeah.

7 MR. GOODHART: Objection, form,  
8 foundation, leading.

9 MR. COOLS: Join.

10 A. Oh, yes.

11 {Continues reading.} He said that if I  
12 didn't sign the contract on that day, the tub would  
13 cost \$3,000 more. I was pretty sure that I wanted  
14 the tub because I have osteoarthritis and middle  
15 ear disturbance that causes balance problems and  
16 vertigo. Mr. Brown whipped out a contract that  
17 read AIHR, at 1460 West Canal Street, Suite 202, in  
18 Littleton, Colorado.

19 Do I need to read all of this?

20 Q. (BY MR. CLOWARD) No. I just wanted to  
21 know mainly what you meant by, "then came the hard  
22 sell."

23 A. When I told him --

24 MR. GOODHART: Objection, form,  
25 foundation, leading.

1           A.  -- that I wasn't going to sign the  
2 contract until I had a good night's sleep and  
3 thought about it some more --

4           Q.  (BY MR. CLOWARD)  Okay.

5           A.  Anything else in packet 1?

6           Q.  Yeah, I want to talk about a couple of  
7 them.  The next letter I want you to just answer  
8 some questions, if you would, is the September 1,  
9 2012 letter.

10          A.  2012?

11          Q.  Yeah.

12          A.  What's the date?

13          Q.  September 1, it's addressed to Kurt  
14 Bachmeyer.

15          A.  September 1, 2012.  This letter was  
16 directed to Mr. Kurt Bachmeyer, director of  
17 customer service at Jacuzzi.  Subject was the tub.  
18 The name Jacuzzi is an old and respected name, a  
19 legend in its own time.

20                 Want me to continue?

21          Q.  I just want to ask one question regarding  
22 the first paragraph, and you specifically say,  
23 quote, Besides the outrageous behavior and pricing  
24 of AIHR, I have now had time to use the tub.  It is  
25 in no way satisfactory.  I can't imagine what

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1 testing was done before production began, end  
2 quote.

3 First, did I read that correctly?

4 A. Yes.

5 MR. GOODHART: Object to form,  
6 foundation, leading.

7 MR. COOLS: Join.

8 A. Yes.

9 Q. (BY MR. CLOWARD) So the second question  
10 I have is, what did you mean by "it is in no way  
11 satisfactory"?

12 MR. GOODHART: Object to form,  
13 foundation, leading.

14 MR. COOLS: Join.

15 A. There was nothing about the tub that  
16 was -- that I was happy with.

17 Q. (BY MR. CLOWARD) Okay. And is that what  
18 you outlined in the second paragraph there --

19 MR. GOODHART: Objection to form,  
20 foundation --

21 Q. (BY MR. CLOWARD) -- as well as the third  
22 paragraph?

23 MR. GOODHART: Sorry. Objection, form,  
24 foundation, leading.

25 MR. COOLS: Join.

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1 A. Do you want me to read that?

2 Q. (BY MR. CLOWARD) Just read that and you  
3 can confirm whether that's accurate or not.

4 MR. GOODHART: Objection, form,  
5 foundation, leading.

6 MR. COOLS: Join.

7 A. There is no such thing as getting in and  
8 out of a hot bath. You walk in, close the drain,  
9 close and lock the door, and turn on the water.  
10 You sit there and wait for 20 minutes -- 20-plus  
11 minutes, depending upon pressure, and however long  
12 the hot water holds out, while the tub fills  
13 through enough to cover the jets. I don't know how  
14 many gallons it takes, but it's a lot. If you  
15 don't have enough hot water to cover you, you can't  
16 use them.

17 Then you decide the bath is over and you  
18 open the drain and wait while the tub drains, so  
19 you can open the door and walk out. The only thing  
20 is, you cannot safely walk out. The tub is wet,  
21 your feet are wet, and the threshold is too high  
22 and slick. The only way you could make a safe exit  
23 is by doing what commercial truck drivers are  
24 trained to do when exiting the cab of a big rig,  
25 you back out so you can use a grab bar for

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1 stability. You stand there, chilled.

2 Q. (BY MR. CLOWARD) Okay. Were those the  
3 complaints that you had --

4 MR. GOODHART: Objection --

5 Q. (BY MR. CLOWARD) -- regarding the tub?

6 MR. GOODHART: Objection, form,  
7 foundation, leading.

8 MR. COOLS: Join.

9 A. Would you repeat the question?

10 Q. (BY MR. CLOWARD) Were those some of the  
11 complaints that you had about the tub?

12 A. Yes, some.

13 MR. GOODHART: Objection, form,  
14 foundation, leading.

15 MR. COOLS: Join.

16 Q. (BY MR. CLOWARD) And let's go to your  
17 next letter of September 12. This is -- we've  
18 already covered this, but this is a letter you sent  
19 to Mr. Bachmeyer regarding this tub; correct?

20 A. Well, I said, Your tub has no overflows,  
21 near as I could see.

22 What happened was that Mike emailed me  
23 and told me where the -- where the -- where the  
24 overflow was, it was hidden behind something, I  
25 can't remember what he said, but it did have an

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1 overflow, but it wasn't visible to me.

2 Q. Okay. You were voicing your concerns  
3 with Jacuzzi?

4 A. {Continues reading.} What happens when a  
5 senior experiences a medical emergency while in the  
6 tub and is unable to turn off the water? If this  
7 senior lives alone, it seems to me that it would be  
8 hours or even days before the victim is discovered.  
9 Running water over a period of time could literally  
10 demolish the house. Not a very smart design.

11 Q. So you were --

12 MR. GOODHART: Objection, move to strike  
13 as nonresponsive.

14 MR. COOLS: Join.

15 Q. (BY MR. CLOWARD) So back in 2012,  
16 September 12th, you were critical of the design of  
17 the Jacuzzi tub, and you were voicing that to  
18 Jacuzzi?

19 MR. GOODHART: Object to form --

20 A. In addition --

21 MR. GOODHART: Object to form,  
22 foundation, leading.

23 MR. COOLS: Join.

24 A. {Continues reading.} In addition to my  
25 previous communications, detailed sales and

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1 designs, I believe all things considered, you are  
2 leaving yourselves quite vulnerable to litigation.  
3 The tub sold to me by firstSTREET through their  
4 so-called dealer is a rip off. I want the tub  
5 removed immediately at their expense and refunded  
6 the money I have paid.

7 MR. GOODHART: Objection, move to strike  
8 as not responsive.

9 MR. COOLS: Join.

10 Q. (BY MR. CLOWARD) So this letter is  
11 detailing the concerns and criticisms that you  
12 have; true?

13 MR. GOODHART: Objection, form,  
14 foundation --

15 A. Yes.

16 MR. GOODHART: -- leading.

17 MR. COOLS: Join.

18 Q. (BY MR. CLOWARD) Okay. And then the  
19 next letter, October 15, 2012, you point out -- I  
20 think it should be maybe just the next one in line,  
21 October 15th, 2012.

22 A. Yes.

23 Q. In this letter -- let me just see if I  
24 read this correctly and then I'll ask you a  
25 question about it. Question -- or excuse me,

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1 quote, This is my fourth communication to you, end  
2 quote. Did I receive that -- or did I read that  
3 correctly?

4 A. Yes.

5 MR. GOODHART: Objection, form,  
6 foundation, leading.

7 Q. (BY MR. CLOWARD) So was this October 15,  
8 2012 letter the fourth letter you'd sent to Jacuzzi  
9 regarding your concerns with this walk-in tub?

10 MR. GOODHART: Objection, form,  
11 foundation, leading.

12 A. Yes.

13 MR. COOLS: Join.

14 Q. (BY MR. CLOWARD) And then you go on to  
15 state, quote, To date I have received no response,  
16 end quote. Did I read that correctly?

17 MR. GOODHART: Objection, form,  
18 foundation, leading.

19 MR. COOLS: Join.

20 A. Yes.

21 Q. (BY MR. CLOWARD) So up to this point  
22 Jacuzzi didn't even respond to the three previous  
23 letters?

24 MR. GOODHART: Objection, form,  
25 foundation, leading.

1 MR. COOLS: Join.

2 A. No response.

3 Q. (BY MR. CLOWARD) Okay. And in this  
4 letter the third paragraph, let me see if I read  
5 this correctly, but it says, quote, Your tub in no  
6 way delivers what seniors are expecting from  
7 reading the advertisements put out by firstSTREET.  
8 It is misleading, to say the least, and false in  
9 many respects. Furthermore, this tub is a death  
10 trap for any senior experiencing a medical  
11 emergency while bathing. It should be recalled,  
12 end quote.

13 Did I read that correctly?

14 MR. GOODHART: Objection, form,  
15 foundation, leading.

16 A. Yes, you read it correctly.

17 MR. COOLS: Join.

18 Q. (BY MR. CLOWARD) And explain for the  
19 jurors what you meant when you said, quote, this  
20 tub is a death trap for any senior experiencing a  
21 medical emergency while bathing, end quote.

22 MR. GOODHART: Objection, form,  
23 foundation, leading.

24 MR. COOLS: Join.

25 A. What I meant was -- what I meant was, if

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1 I got in the tub and I blacked out and I slipped  
2 down in the water, there was no way I could get  
3 out.

4 Q. (BY MR. CLOWARD) And were you concerned  
5 about that?

6 A. Yes, because of my various disabilities,  
7 I, on occasion, do black out.

8 Q. Is that why you were informing Jacuzzi of  
9 this defect with the design?

10 MR. GOODHART: Objection, form,  
11 foundation, leading.

12 A. Yes.

13 MR. COOLS: Join.

14 Q. (BY MR. CLOWARD) Why were you sending  
15 these letters to Jacuzzi?

16 MR. GOODHART: Objection, form,  
17 foundation, leading.

18 A. I wanted to document my problems with the  
19 tub.

20 Q. (BY MR. CLOWARD) Okay. And your  
21 concerns?

22 MR. GOODHART: Objection, leading.

23 A. Yes.

24 MR. COOLS: Join.

25 Q. (BY MR. CLOWARD) Other than your

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1 problems, were there other reasons you were  
2 contacting Jacuzzi?

3 A. I didn't want other seniors to be taken  
4 in like I was.

5 Q. Okay.

6 A. If you go back to the letter, the first  
7 letter I wrote to him, where was it, that I  
8 discussed that the Jacuzzi brothers had invented  
9 the propeller, and what a profound impact that had  
10 on the country, and so Jacuzzi was a revered name.  
11 A don't remember which letter a put that in but it  
12 was one of the first.

13 Anyway, that was my concern, you know,  
14 the Jacuzzi brothers did have a patent on the  
15 propeller, and the propeller was a profound  
16 invention for everything, every industry, and so it  
17 was a revered name. And so the tub was advertised  
18 as a Jacuzzi, I was just sure it was what I was  
19 looking for.

20 Q. Was it?

21 A. No.

22 Q. And how was it not?

23 MR. GOODHART: Objection, asked and  
24 answered.

25 A. For Heaven's sakes, there was nothing

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1 about it that was right.

2 Q. (BY MR. CLOWARD) Okay. In addition to  
3 notifying Jacuzzi by letter, did you also make  
4 efforts to notify them by email?

5 MR. GOODHART: Objection, form,  
6 foundation, leading, assumes facts.

7 MR. COOLS: Join.

8 A. We had an exchange of emails -- I had an  
9 exchange of emails with Bachmeyer.

10 Q. (BY MR. CLOWARD) Okay. And what was the  
11 purpose of the emails that you were sending to  
12 Mr. Bachmeyer?

13 A. I don't know why I used the emails  
14 instead of letter, unless he emailed me and I was  
15 responding.

16 Q. Okay. In addition to Jacuzzi, did you  
17 also contact any of the other parties that were  
18 involved in selling you the tub?

19 MR. COOLS: Object to form, leading.

20 A. Well, yes, I made contact with  
21 firstSTREET and AIHR, Nick Fawkes; Tricky Nicky.

22 Q. (BY MR. CLOWARD) And were you expressing  
23 the same types of concerns with regard to the  
24 safety of the tub to those parties that you were to  
25 Jacuzzi?

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1 MR. GOODHART: Objection, form,  
2 foundation, leading.

3 MR. COOLS: Join.

4 A. Yes.

5 Q. (BY MR. CLOWARD) Okay. Specifically I  
6 would reference -- or refer you to Exhibit 2, and  
7 I'll find you the page. Why don't you just go  
8 ahead and read this silently and then I'll just ask  
9 you a question about that. This is, for the  
10 record, the letter dated December 4th, 2012, dated  
11 {sic} to Stacey L. Hackney, first STREET for Boomers  
12 & Beyond.

13 MR. GOODHART: Object to form,  
14 foundation, leading.

15 MR. COOLS: Join.

16 Q. (BY MR. CLOWARD) Did you write that  
17 letter to Ms. Hackney on December 4th, 2012?

18 A. Yes.

19 MR. GOODHART: Objection, form,  
20 foundation, leading.

21 Q. (BY MR. CLOWARD) What was the purpose of  
22 you writing that letter to Ms. Hackney on  
23 December 4, 2012?

24 MR. GOODHART: Objection, form,  
25 foundation, leading.

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1 MR. COOLS: Join.

2 A. I had received a letter from her  
3 demanding payment.

4 Q. (BY MR. CLOWARD) Okay.

5 A. She said that she was a legal  
6 representative of firstSTREET, legal counsel I  
7 think is the way she put it.

8 Q. And what are some of the things there you  
9 pointed out to firstSTREET in that letter?

10 MR. GOODHART: Object to form,  
11 foundation, leading.

12 MR. COOLS: Join.

13 A. Well, I pointed out -- she claimed to  
14 have no knowledge of the defect of the tub. I  
15 said, This is hard to fathom since there have been  
16 several communications to Jacuzzi. And in all  
17 instances Nick Fawkes and his cohorts have  
18 identified themselves as Jacuzzi.

19 Q. (BY MR. CLOWARD) Did you then go on and  
20 point out any of those defects?

21 MR. GOODHART: Object to form,  
22 foundation, leading.

23 MR. COOLS: Join.

24 A. {Continues reading.} When installation  
25 was complete, I attempted to use the tub and found

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1     that it in no way delivered what your advertisement  
2     led one to believe. There were several  
3     communications to Jacuzzi about design flaws and  
4     the risks associated with -- associated. And I  
5     assumed, incorrectly it seems, that those were  
6     being passed on to the proper people.

7           Q. (BY MR. CLOWARD) Okay. So you were  
8     attempting to inform or educate her about the  
9     complaints that you had already made to Jacuzzi; is  
10    that accurate?

11           MR. GOODHART: Object to form,  
12    foundation, leading.

13           MR. COOLS: Join.

14           A. Yes, that's correct.

15           Q. (BY MR. CLOWARD) And in the previous  
16    paragraph what did you mean when you said, quote,  
17    When ready to get out, one had to sit and wait for  
18    the tub to drain before opening the door, it was  
19    neither comfortable, convenient, nor safe, end  
20    quote?

21           What did you mean that it was not safe?

22           MR. GOODHART: Object to form,  
23    foundation, leading.

24           MR. COOLS: Join.

25           A. Because my feet were wet, the tub was

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1 wet, and by the time all of the heating and  
2 equipment that was installed underneath the tub, it  
3 was no longer walk-in, the threshold was this high,  
4 and the flashing that was put on the threshold was  
5 slick.

6 Q. (BY MR. CLOWARD) Okay. And additionally  
7 when you said, quote, For anyone suffering a  
8 medical emergency, I have a balance problem and  
9 periodic blackouts, there was no way to get out.  
10 The door opens inward and the pressure of the water  
11 would negate its opening, end quote.

12 What did you mean when you were telling  
13 Ms. Hackney about that?

14 MR. GOODHART: Objection, form,  
15 foundation, leading.

16 MR. COOLS: Join.

17 A. I was telling her that I didn't feel safe  
18 in using the tub.

19 MR. CLOWARD: Okay. I don't have any  
20 other questions. Thank you very much.

21 THE WITNESS: You're welcome.

22 MR. GOODHART: I'll go first.

23 EXAMINATION

24 BY MR. GOODHART:

25 Q. Are you doing okay?

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1 A. Yes.

2 Q. All right. I introduced myself earlier,  
3 my name is Philip Goodhart, and I represent  
4 firstSTREET and AITHR in this particular  
5 litigation.

6 I'm going to jump around a little bit,  
7 and I apologize for that. You indicated that you  
8 had a concern about blacking out in the tub and  
9 then not being able to get out; is that right?

10 A. Correct.

11 Q. If you were in a regular tub, a normal  
12 bathtub, traditional bathtub, and you blacked out  
13 while you were in the bathtub, what would happen to  
14 you?

15 A. I could lean over the edge of the tub.

16 Q. Okay. So your head would be above the  
17 water level?

18 A. Uh-huh, yeah.

19 Q. And if you were sitting in the Jacuzzi  
20 tub and you blacked out, your head would still be  
21 above the water level?

22 A. My head would still be above the water  
23 level, but the tub would be above my head -- the  
24 top of the tub would be above my head.

25 Q. Right. If you blacked out in a

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1 traditional tub and slipped down into that  
2 traditional tub, would your head go underwater?

3 A. I probably wouldn't have filled the tub  
4 that full.

5 Q. Okay. You've heard -- or have you ever  
6 heard of stories of people drowning in an inch of  
7 water?

8 A. Yes, yes.

9 Q. Okay. Do you think you would've put at  
10 least an inch of water in a traditional tub when  
11 you were bathing?

12 A. Oh, yes, I would put more than an inch.

13 Q. Okay. If you had slid down in a  
14 traditional tub, you could have drowned?

15 A. I could have.

16 Q. Okay. I want to ask you about your  
17 complaints to the Consumer Product Safety  
18 Commission first. And can you have a look at  
19 Exhibit 4.

20 A. It must be in here somewhere.

21 Q. Yeah. Is it okay if I come around  
22 towards you and --

23 MR. GOODHART: Or Ben, can you find  
24 Exhibit 4?

25 A. Yeah, I found 4.

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1 Q. (BY MR. GOODHART) Okay. If you can turn  
2 towards the back of Exhibit 4 -- here, let me -- if  
3 you can hand me Exhibit 4, please, then I can find  
4 it.

5 Okay. I'm going to show you a document  
6 that is towards the back of Exhibit 4. And you  
7 testified earlier, I believe, that this was an  
8 email you received from the Consumer Product Safety  
9 Commission in response to your complaint; is that  
10 correct?

11 A. I don't believe that this particular  
12 document came from -- Well, it says that it came  
13 from CPSC, but it was talking about the Federal  
14 Trade Commission.

15 Q. Okay. But the subject of this email is  
16 Report Number 20121077-B1D09-1278892 was submitted  
17 to the CPSC; correct?

18 A. Right.

19 Q. And if you go midway through this  
20 document, indented there's a bullet point; do you  
21 see that?

22 A. Yes.

23 Q. And that says, The requirements below  
24 were not met: Description of risk of harm; do you  
25 see that?

1 A. Let's see, what paragraph is that?

2 Q. If you go to the third paragraph in this  
3 email from the CPSC, it starts, Your report will  
4 not be posted; do you see that?

5 A. Because we are an agency that relies on  
6 reports such as yours to help us do our job, we're  
7 not -- I don't know if I'm following you.

8 Q. Okay. Let me see. I'm going to point it  
9 out to you. If you go to the third paragraph, I'm  
10 just going to point it to you, which starts right  
11 here, Your report will not be posted; do you see  
12 that?

13 A. Well, safe products is the Federal Trade  
14 Commission, that's not C -- that's not CPSC.

15 Q. Okay. I'm just asking you, at least in  
16 this email, if I'm reading this correctly, the CPSC  
17 was informing you that your report -- or your  
18 complaint would not be posted on saferproducts.gov  
19 because it does not meet the minimum requirements  
20 for publication.

21 A. That's correct.

22 Q. And then it says, The requirements below  
23 were not met, and it says, Description of risk of  
24 harm.

25 A. Where do you see that?

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1 Q. Right below the bullet point,  
2 description --

3 A. {Reading.} If you wish to submit  
4 additional information to address the deficiency  
5 identified above, please forward this email  
6 together with your additions to clearinghouse --

7 Q. Okay. Do you see that?

8 A. Yes.

9 Q. Okay. So when the CPSC notified you that  
10 your report and complaint was deficient because it  
11 did not have a description of the risk of harm, did  
12 you respond to that?

13 A. I didn't respond to the clearinghouse,  
14 no.

15 Q. Okay. In a number of those documents  
16 there's an email address of -- for you of  
17 3tippy47@bresnan.net.

18 A. Right, that's my email address.

19 Q. I'm just curious, and I'm just like this,  
20 and I apologize, does the 3tippy47 stand for  
21 anything or mean anything?

22 A. Yes, when I was 3 years old my parents  
23 gave me an old mongrel that we named Tippy. And in  
24 '47 our house burned up and the dog burned up in  
25 the house.

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1 Q. Oh, I'm sorry to hear about that, I  
2 really am.

3 Now, Mr. Cloward went through the  
4 complaints that you've had, did you -- other than  
5 what we just read from the Consumer Product Safety  
6 Commission, did you ever receive a response from  
7 them with respect to your complaint?

8 A. Well, yes, they responded and they asked  
9 for additional information, if they could post it  
10 in the national database, and release my contact  
11 information. So I did fill that out and return it  
12 to them.

13 Q. Okay. And did they ever respond to you  
14 with the results of their investigation?

15 A. I don't know that they did. In fact, I  
16 don't know if they do investigations. Do they? I  
17 think they're merely a reporting entity.

18 Q. Okay. And you also wanted the Department  
19 of Elder Fraud for the U.S. Attorney General's  
20 office to investigate; correct?

21 A. Yeah -- Well, I there again, I wanted  
22 them to be aware of my concerns.

23 Q. Okay. Did any -- did -- were you ever  
24 told of what happened to any investigation that the  
25 Department of Elder Fraud may have performed?

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1 A. I don't recall that I did.

2 Q. Okay. Do you recall being notified of  
3 any investigation that the attorney general of  
4 Montana did?

5 A. I don't think that I ever received any  
6 kind of information like that.

7 Q. Okay. Did you receive any response as to  
8 any investigation that the Associated Press may  
9 have done?

10 A. No.

11 Q. Have you ever filed a lawsuit --

12 A. No.

13 Q. -- against anybody?

14 A. No, no.

15 Q. Have you ever been defendant in a  
16 lawsuit?

17 A. No.

18 Q. Now, looking through the documents that  
19 were provided today, it appeared as though you  
20 approached a couple of lawyers to find out what  
21 could be done about the concerns you had about the  
22 Jacuzzi tub; is that right?

23 A. Yes. The first one was Jennifer Lint,  
24 and she said, I have no experience in product  
25 liability litigation, so she said, I couldn't do

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1 that for you.

2 Well, now, Royce McCarty is my personal  
3 attorney, and he has done work for me. When I  
4 moved from Washington state to Montana state,  
5 there -- I have a trust and it had a lot of  
6 documents that had to be changed. And so I took  
7 the contract to him and had him look at it, and he  
8 said, it's probably legitimate, they're just inept.

9 Q. Okay. Did Mr. McCarty recommend that you  
10 pursue litigation against Jacuzzi?

11 A. He did not recommend that I pursue  
12 litigation. He said, you have to weigh the  
13 benefits against the risk. And I decided I wasn't  
14 spending a dime more, that I would chalk this up to  
15 life experience and go on and forget the whole bit.

16 Q. How old are you right now?

17 A. 82.

18 Q. And are you a member of any type of  
19 senior community where you live, where seniors will  
20 get together and meet or anything like that?

21 A. No.

22 Q. Are you a member or do you subscribe to  
23 any senior magazines?

24 A. No.

25 Q. In one of the documents that Mr. Cloward

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1     went over with you, you make reference to, this  
2     product is not meant for seniors, do you remember  
3     that?

4             A.   Yes.

5             Q.   Okay.  When you say it's not meant for  
6     seniors, do you mean it's just not meant for you?

7             A.   No, that's plural.

8             Q.   Okay.  What seniors have you talked to?

9             A.   Nobody.

10            Q.   Okay.

11            A.   Well, I've talked -- I've talked to  
12     people about it, but -- I guess Ken Bell was the  
13     first person I talked to, he's an attorney but he's  
14     also member of the family.  And I told him that  
15     I -- you know, I was afraid I would just run up  
16     more attorney's fees.

17            Q.   I understand that.  I'm just trying to  
18     get an idea of when you put in your letters that --  
19     and used the words in your drafts that these tubs  
20     were not meant for seniors, that implies that it's  
21     not meant for any senior, and I want to get an  
22     understanding as to how you came to that  
23     understanding or that idea?

24            A.   The first time I used the tub.

25            Q.   Okay.  But that was based upon your

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1 personal experience in the tub?

2 A. Right.

3 Q. And when you say the word "seniors" in  
4 your letters, it's not based upon other people's  
5 experiences with the tub, it's just based upon your  
6 own personal experience?

7 A. That's right.

8 Q. And you have no idea, because you never  
9 talked to other seniors about this, about how other  
10 seniors have thought about the tub?

11 A. I have not.

12 Q. Okay. So you're expanding your belief  
13 about this tub to all seniors that are out there?

14 A. That's correct, I am.

15 Q. Okay. And that's just your personal  
16 opinion?

17 A. Right.

18 Q. Okay. In looking through the documents  
19 that were produced today, it appears as though  
20 you're fairly good at going on the internet and  
21 Google-searching things; is that a fair statement?

22 A. Yes.

23 Q. Okay. Before you reached out to Jacuzzi  
24 using the ad that was produced here today and the  
25 number, had you done any online research about

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1 walk-in tubs?

2 A. No, I hadn't.

3 Q. Okay. After you reached out to Jacuzzi  
4 and talked to them and set up an appointment, but  
5 before the salesperson came into the home, did you  
6 do any online research about walk-in tubs?

7 A. No.

8 Q. Do you remember if the salesperson left a  
9 brochure with you, after you had signed the  
10 contract, which had some promotional materials in  
11 it?

12 A. I don't recall. I don't think he did,  
13 but I would not say for sure.

14 Q. Okay. You've produced lot of documents  
15 here today; right?

16 A. Right.

17 Q. And we've gone over a lot of them and  
18 they include, for example, Exhibit 6 is the  
19 installation checklist, and there was a copy of the  
20 contract that was signed by you; correct?

21 A. Right.

22 Q. And would it be fair to say that you kept  
23 all the information that was provided to you at the  
24 time you signed -- or at the time the salesperson  
25 had you sign the contract all the way through until

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1     when the tub was installed?

2             A.   I've got hard copies of the Christmas  
3     letter I've written back to 2000 and beyond that.  
4     It is my practice to keep hard copies of --

5             Q.   And I cannot blame you for that.

6                     So is it fair to say, then, that you  
7     would -- had a brochure been provided to you, after  
8     you signed the contract, that had promotional  
9     materials in it, you would've kept that brochure?

10            A.   Well, those things that Jacuzzi sent  
11   me -- or not Jacuzzi, firstSTREET, those magazines,  
12   I kept in my file.

13            Q.   Right.   So --

14            A.   I don't know that I read them.

15            Q.   So what I'm trying to find out, though,  
16   Ms. Chopper, is based upon your custom and practice  
17   of always keeping materials and not throwing  
18   originals out, if the salesperson had left a  
19   brochure with you that had several pages of  
20   promotional and marketing materials about the  
21   Jacuzzi product in it, that is something, based on  
22   your custom and practice, you would've kept?

23            A.   I'm pretty sure I would have, and I don't  
24   have anything like that in my possession.

25            Q.   Okay.   And had you kept that, you

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1 certainly would've given it to Mr. Cloward and  
2 brought it with you today?

3 A. Of course.

4 MR. GOODHART: Okay. I don't think I  
5 have any other questions for you. Thank you, I  
6 appreciate it.

7 THE WITNESS: Okay.

8 EXAMINATION

9 BY MR. COOLS:

10 Q. Ms. Chopper, my name is Josh Cools, I  
11 represent Jacuzzi.

12 How long did Mr. Brown spend with you  
13 when he came to sell you the tub?

14 A. Somewhere in my documentation -- I think  
15 he came at 5:30 and he left at 7:30, so he spent  
16 two hours.

17 Q. And I know that Mr. Goodhart already  
18 asked you about the -- whether or not a brochure  
19 was left with you, but do you remember seeing any  
20 materials about the tub while Mr. Brown was there  
21 with you?

22 A. No, no. Like I said, the name Jacuzzi,  
23 particularly among people of my age revered the  
24 name Jacuzzi.

25 Q. So it's fair to say that you did not see

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1 any materials -- you do not recall seeing any  
2 materials related to the tub when the tub was sold  
3 to you; is that correct?

4 A. No, no, no. Mr. Brown, John Brown was a  
5 very charming man that talked about his family and  
6 showed me pictures and commented about my bulletin  
7 boards and just was very ingratiating.

8 Q. So do you recall seeing any  
9 specifications about the tub or any pictures of the  
10 tub before you purchased it?

11 A. No. I think on the back of the contract  
12 there's a diagram of where he drew, but no,  
13 I hadn't -- no, I hadn't seen anything.

14 Q. Before you purchased the tub did you know  
15 that the door swung inward on the tub?

16 A. No.

17 Q. What size is your water heater?

18 A. I don't know for sure, but I think it's  
19 40 gallon. I know that I ran out of hot water in  
20 14 minutes.

21 Q. And it's the same size today as what it  
22 was --

23 A. Yeah.

24 Q. -- when you had the tub installed?

25 A. Yeah.

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1 Q. It's fair to say that you were an unhappy  
2 customer; right?

3 A. Very.

4 Q. And you didn't think that the tub was  
5 comfortable; correct?

6 A. No, I did not.

7 Q. You were unhappy with how long it took to  
8 fill up; right?

9 A. I was.

10 Q. You were never injured in this tub, were  
11 you?

12 A. No.

13 Q. How many times did you use the tub?

14 A. Twice. Well, I will qualify that, I used  
15 the jets twice. Before it was taken out, like I  
16 explained to my attorney, I would run 10 inches at  
17 the bottom of the tub and get in what I called a  
18 spit bath.

19 Q. Now, you purchased the tub on June 28th,  
20 2012; is that correct?

21 A. Without looking back through the  
22 documentation, I can't confirm that.

23 Q. Okay. Do you recall that the tub was  
24 installed in August of 2012?

25 A. I can't confirm that either, without

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1 going back through my documentation. But I know  
2 that sometime I got a call from Mike Kirchner in  
3 Bigfork and he said, are you waiting for a tub?  
4 And I said, yes. He said, well, I have a tub here,  
5 but the only thing with it is the name Chopper in  
6 Hamilton. He said, they haven't shipped the  
7 surrounds. So he was calling to find -- I was the  
8 only Chopper in Hamilton, so he called and said,  
9 are you waiting for a tub?

10 Q. So if you look at Exhibit 6, have you got  
11 that in front of you? There you go, it's that one  
12 there. That's your signature there at the bottom,  
13 isn't it?

14 A. Yes, that's right, it is.

15 Q. And you signed this at the time that your  
16 tub was installed?

17 A. Well, it's an installation check sheet,  
18 so I'm sure it is because everything -- or all the  
19 boxes -- well, the three bottom boxes aren't  
20 checked, but the one, two, three, four, five top  
21 ones are.

22 Q. Right. My question was, you signed this  
23 at the time that your tub was installed; correct?

24 A. Yes.

25 Q. Okay. It's fair to say that you had

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1 complaints about the process before you even had  
2 your tub installed; right?

3 A. I had my suspicion about Nick Fawkes, the  
4 guy comes off as a smartass, and that's why I did  
5 as much investigation as I did.

6 Q. So I just -- on Exhibit 8, the last page  
7 there, if you could take a look at that.

8 A. Exhibit 8?

9 Q. Yes. This is what the front of it looks  
10 like.

11 A. Saturday, yeah.

12 Q. Okay. So if you look at the last page  
13 there, I believe you previously testified that  
14 these were your notes; is that correct?

15 A. Yes, they were notes to myself.

16 Q. Okay. And there's a date up at the top  
17 of that that's July 26th; do you see that?

18 A. Yes.

19 Q. Okay. Is that your handwriting?

20 A. Yes, I'm pretty sure I wrote that.

21 Q. Do you believe that's a reference to  
22 July 26th, 2012, around the same time that you  
23 purchased the tub?

24 A. No, no. Because of my notes here of all  
25 the people that I've talked to, like at the bottom

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1 of that page it said I talked to the City of  
2 Littleton on 72/6, so you know, I don't know what  
3 the July 26th means.

4 Q. Well, you believe that you talked to the  
5 City of Littleton on July 26th, 2012?

6 A. No, I didn't talk to them until July --  
7 July 26th -- oh, that is July 26th. Maybe  
8 that's -- maybe that's what that means.

9 Q. So do you believe this document was  
10 created sometime before July 26th, 2012?

11 A. Probably not in this form, probably on a  
12 scratch pad somewhere.

13 Q. Okay. Do you -- had you compiled this  
14 information as of July 26th, 2012?

15 A. Uh-huh, yeah.

16 Q. Yes?

17 A. Yes.

18 Q. Okay. And in fact, you'd already  
19 consulted with an attorney as of July 26th, 2012,  
20 hadn't you?

21 A. I think I would've talked to, yes,  
22 Jennifer Lint and McCarty.

23 Q. And that's all before your tub was even  
24 installed; correct?

25 A. Uh-huh, yes.

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1 Q. While -- I think it was off the record we  
2 talked a little bit about your conversation with  
3 Mr. Cloward. When did Mr. Cloward first contact  
4 you?

5 A. I can't remember the day of the phone  
6 call. I found a call on my answering machine that  
7 he had called, but since I get so many scam calls,  
8 I didn't call him because I didn't know if he was  
9 who he said he was --

10 Q. When did you first --

11 A. -- so it wasn't until I received the  
12 subpoena and saw who the -- the firm in Las Vegas,  
13 and then I called them and I said, the number that  
14 he gave me is not any number. They said, oh,  
15 that's -- he's a member here, but that's his cell  
16 number, so that's the number I called.

17 Q. And on how many occasions have you spoken  
18 with Mr. Cloward since then?

19 A. Let's see, I called him back and he asked  
20 me to make copies of stuff. And when I got  
21 finished copying, I called him and I said, where do  
22 you want me to direct this information? And he  
23 said, in Las Vegas, at the firm. So I directed it  
24 to Las Vegas.

25 Q. So do you remember how many times that

1     you actually spoke with Mr. Cloward?

2             A.   Not very many times until he -- Let's  
3     see, I talked to him after I received the subpoena,  
4     which directed me to appear on the 20th, which is  
5     today.   But then when I told him how much stuff I  
6     had in my file, he said, would it be all right if I  
7     fly in the day before and go over this stuff with  
8     you?   And I said, that would be fine.

9             Q.   And so -- and you're referring to the  
10    meeting that you had with him yesterday where he --

11            A.   Right.

12            Q.   How long did he spend with you yesterday?

13            A.   Well, several hours.   He was gone about  
14    an hour more when he went down to UPS to make  
15    copies.   I have a copy machine, but I'm sure glad  
16    that he didn't try to make all the copies he made  
17    on that thing.   Anyway, he was gone for a period of  
18    an hour or more, and he came back with a box of  
19    stuff and said, do you know how much money I spent  
20    making these copies, I forget what he said, \$450,  
21    or something.

22                   And he came in and we talked some more  
23    and went over some more stuff.   And I don't know --

24                   THE WITNESS:   What time did you leave?

25                   (Speaking to Mr. Cloward.)

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1           A. I don't know what time he left, it was --  
2       Oh, yes, I do know, it was more like 4:30 because  
3       he said, I still have to go to Darby, and Darby is,  
4       oh, 30, 40 minutes down the road. And so I don't  
5       know -- I don't know -- but anyway, he showed --

6           First of all, he said that his plane  
7       would get in at 1:20 -- at 1:10, so he thought by  
8       the time he rented the car and so on and so forth  
9       it would be close to 2:30 or 3 before he got to my  
10      house. But then he called me and said he was in  
11      Missoula, his plane had landed at 12-something,  
12      and -- I don't know whether he changed flights or  
13      whether -- you know, I don't know why he was ahead  
14      of schedule, but anyway, he was ahead of schedule.  
15      And I said, come on out any time you're ready. If  
16      you want to take time to have lunch, have lunch and  
17      then come out, I'm not going anywhere.

18           Q. (BY MR. COOLS) But it's fair to say  
19      he -- I think you said he spent a few hours with  
20      you; is that correct?

21           A. Yeah, I would say -- I would say probably  
22      a couple, three maybe.

23           Q. And did he tell you about the case  
24      pending in Las Vegas?

25           A. He told me about somebody that drowned,

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1 is that Las Vegas?

2 Q. No.

3 A. Well, he told me about somebody else that  
4 had a medical emergency of some kind, and somebody  
5 called the medics and there were four paramedics  
6 that came out, and the four of them couldn't get  
7 this person out of the tub. They broke her arm in  
8 the process of getting her out of the tub. And  
9 eventually had to end up by sawing the door off to  
10 get her out of the tub. And then they took her to  
11 the hospital, where she died a few days later. But  
12 I guess he said she laid in that tub for three days  
13 before she was found.

14 Q. Did you know before you purchased the tub  
15 that you had to shut the door before you filled it  
16 up?

17 A. Huh-uh.

18 MR. CLOWARD: Is that a no?

19 A. Well, that's true, I had to shut the door  
20 before I filled it up. I didn't know that the door  
21 went inward. Of course you have to shut the door  
22 before you fill it up.

23 Q. (BY MR. COOLS) Let me just ask my  
24 question again.

25 Did you know, before you purchased the

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1 tub, that you had to close the door before you  
2 could fill it?

3 A. I don't know that the subject ever came  
4 up. I knew that it was getting dangerous for me  
5 getting in and out of a bathtub, but I hadn't done  
6 any research as far as what I was gonna do.

7 Q. Considering the research that you did and  
8 that you'd already consulted with an attorney all  
9 before your tub was even installed, it's fair to  
10 say that you were already unhappy with your  
11 purchase, is that correct, even before the tub was  
12 installed?

13 A. I told Mr. Bachmeyer, in my first letter  
14 to him, that I had buyer's remorse.

15 Q. Right. But my point is, you had buyer's  
16 remorse before they even brought the tub out and  
17 installed the tub; right?

18 A. I'm not sure about that. I know that I  
19 consulted with Royce McCarty, he looked at the  
20 contract and that's when he said, well, they're  
21 probably legitimate, they're just inept.

22 Q. You went and spoke with an attorney  
23 because you were unhappy with something about the  
24 process; right?

25 A. Like I told you, Nick Fawkes sent up a

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1 red flag right away. He -- he's just the kind of  
2 guy that makes you suspicious. Like I said, his  
3 attitude was a smartass. And that's why I started  
4 doing research because I had a feeling that he was  
5 not legitimate.

6 Q. And when you started doing that research,  
7 you were unhappy with how the -- with your purchase  
8 so far; is that fair to say?

9 A. Yes, his first initial response to me  
10 was, you know, that -- let's see, how did that go?  
11 It was a thank you for the tub, but then -- and  
12 then I got -- I called and I got this Tracy  
13 Dierkson, or whatever her name is, who told me that  
14 the tub would be coming from Bigfork.

15 And I wrote an email to Nick Fawkes and I  
16 said, for Heaven's sakes, Bigfork is hundreds of  
17 miles from here, surely you can find somebody in  
18 Missoula, which is 50 -- 50 miles away and is the  
19 nearest metro. And the response was, everybody  
20 that's a skilled tradesman is down working in the  
21 oil fields in Bakken.

22 And so -- but then when Mike came, I  
23 found out he had already installed one tub up in  
24 his neighborhood. And there was a problem with the  
25 tub because the door was leaking, and he said that

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1 a Jacuzzi technician had been out to look at the  
2 tub. So they already had his name, you know, and I  
3 guess that's why he was recruited by Facility  
4 whatever -- Facility Management, whatever.

5 Q. But assuming that, as you've testified  
6 that this -- you know, this page with your notes,  
7 this was all created prior to the tub even being  
8 installed, you went to a considerable amount of  
9 research to create these notes; isn't that right?

10 A. What -- I forget what day the tub was  
11 installed.

12 Q. The tub was installed August 20th in  
13 2012.

14 A. So, yes, I did do a lot of research  
15 before the tub was installed.

16 Q. Even going so far as to, you know, track  
17 down the information for the attorney general of  
18 Montana, the secretary of state, the -- calling the  
19 City of Littleton, Colorado, all of that, you  
20 compiled all of that information before you even  
21 received the tub; right?

22 A. Yes, yes, that's just my standard  
23 practice.

24 Q. And it's fair to say, isn't it, that you  
25 wouldn't have done this if you were happy with the

1 purchase; right?

2 A. Like I said before, I was suspicious of  
3 Nick Fawkes, and that's the reason I did my  
4 research. And I found out in Littleton that nobody  
5 was using that address in Littleton. They were  
6 using it as a warehouse, I guess, because nobody  
7 was there and everything was done by cell phone.  
8 So, you know, where they were when they made their  
9 calls and letters and stuff, I have no idea, and  
10 that made me suspicious, too.

11 MR. COOLS: Those are all my questions.  
12 Thank you.

13 MS. LLEWELLYN: I just have a few  
14 questions for you.

15 MR. COOLS: He's probably not going to  
16 let you.

17 MR. CLOWARD: Sorry.

18 MR. COOLS: This is a previous --

19 MR. CLOWARD: I don't have a problem with  
20 it, but they've given me a hard time about it, so I  
21 think what's good for the goose is good for the  
22 gander, but --

23 MR. GOODHART: Whoa, whoa, you said  
24 "they," I don't remember giving you a hard time  
25 about it.

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1 MR. CLOWARD: You're the one that did.

2 (Laughter.)

3 MR. GOODHART: I don't --

4 MR. CLOWARD: Go ahead and ask your  
5 question.

6 MS. LLEWELLYN: No, it's fine.

7 MR. CLOWARD: I really -- go ahead. If  
8 you have a question, go ahead.

9 MS. LLEWELLYN: I'm fine.

10 MR. CLOWARD: Okay.

11 EXAMINATION

12 BY MR. CLOWARD:

13 Q. Ms. Chopper, earlier Mr. Goodhart asked  
14 you about a regular tub compared to the walk-in  
15 tub, which one do you feel is safer?

16 A. Well, I had a regular tub prior to this  
17 one and it was getting harder for me to get in and  
18 out of the tub because of my disability --

19 Q. Uh-huh.

20 A. -- and so I knew I was gonna have to do  
21 something. And so when they -- when I saw this  
22 thing for Jacuzzi, I bit, because like I said,  
23 people of my generation knew what the Jacuzzi  
24 brothers had done as far as patenting the  
25 propeller, which revolutionized everything, so we

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1 held that name in awe.

2 Q. Did you trust Jacuzzi to provide a safe  
3 product?

4 A. Yes.

5 MR. COOLS: Objection, leading.

6 Q. (BY MR. CLOWARD) Did Jacuzzi violate  
7 that trust?

8 A. Yes.

9 MR. COOLS: Objection, leading, lacks  
10 foundation.

11 MR. GOODHART: Join.

12 Q. (BY MR. CLOWARD) How did they violate  
13 your trust?

14 MR. COOLS: Same objections.

15 MR. GOODHART: Join.

16 A. How did they violate my trust? They  
17 didn't produce what I was expecting.

18 Q. (BY MR. CLOWARD) And what were you  
19 expecting?

20 A. Comfort, convenience, safety.

21 Q. Okay. Were you glad that you had the  
22 Jacuzzi tub removed from your home?

23 A. Oh, yeah, yeah. I couldn't wait to get  
24 it removed after I used the tub twice.

25 Q. And it's my understanding you actually

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1 paid an additional \$700 to have it removed?

2 A. I did, I paid --

3 MR. COOLS: Objection, leading.

4 MR. GOODHART: Join.

5 A. -- Mike Kirchner \$700 to remove the tub.

6 And what he did with it after that, I don't know,

7 but I remember reading somewhere that that guy back

8 at Facilities Management asked if the tub could be

9 refurbished and installed somewhere else, and I

10 don't know -- I don't know where I read that.

11 Maybe Mike -- maybe Mike in one of his emails, or

12 something. But anyway, that question was asked of

13 him.

14 Q. Okay. I believe it was Mr. Cools that

15 was asking -- maybe it was Mr. Goodhart, about

16 whether or not the tub was appropriate for other

17 seniors. Why do you feel that the tub -- the

18 walk-in tub is not appropriate for seniors --

19 MR. GOODHART: Objection --

20 Q. (BY MR. CLOWARD) -- plural?

21 MR. GOODHART: Objection, form,

22 foundation, leading.

23 MR. COOLS: And misstates prior

24 testimony.

25 A. Because of my experience, it was not

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1 comfortable, it was not convenient, it was not  
2 safe. And I didn't want any -- I didn't -- I  
3 didn't want people to be sucked in like I was.

4 MR. CLOWARD: Okay. No further  
5 questions. Thank you very much.

6 THE WITNESS: You're welcome.

7 MR. GOODHART: I have no questions.  
8 Thank you.

9 MR. COOLS: I have no further. Thank you  
10 for your time.

11 MR. CLOWARD: So you --

12 COURT REPORTER: Do you want to go off?

13 MR. CLOWARD: I'll just do the  
14 admonishment on the record.

15 The nice reporter will type up the  
16 deposition today in a booklet format, where you can  
17 read the questions and answers, and you can sign  
18 off on that or you can just waive that, that's up  
19 to you. If you want to do that, then you would be  
20 required to work with the court reporter to have  
21 the transcript either sent to you or you'd go to  
22 their location and you'd read through the  
23 transcript and then sign off, or you can waive,  
24 it's your right.

25 THE WITNESS: I have one question for

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1     you.

2                   MR. CLOWARD:   Okay.

3                   THE WITNESS:   Am I going to have to be  
4     a witness at a trial?

5                   MR. CLOWARD:   I'm hoping not.   You can't  
6     be compelled to come to Nevada.   Would you be  
7     interested to come to Nevada to testify and talk to  
8     jurors?

9                   THE WITNESS:   Well, I have no reason to  
10    go to Nevada anymore.

11                   How old is Dakota?   What year was she  
12    born?   (Speaking to Ms. Williamson.)

13                   MS. WILLIAMSON:   Dakota?

14                   THE WITNESS:   Dakota.   We made the  
15    trip -- we made the trip to Las Vegas the year  
16    Dakota -- when she was born.

17                   MS. WILLIAMSON:   Oh, that was '06.

18                   MR. CLOWARD:   We can go off now.

19                   THE WITNESS:   I lived there in the '50s  
20    and I've been back several times since.

21                   MR. GOODHART:   Too late, we're on the  
22    record.

23                   MR. CLOWARD:   Okay.   Well, you cannot be  
24    compelled to come to Nevada, but certainly I think  
25    it would be helpful if you came and talked to the

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1 jurors about your experience, so that's up to you.

2 THE WITNESS: Are you gonna pay for my  
3 way? (Laughter --

4 MR. CLOWARD: I would imagine we would  
5 arrange for your travel, yes.

6 And thank you -- So do you want to  
7 exercise your right to review and read and sign the  
8 transcript? You don't have to do that, you can  
9 waive that. Most folks waive that, but some folks  
10 do like to review the transcript to make sure that  
11 it was transcribed correctly.

12 THE WITNESS: You know, I don't give a  
13 dang anymore.

14 MR. CLOWARD: Okay. We'll just say that  
15 she waives, then.

16 MR. GOODHART: That's fine.

17 THE WITNESS: I'll chalk --

18 COURT REPORTER: Let's let --

19 THE WITNESS: -- chalk everything up to  
20 experience.

21 COURT REPORTER: Okay. Let's let her get  
22 us off the record.

23 VIDEOGRAPHER SIMONICH: This concludes  
24 the deposition of Jerre Chopper. The time is 3:20  
25 p.m., and we are now going off the record.

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(Deposition concluded at 3:20 p.m.

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Witness excused, signature waived.)

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## C E R T I F I C A T E

STATE OF MONTANA )  
: ss.  
County of Ravalli )

I, Terra Rohlf, RPR, Freelance Court Reporter and Notary Public for the State of Montana, residing in Hamilton, Montana, do hereby certify:


That I was duly authorized to swear in the witness and did report the deposition of JERRE CHOPPER in this cause;

That the reading and signing of the deposition by the witness have been expressly waived;

That the foregoing pages of this deposition constitute a true and accurate transcription of my stenotype notes of the testimony of said witness.

I further certify that I am not an attorney nor counsel of any of the parties; nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 26th day of December, 2018.



Terra Rohlf, RPR,  
Freelance Court Reporter  
Notary Public, State of Montana  
Residing in Hamilton, Montana  
My Commission expires: 11/4/19

007432

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225 Hillcrest Drive  
Hamilton, MT 59840  
September 1, 2012

Mr. Kurt Bachmeyer  
Director of Customer Service  
Jacuzzi  
14525 Monte Vista Ave.  
Chino, CA 91710

Dear Mr. Bachmeyer:

**SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK IN TUB**

The name Jacuzzi is an old and respected name; a legend in its own time. It would be a shame to have that reputation tarnished. Besides the outrageous behavior and pricing of AIHR, I have now had time to use the tub. It is in no way satisfactory. I can't imagine what testing was done before production began.

There is no such thing as getting into and out of a hot bath. You walk in, close the drain, close and lock the door and turn on the water. You sit there and wait for 20+ minutes depending on pressure and however long the hot water holds out, while the tub fills enough to cover the jets. I don't know how many gallons it takes but it's a lot. If you don't have enough hot water to cover, you can't use them.

When you decide the bath is over you open the drain and wait while the tub drains so you can open the door and walk out. The only thing is you cannot safely walk out; the tub is wet, your feet are wet and the threshold is too high and slick. The only way to make a safe exit is by doing what commercial truck drivers are trained to do when exiting the cab of a big rig. You back out so you can use the grab bar for stability. You stand there chilled.

I do not like the tub and I resent the money I have already forked over (\$9,850) to these hawkers. A call to your factory discloses their price on this tub is \$6,501. My price was quoted as \$11,700. That is a high markup all things considered. What I want is my bath restored to a practical condition.

Yours truly,



Jerre R. Chopper

JACUZZI005197

225 Hillcrest Drive  
Hamilton, MT 59840  
September 12, 2012

Mr. Kurt Bachmeyer  
Director of Customer Service  
Jacuzzi  
14525 Monte Vista Ave.  
Chino, CA 91710

Dear Mr. Bachmeyer:

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK IN TUB

With time one discovers all kinds of things.

Your tub has no overflow as near as I can see. What happens when a senior experiences a medical emergency while in the tub and is unable to turn off the water?

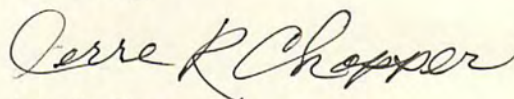
If this senior lives alone, it seems to me that it could be hours or even days before the victim is discovered. Running water over a period of time could literally demolish a house.

Not a very smart design.

In addition to my previous communications detailing sales and design, I believe all things considered, you are leaving yourselves quite vulnerable to litigation.

This tub sold to me by firstSTREET through their so-called dealer AIHR is a rip-off. I want the tub removed immediately at their expense and a refund of the money I have paid: \$9,850.

Yours truly,



Jerre R. Chopper

JACUZZI005198



225 Hillcrest Drive  
Hamilton, MT 59840  
October 15, 2012

Mr. Kurt Bachmeyer  
Director of Customer Service  
Jacuzzi  
14525 Monte Vista Ave.  
Chino, CA 91710

Dear Mr. Kurt Bachmeyer:

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK IN TUB  
Model No. NQ80; Mfg. No. 128683 or 1206-03

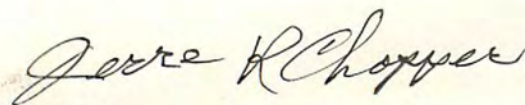
This is my fourth communication to you. To date I have received no response. I deduce that you have no authority to speak for the company

Please provide the name of someone who does have that authority, mailing address, plus phone number, plus e-mail address.

Your tub in no way delivers what seniors are expecting from reading the advertisements put out by firstSTREET—it is misleading to say the least and false in many respects. Furthermore, this tub is a death trap for any senior experiencing a medical emergency while bathing. It should be recalled.

I have contacted the U.S. Consumer Product Safety Commission and I am having the tub removed at my own expense.

Sincerely,



[3tippy47@bresnan.net](mailto:3tippy47@bresnan.net)  
Jerre R. Chopper

JACUZZI005208



**From:** <info@JACUZZI.COM>  
**Subject:** Confirmation of Online Registration of Your Jacuzzi Product  
**Date:** August 23, 2012 10:34:24 AM MDT  
**To:** <3tippy47@bresnan.net>

Welcome to the Jacuzzi family and thank you for registering your product. Please review the following information to ensure that it is accurate.

If there are errors or any changes need to be made to your information, please contact a Jacuzzi Bath Division representative by phone at 1-800-288-4002, option 4 (Mon-Fri, 8AM-5PM Central).

Serial Number: BDDDZ8  
Item: NQ80959 FS 5230 C RH SLN HTR SKT  
Date Manufactured: 06/20/12  
First Name: jerre  
Last Name: chopper  
Date Purchased: 06/28/12  
Address: 225 hillcrest dr.  
                    hamilton, MT 59840  
Home Phone: (406) 375-0546  
Work Phone:

Enjoy your Jacuzzi experience!!!

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**From:** Jerre Chopper <3tippy47@bresnan.net>  
**Subject:** Re: Walk in Tub  
**Date:** November 6, 2012 3:42:36 PM MST  
**To:** "Bachmeyer, Kurt" <Kurt.Bachmeyer@jacuzzi.com>



They have not. A letter went to AIHR on October 5; some days later they had a call from Nick Fawkes who stated "the tub was installed correctly and we expect payment in full".

He was told a written response was needed. Fawkes stated that he would have his attorney draw up something. End of dialogue; nothing further.

Personally I want no further dealings with these people. It is clear to me that they are charlatans. I believe that reimbursement of the \$700 for removal of the tub and the return of my \$5000 down payment would be the ethical thing for them to do. If they choose not to do that, so be it. I will eat the costs and chock it up to one more life experience. I will not get in a pissing contest that mounts up costs and achieves nothing.

To clue you in on one more thing.....I have been in contact with an Associated Press reporter. Once the Silly Season is over they may evaluate the situation and take action-or not. Only time will tell.

On Nov 6, 2012, at 3:10 PM, Bachmeyer, Kurt wrote:

Do you know if they have contacted your attorney to discuss this situation?

### **Kurt Bachmeyer**

Director of Customer Service

<image001.jpg>

[www.jacuzzi.com](http://www.jacuzzi.com)

14525 Monte Vista Avenue / Chino, CA 91710

909.247.2187 (o) 909.606.4270 (f)

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---

**From:** Jerre Chopper [mailto:[3tippy47@bresnan.net](mailto:3tippy47@bresnan.net)]

**Sent:** Monday, November 05, 2012 3:11 PM

**To:** Bachmeyer, Kurt

**Subject:** Re: Walk in Tub

I have never received any communication from First Street. The only thing directed my way was unceasing calls from that Shyster Nick Fawkes dba AIHR, to "gimme the money" The calls didn't stop until I hired another attorney who directed all communication go through that office.

The tub was removed from my premises on October 18 by the original installer from Big Fork, MT. for

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which I paid him \$700.

In case you are not as yet aware, I have filed a complaint with the U.S. Consumer Product Protection Commission in Bethesda, MD. My complaint will be posted on line. This tub is neither comfortable, convenient, safe or affordable. How you ever got mixed up with an outfit like First Street who caters to the oldster crowd is hard to comprehend. Needless to say the name Jacuzzi has lost its luster in my sphere of influence. This fiasco has been a costly error in judgement on my part and never again will I respond to a mass merchandising campaign.

Jerre Chopper

On Nov 5, 2012, at 1:26 PM, Bachmeyer, Kurt wrote:

Dear Jerre R. Chopper –

I apologize that you have not received a response from the First Street representatives; they have been notified of your dissatisfaction with regards to the sale; installation and ultimately the use of the unit. I have confirmed with our President of Jacuzzi that they will be responding to your concerns and issues as outlined in your letters. If you have not received a response from a First Street representative please let me know immediately.

Regards,

**Kurt Bachmeyer**

Director of Customer Service

<image001.jpg>

[www.jacuzzi.com](http://www.jacuzzi.com)

14525 Monte Vista Avenue / Chino, CA 91710

909.247.2187 (o) 909.606.4270 (f)

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**From:** Jerre Chopper <3tippy47@bresnan.net>  
**Subject:** Re: Walk in Tub  
**Date:** November 5, 2012 4:10:33 PM MST  
**To:** "Bachmeyer, Kurt" <Kurt.Bachmeyer@jacuzzi.com>



I have never received any communication from First Street. The only thing directed my way was unceasing calls from that Shyster Nick Fawkes dba AIHR, to "gimme the money" The calls didn't stop until I hired another attorney who directed all communication go through that office.

The tub was removed from my premises on October 18 by the original installer from Big Fork, MT. for which I paid him \$700.

In case you are not as yet aware, I have filed a complaint with the U.S. Consumer Product Protection Commission in Bethesda, MD. My complaint will be posted on line. This tub is neither comfortable, convenient, safe or affordable. How you ever got mixed up with an outfit like First Street who caters to the oldster crowd is hard to comprehend. Needless to say the name Jacuzzi has lost its luster in my sphere of influence. This fiasco has been a costly error in judgement on my part and never again will I respond to a mass merchandising campaign.

Jerre Chopper

On Nov 5, 2012, at 1:26 PM, Bachmeyer, Kurt wrote:

Dear Jerre R. Chopper –

I apologize that you have not received a response from the First Street representatives; they have been notified of your dissatisfaction with regards to the sale; installation and ultimately the use of the unit. I have confirmed with our President of Jacuzzi that they will be responding to your concerns and issues as outlined in your letters. If you have not received a response from a First Street representative please let me know immediately.

Regards,

**Kurt Bachmeyer**  
 Director of Customer Service

<image001.jpg>

[www.jacuzzi.com](http://www.jacuzzi.com)

14525 Monte Vista Avenue / Chino, CA 91710  
 909.247.2187 (o) 909.606.4270 (f)

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I apologize that you have not received a response from the First Street representatives; they have been notified of your dissatisfaction with regards to the sale; installation and ultimately the use of the unit. I have confirmed with our President of Jacuzzi that they will be responding to your concerns and issues as outlined in your letters. If you have not received a response from a First Street representative please let me know immediately.

Regards,

**Kurt Bachmeyer**

Director of Customer Service

<image001.jpg>

[www.jacuzzi.com](http://www.jacuzzi.com)

14525 Monte Vista Avenue / Chino, CA 91710

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**From:** Jerre Chopper <3tippy47@bresnan.net>  
**Subject:** **Installation of tub**  
**Date:** July 11, 2012 10:45:50 AM MDT  
**To:** nick.fawkes@aihremodelers.com

Nick Fawkes  
General Manager  
First Street  
AIHRemodelers

In visiting with your production person Tracey Dierkens, I was told that the tub would be shipped to installer Mike Kircher at Big Fork, Montana.

With all due respect, Big Fork is hundreds of miles from here and i find it hard to believe that you don't have a qualified Jacuzzi installer in Missoula that is the closest metro to Hamilton--50 miles.

There have been other issues as well. The electric installation did not go as I was told to expect; they also had the wrong address.

When i signed the contract with John Brown on June 28, i gave him a check for \$5000 dated July 10. I told him this particular account had a bit less than that but a deposit was due by the 7th or 8th. He agreed to direct holding the check until the 10th. It cleared my bank on July 5. It was paid but an overdraft of \$25 was debited to my account.

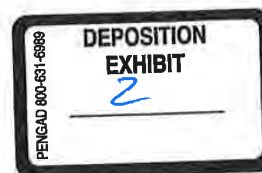
The balance due of \$9,700. is in hand and it is my intention to submit a cashiers check when installation is complete unless you direct me otherwise.

Jerre R. Chopper  
225 Hillcrest Drive  
Hamilton, MT 59840

Phone: 406-375-0546  
Email: 3tippy47@bresnan.net

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# BOATWRIGHT LAW OFFICE, P.C.

JENNIFER B. LINT

September 28, 2012

Monique Trujillo  
Aging in the Home Remodelers  
1460 W. Canal Ct, Suite 102  
Littleton, CO 80120

Re: *Jerre Chopper, 225 Hillcrest Drive, Hamilton, Montana*

Dear Ms. Trullillo:

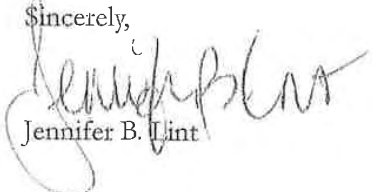
I have met with Ms. Jerre Chopper regarding her recent purchase of a product from your company. Ms. Chopper is extremely unsatisfied with the product, with the timeliness of the installation, and with the customer service of your organization.

I reviewed the documentation regarding this transaction for Ms. Chopper. While your company does provide a three (3) day right of rescission, the right is meaningless when the buyer does not have the opportunity to inspect the product during the rescission period. Ms. Chopper relied on your marketing information which represented this tub was an excellent, affordable choice for seniors. After viewing the tub, it is apparent to Ms. Chopper that the tub is anything but utilitarian, and certainly not affordable.

Moreover, when Ms. Chopper was visited by your salesman, she was pressured into signing the contract. The salesman gave her the "hard sell" telling her that she had to sign that day in order to save \$3,000.00. The salesman visited her at 5:30 pm, a time of day where Ms. Chopper was, as are many other seniors, winding down for the day and they might not be at their sharpest. She feels taken advantage of and given time to review the product in person, would not have made this purchase.

Therefore, Ms. Chopper will permit the original installer to come remove the tub, and return it to you in exchange for a full refund of her \$5,000.00. Please make arrangements through my office, and please direct all future communication and correspondence through my office. Thank you.

Sincerely,

  
Jennifer B. Lint

JBL/lac  
cc: client

COPY

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November 29, 2012

Ms. Jerre R. Chopper  
225 Hillcrest Drive  
Hamilton, Montana 59840

Dear Ms. Chopper:

I serve as corporate counsel for AITHR Dealer, Inc. ("AITHR"), a wholly owned subsidiary of firstSTREET for Boomers and Beyond, Inc. AITHR installed a walk-in tub in your home. You signed a contract in which you agreed to pay \$14,700.00 for the walk-in tub. AITHR has fulfilled its obligation under the contract and expended significant time and money to install the product in your home but as of this date, you have only paid \$5000.00 and owe an additional \$9700.00 to AITHR.

You have indicated that you are dissatisfied with the walk-in tub. To my knowledge, your complaint does not stem from any defect with the product itself. In fact, my understanding is that your walk-in tub functions properly at this time. If that is not the case, please let me know immediately. Otherwise, you signed a contract in which you agreed to purchase the product. You had a three day rescission period in which you could have cancelled your order and instead, you allowed AITHR's installer to come into your home and install the walk-in tub. Accordingly, AITHR needs prompt payment from you for the outstanding \$9700.00 that you contractually agreed to pay or it will be forced to take additional action to collect this sum.

You may call Nick Fawkes, General Manager of AITHR, directly to discuss payment. He can be reached at 303-953-7080. I look forward to a prompt resolution of this matter.

Sincerely,

Stacy L. Hackney



007444

**firstSTREET**  
*for Boomers and Beyond*

1998 Ruffin Mill Road  
Colonial Heights, VA 23834

**ADDRESS SERVICE  
REQUESTED**



02 1A  
000 43 441 22 NOV 30 2012  
MAILED FROM ZIP CODE 23834

**\$ 00.45<sup>0</sup>**

Ms. Jerre R. Chopper  
225 Hillcrest Drive  
Hamilton, Montana 59840

59840024425



007444

December 4, 2012

Ms. Stacy L Hackney  
First Street for Boomers and Beyond  
1998 Ruffin Mill Road  
Colonial Heights, VA 23834

Dear Ms. Hackney:

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK-IN TUB  
Model No: NQ80, Mfg. No: 128683 or 1206-03

Your letter of November 29 regarding the above is received. You claim to have no knowledge of any defect in the tub. This is hard to fathom since there have been several communications to Jacuzzi and in all instances Nick Fawkes and his co-horts have identified themselves as Jacuzzi.

However, I will attempt to enlighten you. I signed a contract with AIHR on June 28 and gave the salesman, John Brown, a check for \$5000. I was told the tub would be installed in 3-4 weeks. After some weeks I inquired and was told the installer would be Mike Kirchner in Big Fork. I e-mailed Nick Fawkes and pointed out that Big Fork was hundreds of miles from Hamilton and that Missoula was the nearest Metro—50 miles. The manner of Fawkes's reply sent up a red flag and I decided to do some investigation.

Inquiry with the Secretary of State disclosed AIHR was not registered or licensed to do business in Montana. Neither was Nick Fawkes dba AIHR, nor firstSTREET. The Colorado Secretary of State gave the same response. The City of Littleton reported them unknown. Someone was sent to the address. It was reported that they rented so were legitimate tenants; however there was no sign of activity and they had not registered with the city or paid any business tax.

I took the contract to my attorney, Royce McCarty, and he assured me that no court in Montana would honor a petition by an unlicensed company doing business here. He further told me that there was no law against price gouging.

Installation was arranged for August 13-14. On the 14<sup>th</sup> Mike said he did not have the material needed to complete installation. He would be back on the 20<sup>th</sup>. On the 15<sup>th</sup> a check for half the balance owing was sent to AIHR and told that the remainder would be forthcoming when tradesmen had been paid and that the tub delivered what was promised.

On the 16<sup>th</sup> Nick Fawkes called. He ranted and raved and demanded money. Clearly he was a man out of control and behaving like a jerk. Since I was already suspicious of him I went to the bank the check was drawn on and put a stop payment on any paperless transactions he might try

JACUZZI005200



to slip through. The bank reported that to be the case and it was returned unpaid. I also notified the bank that the \$5000 check was drawn on with the same message.

When installation was complete I attempted to use the tub and found that it in no way delivered what your advertisement led one to believe. After getting in the tub and turning on the water one waited until it filled—75 gallons was required to run the jets. When ready to get out one had to sit and wait for the tub to drain before opening the door. It was neither comfortable, convenient nor safe. For anyone suffering a medical emergency (I have a balance problem and periodic blackouts) there was no way to get out. The door opens inward and the pressure of the water would negate its opening.

There were several communications to Jacuzzi about design flaws and the risks associated, and I assumed (incorrectly it seems) those were being passed on to the proper people.

Meanwhile Nick Fawkes and his crowd kept up a relentless barrage of “gimme the money” and I stopped answering the phone. Boatwright Law was directed to let AIHR know that all further communication, in writing, from them was to go through that office.

Notice was posted with both the Montana and US Attorney Generals Office of Elder Fraud.

Finally on October 10 I filed a claim with the U.S. Consumer Product Safety Commission in Bethesda, MD and subsequently gave permission to have it entered into their database.

On October 18 the tub was removed from my premises by Mike Kirchner, for which I paid him \$700. On that date Mike said that he had never been paid for the original install. Apparently there was litigation pending between AIHR and New England Facilities Management—the company that had originally recruited him.

I believe that the \$5000 you have already collected from me should cover any expenses you have incurred. Further I believe that if a company of integrity believes in the product they peddle it offers a money back guarantee if not completely satisfied.

I have had to restore the bathroom and deal with all the distress this byzantine drama has caused.

Sincerely,

Jerre R. Chopper

Copy – Royce McCarty

Jennifer Lint

Kurt Bachmeyer ✓

JACUZZI005201

225 Hillcrest Drive  
Hamilton, MT 59840  
October 10, 2012

*He Done*  
*1-800 638-2792 - HOT LINE*

U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK-IN TUB  
Model No. NQ80, Mfg. No: 128683 or 1206-03

To Whom It May Concern:

A life-threatening situation would occur if a senior living alone should suffer a medical emergency while bathing. There is no way to get out of the tub. The door opens inward and water pressure would negate it's opening. With time one learns these things.

This all began in late June when firstSTREET for "boomers and beyond" at 1998 Ruffin Mill Rd., Colonial Heights, VA 23834 started running full page color ads in Parade Magazine for the tub. It caught my eye because like many older Americans who know the history of the Jacuzzi brother's invention of the propeller and the profound impact this had on the industrialization of the country. We tend to be in awe; it is a long and revered name in our lexicon.

I called the number given. It turned out to be a call center in Denver manned by Troy Brown. He made an appointment for 11:30 a.m. on June 28. He said the caller would be Larry Cinquemani who was the dealer rep for Montana & Idaho. On that date he called to tell me that John Brown would be calling later in the day. He arrived at 5:30 p.m.

Mr. Brown was a most charming fellow. He told me all about himself and his family and showed pictures of them. He paid particular attention to items on my bulletin board and engaged in conversation about them. He gave his pitch. I told him I would have to sleep on the matter. Then came the hard sell. He said if I didn't sign that day the price would go up \$3000 and he knew I wanted the tub. I agreed.

He whipped out a contract that read AIHR at 1460 W. Canal Ct., Suite 102, Littleton CO 80120. He said they were a dealer for firstSTREET. The bottom line on the contract was \$11,700. He said the tub would be installed in three to four weeks. I gave him a check for \$5,000 left at 7:30 p.m.

After several weeks had elapsed I called AIHR to inquire. I was told that the installer would be Mike Kirchner at Big Fork. I E-mailed Nick Fawkes, General Manager, and pointed out that Big Fork was hundreds of miles from here and surely they must have a Jacuzzi trained tech much



closer. Missoula is the closest metro—50 miles. His response was “don’t worry, we will take good care of you”. That manner of response raised a red flag and I decided to do some investigating.

I called the Montana Secretary of State and asked if AIHR was licensed. Not so. I asked if Mike Fawkes dba AIHR was licensed. Not so. I asked if firstSTREET was; not so. I was told that licensing was required to do business in the state. Next I called the Colorado Secretary of State and asked the same questions. They had never heard of them but said licensing was not required in Colorado.

Next I called the City of Littleton. They knew of no one by that name at that address and sent someone out to check. They called back and reported that they did rent the space so were a legitimate tenant, however there was no sign of activity there and they had not registered with the city and had paid no business tax.

Before I took possession of the tub I took the contract to my attorney and asked him to look it over. He said that no court in Montana would take their claim if they decided to sue me. They were probably legit, just inept. He said there was no law against price gouging.

Arrangements were made for Mike Kirchner to come on August 13 for a two-day install. On the 14<sup>th</sup> he ran out of material and said he would be back on the 20<sup>th</sup>.

On August 15 I mailed a check to AIHR for half the balance owing and stated that the rest would be forthcoming when installation was complete, when all tradesmen had been paid and provided the tub delivered what I was expecting.

On August 16 Nick Fawkes called. He ranted and raved that the tub was in so gimme the money. I told him to call Mike. By this time my suspicion that Nick Fawkes and his posse were a bunch of shysters was pretty much confirmed. I went to the bank and put a stop payment on any paperless transactions they decided to try and slip through. Some days later the bank called and said they had. It was returned unpaid.

From then on I received daily harassing phone calls to “gimme the money”. Finally I let all calls go to the answering machine. They didn’t stop until I hired another attorney to contact AIHR who directed that all communication go through that office.

Installation of the tub was complete on August 20. I waited 24 hours for everything to dry and then attempted to use the tub. What an awakening! This tub is anything but utilitarian.

About that time I received an E-mail survey from Mr. Kurt Bachmeyer, Director of Customer Service, Jacuzzi, 14525 Monte Vista Ave., Chino, CA 91710. I didn’t answer the survey; I wrote a letter describing my displeasure with the people representing Jacuzzi and my dissatisfaction with the tub.

One gets in the tub, closes and locks the door, closes the drain and turns on the water. You sit shivering (in my case 16 minutes) while the tub fills. When the bath is over you open the drain

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and wait shivering for the tub to drain so you can open the door and walk out. The only problem is you can't walk out—the tub is wet, your feet are wet and the outside threshold is slick and too high. The only safe way to exit the tub is to do what professional truck drivers are trained to do when exiting the cab of a big rig and that is back out holding a grab bar for stability.

Twice more I wrote Mr. Bachmeyer. I stated my outrage at the behavior and pricing of AIHR; that I wanted the tub removed so that I could install something that was safe and sane. No response. Jacuzzi has remained strangely silent.

Can you facilitate getting the tub removed and my money returned? If I have to hire a product liability lawyer I will sue Nick Fawkes, Todd Stout, John Brown & Monique Trujillo dba AIHR, firstSTREET, its officers, & directors, and Jacuzzi. I will ask for removal of the tub, return of my money, attorney fees and punitive damages for the distress this whole episode has caused.

Sincerely,

Jerre R. Chopper

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This is a copy of your Report to the U.S. Consumer Product Safety Commission submitted on 10/17/2012. In order for this Report to be included in the CPSC's database, the Publicly Available Consumer Product Safety Information Database, available at [www.SaferProducts.gov](http://www.SaferProducts.gov), you must complete the last page of the Report and return it to the CPSC.

Incident Details
------------------

Report Number: 20121017-B1D09-1278892

Report Submitted Date: 10/17/2012

Who You Are: Consumer

Incident Description: To Whom It May Concern:

A life-threatening situation would occur if a senior living alone should suffer a medical emergency while bathing. There is no way to get out of the tub. The door opens inward and water pressure would negate it's opening. With time one learns these things.

This all began in late June when firstSTREET for "boomers and beyond" at [REDACTED] started running full page color ads in Parade Magazine for the tub. It caught my eye because like many older Americans who know the history of the Jacuzzi brother's invention of the propeller and the profound impact this had on the industrialization of the country. We tend to be in awe; it is a long and revered name in our lexicon.

I called the number given. It turned out to be a call center in Denver manned by [REDACTED]. He made an appointment for 11:30 a.m. on June 28. He said the caller would be [REDACTED] who was the dealer rep for Montana & Idaho. On that date he called to tell me that [REDACTED] would be calling later in the day. He arrived at 5:30 p.m.

[REDACTED] was a most charming fellow. He told me all about himself and his family and showed pictures of them. He paid particular attention to items on my bulletin board and engaged in conversation about them. He gave his pitch. I told him I would have to sleep on the matter. Then came the hard sell. He said if I didn't sign that day the price would go up \$3000 and he knew I wanted the tub. I agreed.

He whipped out a contract that read AIHR at [REDACTED]. He said they were a dealer for firstSTREET. The bottom line on the contract was \$11,700. He said the tub would be installed in three to four weeks. I gave him a check for \$5,000 left at 7:30 p.m.

After several weeks had elapsed I called AIHR to inquire. I was told that the installer would be [REDACTED] Mike Kirchner at Big Fork. I E-mailed [REDACTED], General Manager, and pointed out that Big Fork was hundreds of miles from here and surely they must have a Jacuzzi trained tech much closer. Missoula is the closest metro—SO miles. His response was "don't worry, we will take good care of you". That manner of response raised a red flag and I decided to do some investigating.

I called the Montana Secretary of State and asked if AIHR was licensed. Not so. I asked if [REDACTED] dba AIHR was licensed. Not so. I asked if firstSTREET was; not so. I was told that licensing was required to do business in the state. Next I called the Colorado Secretary of State and asked the same questions. They had never heard of them but said licensing was not required in Colorado.

Next I called the City of Littleton. They knew of no one by that name at that address and sent someone out to check. They called back and reported that they did rent the space so were a legitimate tenant, however there was no sign of activity there and they had not registered with the city and had paid no business tax.

Before I took possession of the tub I took the contract to my attorney and asked him to look it over. He said that no court in Montana would take their claim if they decided to sue me. They were probably legit, just inept. He said there was no law against price gouging.

Arrangements were made for [REDACTED] to come on August 13 for a two-day install. On the 14th he ran out of material and said he would be back on the 20th.

CPSC does not guarantee the accuracy, completeness, or adequacy of the contents of the Publicly Available Consumer Product Safety Information Database on [SaferProducts.gov](http://SaferProducts.gov), particularly with respect to information submitted by people outside of CPSC.

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On August 15 I mailed a check to AIHR for half the balance owing and stated that the rest would be forthcoming when installation was complete, when all tradesmen had been paid and provided the tub delivered what I was expecting.

On August 16 [REDACTED] called. He ranted and raved that the tub was in so gimme the money. I told him to call [REDACTED]. By this time my suspicion that [REDACTED] and his posse were a bunch of shysters was pretty much confirmed. I went to the bank and put a stop payment on any paperless transactions they decided to try and slip through. Some days later the bank called and said they had. It was returned unpaid.

From then on I received daily harassing phone calls to "gimme the money". Finally I let all calls go to the answering machine. They didn't stop until I hired another attorney to contact AIHR who directed that all communication go through that office.

Installation of the tub was complete on August 20. I waited 24 hours for everything to dry and then attempted to use the tub. What an awakening! This tub is anything but utilitarian.

About that time I received an E-mail survey from [REDACTED], Director of Customer Service, Jacuzzi, [REDACTED]. I didn't answer the survey; I wrote a letter describing my displeasure with the people representing Jacuzzi and my dissatisfaction with the tub.

One gets in the tub, closes and locks the door, closes the drain and turns on the water. You sit shivering (in my case 16 minutes) while the tub fills. When the bath is over you open the drain and wait shivering for the tub to drain so you can open the door and walk out. The only problem is you can't walk out—the tub is wet, your feet are wet and the outside threshold is slick and too high. The only safe way to exit the tub is to do what professional truck drivers are trained to do when exiting the cab of a big rig and that is back out holding a grab bar for stability.

Twice more I wrote [REDACTED]. I stated my outrage at the behavior and pricing of AIHR; that I wanted the tub removed so that I could install something that was safe and sane. No response. Jacuzzi has remained strangely silent.

Can you facilitate getting the tub removed and my money returned? If I have to hire a product liability lawyer I will sue [REDACTED] dba AIHR, firstSTREET, its officers, & directors, and Jacuzzi. I will ask for removal of the tub, return of my money, attorney fees and punitive damages for the distress this whole episode has caused.

Incident Date: 8/21/2012

Incident Location: Home/Apartment/Condominium – 255 Hillcrest Drive, Hamilton, Montana, 59840, United States

#### Victim Details

First Name: Jerre R.

Last Name: Chopper

Injury Information: Incident, No Injury

Victim is of Hispanic/Latino origin?

Race: Unspecified

Other Race/Ethnicity:

My Relationship to Victim: Self

Gender: Unknown

Age when incident occurred: (Unspecified) Years

Address: 255 Hillcrest Drive, Hamilton, Montana, 59840, United States

CPSC does not guarantee the accuracy, completeness, or adequacy of the contents of the Publicly Available Consumer Product Safety Information Database on SaferProducts.gov, particularly with respect to information submitted by people outside of CPSC.

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E-mail: 3tippy47@bresnan.net

Phone Number: (406) 375-0546

#### Product Details

Product Description: THE JACUZZI DESIGNED FOR SENIORS WALK-IN TUB Model No. NQ80, Mfg. No: 128683 or 1206-03

Product Category: Plumbing & Bath

Product Type: Hot Tubs or Home Spas

Brand Name: Jacuzzi

Manufacturer / Importer /

Private Labeler  
Name:

Model Name or Number: NQ80

Serial Number:

Date  
Manufactured:

Manufacturer  
Date Code:

Manufacturer Address: 14525 Monte Vista Ave, Chino, California, 91710, United States

Manufacturer  
Website URL:

Manufacturer  
Phone Number:

Retailer: AIHR

Retailer State: Colorado

#### Additional Details

Purchase Date: 6/28/2012

I still have the product in my possession. N/A

The product was damaged before the incident. N/A

The product was modified before the incident. N/A

Have you contacted the manufacturer? N/A

If not, do you plan to contact them? N/A

CPSC does not guarantee the accuracy, completeness, or adequacy of the contents of the Publicly Available Consumer Product Safety Information Database on SaferProducts.gov, particularly with respect to Information submitted by people outside of CPSC.

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Explanation:

Picture / CONSUMER4.pdf  
Document 1:

Your Contact Information

First Name: Jerre R.

Last Name: Chopper

Address: 255 Hillcrest Drive, Hamilton, Montana, 59840, United States

E-mail 3tippy47@bresnan.net

Phone Number: (406) 375-0546

OMB Control Number 3041-0146

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CPSC does not guarantee the accuracy, completeness, or adequacy of the contents of the Publicly Available Consumer Product Safety Information Database on SaferProducts.gov, particularly with respect to Information submitted by people outside of CPSC.

CPSC  
4330 East West Highway  
Bethesda, MD 20814-4408  
United States

Jerre R. Chopper  
255 Hillcrest Drive  
Hamilton, MT 59840

**Date:** 10/18/2012

**Subject:** Report No. 20121017-B1D09-1278892 is Pending Your Consent and Validation

Jerre R. Chopper,

Thank you for contacting the U.S. Consumer Product Safety Commission (CPSC) on Wednesday, October 17, 2012 to submit your Report.

Attached is a copy of the Report you submitted. This is the only time you will be provided a copy of your Report. We suggest that you save a copy for future reference. Occasionally, CPSC will contact a Report submitter to clarify information provided in a Report or to gather additional information. A representative from CPSC may contact you in the future.

Your Report is not yet complete.

**What Do I Need to do to Complete My Report?**

Please review the attached Report. On the last page, labeled Consent and Submit, you will be asked whether CPSC can publish the Report on [www.SaferProducts.gov](http://www.SaferProducts.gov) so other people can see it. You also will be asked whether your name and contact information can be given to the manufacturer or private labeler of the consumer product. Finally, you will be asked to verify the truth and accuracy of the Report. Your name and contact information will **never** be published on [SaferProducts.gov](http://SaferProducts.gov).

We will not publish this Report on [SaferProducts.gov](http://SaferProducts.gov) without your consent. Please promptly return a copy of the Report with the completed Consent and Submit page to CPSC, ideally within 30 days. Send the Report using one of the following methods to:

U.S. Consumer Products Safety Commission  
Attn: Clearinghouse

E-mail: Scan and e-mail to [clearinghouse@cpsc.gov](mailto:clearinghouse@cpsc.gov)  
Facsimile: 1-855-221-6466  
Postal mail: 4330 East West Highway, Bethesda, MD 20814-4408.

You are not required to provide the requested consents and verification. If you do not complete and return the Report to CPSC, it will remain incomplete and will not be posted but will be maintained for internal use by CPSC.

**Can other people see and use this Report?**

CPSC maintains a Publicly Available Consumer Product Safety Information Database on [www.SaferProducts.gov](http://www.SaferProducts.gov) that contains Reports submitted to us that contain certain minimum information about the product and incident. Other people will see this Report on [SaferProducts.gov](http://SaferProducts.gov) if you give us permission and the Report contains the required minimum information.

People can search for Reports on [SaferProducts.gov](http://SaferProducts.gov) to learn about potentially harmful products.

**How will CPSC use this Report?**

Reports we receive help us in our mission to protect the public from unreasonable risks of injury or death related to the

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use of thousands of types of consumer products under the agency's jurisdiction. CPSC reviews every Report that is submitted. Where appropriate, we may undertake additional product investigations.

CPSC staff cannot respond to every Report on an individual basis. However, your Report is extremely important to CPSC because we are an agency that relies on Reports such as this to help us do our job.

**What Happens Next?**

If your Report meets the minimum requirements for publication on SaferProducts.gov, which includes your consent to publish the Report, CPSC will send it to the identified manufacturer or private labeler within 5 business days, where practicable. If you provided consent, the manufacturer or private labeler will also receive your contact information and may contact you to verify the information in your Report. A manufacturer or private labeler will have an opportunity to comment on your Report or make a claim that it contains confidential or materially inaccurate information. Reports that meet the minimum requirements for publication should be posted on SaferProducts.gov 10 business days after CPSC sends the Report to the manufacturer or private labeler.

Reports that do not meet the minimum requirements for publication will be maintained for internal use by CPSC.

If you have any questions, please visit [www.SaferProducts.gov](http://www.SaferProducts.gov), or call (800) 638-2772.

Thank you,

U.S. Consumer Product Safety Commission

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Report No: 20121017-B1D09-1278892

**Consent & Submit**

Please let us know how you would like us to handle your Report.

May we include your Report, including any documents or photographs that you have attached to your Report, but **without your name and contact information**, in the CPSC's Public Database?

- ☒ Yes, you may include my Report in the Public Database.  
☐ No, do not include my Report in the Public Database.

May we release your name and contact information to the product manufacturer / private labeler identified in your Report?

- ☒ Yes, you may release my name and contact information to the product manufacturer/private labeler.  
☐ No, do not release my name and contact information to the product manufacturer/private labeler.

☐ By signing this form, I certify that I have reviewed the Report and that the information provided in this Report is true and accurate to the best of my knowledge, information, and belief.

James R. Chappin  
Signature

10-23-12  
Date

CPSC does not guarantee the accuracy, completeness, or adequacy of the contents of the Publicly Available Consumer Product Safety Information Database on SaferProducts.gov, particularly with respect to information submitted by people outside of CPSC.

**From:** donotreply@cpsc.gov  
**Subject:** The CPSC Notified the Manufacturer about Your Report No. 20121017-B1D09-1278892  
**Date:** November 23, 2012 6:34:54 AM MST  
**To:** 3tippy47@bresnan.net

Jerre R. Chopper,

On Friday, November 23, 2012, the U.S. Consumer Products Safety Commission sent your Report No. 20121017-B1D09-1278892 to the manufacturer or private labeler of the consumer product described in your Report. If you consented to give your contact information to the manufacturer or private labeler, that information was also provided.

**What can a manufacturer ask me about my Report?**

If the manufacturer or private labeler has your contact information, they may contact you to verify the information in your Report. A manufacturer or private labeler cannot use or disseminate your contact information for any purpose other than to verify the information in your Report. A manufacturer or private labeler may not use contact information received from the CPSC for activities such as sales, promotion, warranty, or any other commercial purpose. This requirement does not prevent you from contacting a manufacturer or private labeler for any purpose or from seeking a resolution from the manufacturer or private labeler, if you so desire.

If you have any questions, please visit [www.SaferProducts.gov](http://www.SaferProducts.gov), or call (800) 638-2772.

Thank you for using SaferProducts.gov.

This is an automated message. Do not reply to this e-mail address.

\*\*\*\*\*!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> \*\*\*\*\*!!

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From: donotreply@cpsc.gov  
 Subject: **Report No. 20121017-B1D09-1278892 was Submitted to the CPSC**  
 Date: December 19, 2012 4:54:46 AM MST  
 To: 3tippy47@bresnan.net  
 1 Attachment, 20.9 KB

Jerre R. Chopper,

Thank you for using SaferProducts.gov to submit your Report to the U.S. Consumer Product Safety Commission. We received your Report No. 20121017-B1D09-1278892 on Wednesday, October 17, 2012.

Attached is a PDF copy of your Report. This is the only time you will be provided a copy of your Report. We suggest that you save it for future reference. Occasionally, CPSC will contact a submitter to clarify information provided in a Report or to gather additional information. A representative from CPSC may contact you in the future.

Your Report will not be posted on SaferProducts.gov because it does not meet the minimum requirements for publication. The requirements below were not met:

- Description of Risk of Harm

If you wish to submit additional information to address the deficiency(s) identified above, please forward this email together with your additions to [clearinghouse@cpsc.gov](mailto:clearinghouse@cpsc.gov)

Reports we receive help us in our mission to protect the public from unreasonable risks of injury or death related to the use of thousands of types of consumer products under the agency's jurisdiction. Agency staff reviews every Report that is submitted. Where appropriate, we may undertake additional product investigations.

CPSC staff cannot respond to every Report on an individual basis. However, your Report is extremely important to CPSC because we are an agency that relies on Reports such as yours to help us do our job.

If you have any questions, please visit [www.SaferProducts.gov](http://www.SaferProducts.gov), or call (800) 638-2772.

Thank you for using SaferProducts.gov.

This is an automated message. Do not reply to this e-mail address.

\*\*\*\*\*!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to

this service go to the following web page: <https://www.cpsc.gov/cpsclist.aspx> \*\*\*\*\*!!  [20121017-B...pdf \(20.9 KB\)](#)

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1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 ROBERT ANSARA, as Special )  
 Administrator of the Estate of )  
 5 SHERRY LYNN CUNNISON, Deceased; )  
 et al., )  
 6 Plaintiffs, )  
 7 vs. ) No. A-16-731244-C  
 8 FIRST STREET FOR BOOMERS & BEYOND, )  
 INC.; et al., )  
 9 Defendants. ) (Pages 1 - 120)  
 10 \_\_\_\_\_ )  
 11 AND RELATED CROSS-ACTIONS. )  
 12 \_\_\_\_\_ )  
 (Complete Caption On Following Page)

13

14

15 V O L U M E I

16

17 Videotaped deposition of WILLIAM B.  
 18 DEMERITT, Rule 30(b)(6) Corporate Designee  
 19 for Jacuzzi, taken on behalf of the Plaintiffs,  
 20 at 600 Anton Boulevard, Suite 1400, Costa Mesa,  
 21 California, commencing at 9:49 a.m., on Thursday,  
 22 May 24, 2018, before Kathleen Mary O'Neill,  
 23 CSR 5023, RPR.

24

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## DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

No. A-16-731244-C

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

Defendants.

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AND RELATED CROSS-ACTIONS.

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1 APPEARANCES:

2 For Plaintiffs:

3 CHARLES ALLEN LAW FIRM

4 BY: CHARLES H. ALLEN, ESQ.

5 3575 Piedmont Road, NE

6 Building 15, Suite L-130

7 Atlanta, Georgia 30305

8 404/419-6674

9 callen@charlesallenlawfirm.com

10 -and-

11 RICHARD HARRIS LAW FIRM

12 BY: BENJAMIN P. CLOWARD, ESQ.

13 801 South Fourth Street

14 Las Vegas, Nevada 89101

15 702/444-4444

16 benjamin@richardharrislaw.com

17

18 For Defendant/Cross-Defendant Jacuzzi Brands LLC:

19 SNELL & WILMER LLP

20 BY: JOSHUA D. COOLS, ESQ.

21 3883 Howard Hughes Parkway

22 Suite 1100

23 Las Vegas, Nevada 89169

24 702/784-5200

25 jcools@swlaw.com

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007461

1 APPEARANCES: (Continued)  
2 For Defendants/Cross-Defendants First Street for Boomers  
3 & Beyond, Inc. and AITHR Dealer, Inc.:

4 THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

5 BY: MEGHAN M. GOODWIN, ESQ.

6 1100 East Bridger Avenue

7 P.O. Box 2070

8 Las Vegas, Nevada 89125

9 702/366-0622

10 mmg@thorndal.com

11

12 Videographer:

13 DEAN JONES

14 OASIS REPORTING SERVICES

15 702/476-4500

16

17 Also present:

18 RON TEMPLER

19 (Corporate representative for Jacuzzi)

20

21

22

23

24

25

1	I N D E X		
2	DEPONENT	EXAMINED BY	PAGE
3	William B. Demeritt	Mr. Cloward	7
4			
5	Videotape No. 1 . . . . .	Page	6
6	Videotape No. 2 . . . . .	Page	92
7			
8	EXHIBITS FOR IDENTIFICATION:		PAGE
9	1 Saferproducts.gov Incident Report,		92
10	3 pages		
11	2 6/17/16 Plaintiff's Original Petition,		96
12	13 pages		
13	3 "Chicago Woman Sues: Stuck in Bathtub		104
14	30 Hours," 2 pages		
15	4 Homeability.com "Walk-in Tubs:		105
16	Homeability Uncovers Scams & Shady		
17	Practices," 10 pages		
18	5 Ohio Department of Developmental		110
19	Disability, "Safety Is Not an		
20	Accident It's Everyone's Business,"		
21	2 pages		
22			
23			
24			
25			

1 COSTA MESA, CALIFORNIA

2 THURSDAY, MAY 24, 2018

3 9:49 A.M.

4

5 THE VIDEOGRAPHER: Good morning.

6 This is the videotaped deposition of William B.  
7 Demeritt. Today we are located at 600 Anton Boulevard,  
8 Suite 1400 in Costa Mesa, California.

9 Today is Thursday, May 24th in the year 2018.

10 We're here today in the matter of Robert Ansara  
11 vs. First Street for Boomers & Beyond, Incorporated.  
12 The case number of this deposition is A-16-731244-C.

13 This case is being heard in the District Court  
14 for the State of Nevada, in and for the County of Clark.

15 My name is Dean Jones with Oasis Reporting  
16 Services.

17 Would all present please identify themselves  
18 beginning with the deponent.

19 THE WITNESS: William Demeritt.

20 MR. COOLS: Joshua Cools, attorney on behalf of  
21 Jacuzzi.

22 MR. TEMPLER: Ron Templer, corporate  
23 representative for Jacuzzi.

24 MS. GOODWIN: Meghan Goodwin on behalf of  
25 defendant First Street for Boomers & Beyond and AITHR

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1 indicates that:

2 "After 30 minutes, the tub  
3 filled with 50 gallons of water.  
4 I opened the air jets at my back.  
5 At that moment I was thrushed [sic]  
6 forward, landed on my knees, and my  
7 head was underwater. I was in panic  
8 and tried frantically to get ahold of  
9 the bar to pull myself up. I could  
10 have drowned. The Alert 911 would have  
11 been totally useless, out of reach.  
12 The walk-in tub is a death trap."

13 Do you see where that's listed?

14 A. Yes.

15 Q. Further, do you see at the bottom of the page  
16 where it indicates:

17 "I am a senior citizen, 85 years  
18 plus, and a victim of exploitation of  
19 the elderly."

20 Do you see that?

21 A. Yes.

22 Q. Are you aware of this complaint?

23 A. No.

24 Q. Have you ever been to -- well, you've already  
25 indicated you don't go to sites like this to determine

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1 whether or not there are complaints.

2 Is that something that you've determined you  
3 don't want to do, or is that something you're instructed  
4 by Jacuzzi not to do?

5 MR. COOLS: Object to form.

6 THE WITNESS: Normally we get these. Normally  
7 we would be put on notice. And I have no -- no  
8 recollection of receiving this notice from CPSC.

9 MR. COOLS: Do you have page 4 of this  
10 document?

11 MR. CLOWARD: What do you mean?

12 MR. COOLS: It says page 1, 2, and 3 of 4.

13 MR. ALLEN: It's on the website. It's just the  
14 fourth page. There's nothing on there to see. You can  
15 pull it up.

16 MR. COOLS: Because it says as the last thing  
17 "Have you contacted the" and then it doesn't say what  
18 "the" is.

19 Q. BY MR. CLOWARD: So your testimony is normally  
20 you would receive those, but you didn't receive that in  
21 this case?

22 A. Well, yeah. I mean . . .

23 Q. How is it that this information would be  
24 produced to you?

25 A. This here?

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007466

1 Q. Yeah.

2 A. I'd get an email.

3 Q. From who?

4 A. Form CPSC.

5 Q. Okay. Did you search those emails in looking  
6 for prior complaints?

7 A. I would have opened a file.

8 Q. And you didn't open a file for this incident?

9 A. I don't ever remember seeing this document.

10 Q. Okay. I'm going to hand you --

11 A. And I get -- this is not a one-off kind of  
12 thing. I -- because of the ladder business and a couple  
13 other businesses, I get these on a regular basis, you  
14 know. There is no -- there is no qualification on this.  
15 Anybody can go on here and say anything they want to,  
16 whether it's accurate or not.

17 I'm not -- I'm not passing judgment on this.  
18 All I'm saying is from previous experience with ladders,  
19 I get a lot of these where it's misuse. Okay? But we  
20 follow up on every one of them, and you have a period  
21 under which -- during which you have to respond.

22 Q. Okay. But is it fair to say that you would  
23 create a file for an incident like that; true?

24 A. True.

25 Q. You didn't create a file on that incident that

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## REPORTER'S CERTIFICATE

I, Kathleen Mary O'Neill, Certified Shorthand Reporter No. 5023, RPR, duly empowered to administer oaths, do hereby certify:

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition;


Prior to being examined, the deponent was by me first duly sworn;

Said deposition is a true, correct, and complete transcript of said proceedings taken to the best of my ability.

The dismantling, unsealing, or unbinding of the original transcript will render the Reporter's Certificate null and void.

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure, no request being made for review, the transcript was sealed and sent to the noticing attorney.

Dated: May 29, 2018

  
KATHLEEN MARY O'NEILL  
CSR 5023, RPR, CLR



1 DISTRICT COURT  
CLARK COUNTY, NEVADA

2

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

7 Plaintiffs,

8 vs. CASE NO. A-16-731244-C  
DEPT. NO.

9 FIRST STREET FOR BOOMERS &  
BEYOND, INC.; AITHR DEALER, INC.;  
HALE BENTON, Individually, HOMECLICK,  
10 LLC.; JACUZZI LUXURY BATH, d/b/a  
JACUZZI, INC.; BESTWAY BUILDING &  
11 REMODELING, INC.; WILLIAM BUDD,  
Individually and as BUDDS PLUMBING;  
12 DOES 1 through 20; ROE CORPORATIONS  
1 through 20; DOE EMPLOYEES 1 through  
13 20; DOE MANUFACTURERS 1 through 20; DOE  
20 INSTALLERS 1 through 20; DOE  
14 CONTRACTORS 1 through 20; and DOE 21  
SUBCONTRACTORS 1 through 20, inclusive,

15 Defendants.

16

17 \* \* \* \* \*

18 VIDEOTAPED DEPOSITION OF DAVID MODENA

19 \* \* \* \* \*

20

21 December 11, 2018

22

23 Richmond, Virginia

24 Job No. 508962

25 Reported By: Angela N. Sidener, CCR, RPR

DAVID MODENA - 12/11/2018

Page 2

1 Videotaped deposition of DAVID MODENA, Rule  
2 30(b)(6) Designee for Defendants FIRST STREET FOR BOOMERS  
3 AND BEYOND, INC. and AITHR DEALER, INC., taken by and before  
4 Angela N. Sidener, CCR, RPR, and Notary Public in and for  
5 the Commonwealth of Virginia at large, pursuant to Rules 26  
6 and 30(b)(6) of the Rules of Civil Procedure, and by Notice  
7 to Take Deposition; commencing at 10:31 a.m., December 11,  
8 2018, at Regus, 919 East Main Street, Suite 1000, Richmond,  
9 Virginia 23219.

10

11 Appearances:

12 RICHARD HARRIS LAW FIRM  
13 By: BENJAMIN P. CLOWARD, ESQ.  
14 801 South Fourth Street  
15 Las Vegas, Nevada 89101  
16 Counsel for Plaintiffs

17 THORNDAL ARMSTRONG  
18 By: PHILIP GOODHART, ESQ.  
19 1100 East Bridger Avenue  
20 Las Vegas, Nevada 89101-5315  
21 Counsel for Defendants  
22 First Street for Boomers and Beyond, Inc.  
23 and AITHR Dealer, Inc.

24 STACY LANDIS HACKNEY, ESQ.  
25 In-House Counsel for First Street for Boomers  
and Beyond, Inc. and AITHR Dealer, Inc.

26 SNELL & WILMER, LLP  
27 By: JOSHUA D. COOLS, ESQ.  
28 3883 Howard Hughes Parkway, Suite 1100  
29 Las Vegas, Nevada 89159  
30 Attorney for Defendant Jacuzzi Brands, LLC

31 Also Present:

32 Laura Cooney, Videographer

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1

2

## I N D E X

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4

## DEPONENT

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DAVID MODENA

6

Examination By:

Page

7

Direct

Mr. Cloward

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10

## EXHIBITS RETAINED BY PLAINTIFFS' COUNSEL

11

No.

Description

Page

12

1

Binder of Documents Produced by  
First Street for Boomers and Beyond

65

13

14

2

Electronic PDF File of Original  
Contents in Leave-Behind Folder

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1 THE VIDEOGRAPHER: This is the beginning of  
2 disc number 1 in the videotaped deposition of David Modena.  
3 We are on the record on December 11, 2018, at 10:31 a.m.  
4 Counsel have agreed to waive the usual videographer's  
5 introduction.

6 Would you please introduce yourselves,  
7 starting with Plaintiff's Counsel, and the court reporter  
8 will please swear in the witness.

9 MR. CLOWARD: My name is Ben Cloward, and I  
10 represent the plaintiff.

11 MR. GOODHART: This is Philip Goodhart, and I  
12 represent First Street and AITHR Dealers.

13 MS. HACKNEY: Stacy Hackney, counsel for  
14 AITHR Dealer and First Street.

15 MR. COOLS: Joshua Cools, counsel for  
16 Jacuzzi, Inc.

17 DAVID MODENA,  
18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CLOWARD:

21 Q Good to go. How are you today, sir?

22 A Very good. Thanks.

23 Q What -- what do you prefer to be called?

24 A Just call me Dave.

25 Q Okay.

DAVID MODENA - 12/11/2018

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1 A Dave's good.

2 Q Dave, I appreciate that. My name is Ben, and I  
3 represent the plaintiffs. As I'm sure you're aware, this is  
4 what's called a Rule 30(b)(6) deposition. And what that  
5 means is you've been designated as kind of the corporate  
6 spokesperson to speak on behalf of the companies designated  
7 in the notice. Are you aware of that?

8 A Yes.

9 Q Okay. And so I always like to just give a couple  
10 admonitions. I'm sure you've been deposed before.

11 A Not -- not -- no, I don't think so.

12 Q First time?

13 A Probably so. I don't -- I can't recall to this  
14 level, yes -- so, no.

15 Q Hopefully it will be a decent experience for you.

16 A It's going to be.

17 Q Try not to make it too rough on you. But as the  
18 designee, the corporate designee, because you're speaking on  
19 behalf of the company, at times I may ask a question and  
20 maybe you have a personal opinion about a specific topic,  
21 but you know that the company does it a different way, I  
22 mean no disrespect by this at all, I'm not interested to  
23 know your personal opinion, because your testimony is  
24 binding on the company. You know, that's what I'm  
25 interested in.

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1 concern that you -- that you -- if you -- if you have a  
2 concern like that, you -- you try to address it one way or  
3 the other. But how you determine what's dangerous versus is  
4 it just -- you know, I --

5 **Q So is it fair to say you're unable to tell me**  
6 **whether a slippery floor is dangerous to the elderly that**  
7 **purchase your tub?**

8 MR. GOODHART: Object to form. Asked and  
9 answered. Argumentative.

10 MR. COOLS: Join.

11 MR. GOODHART: You can answer the question,  
12 if you can.

13 A A slippery floor can be dangerous to an elderly  
14 person as well as a -- as a person like myself or any other  
15 person. To what level, how dangerous it is, that's -- I  
16 don't know how you define that. I don't now how you -- how  
17 you make that determination, and -- and it was certainly an  
18 issue that had been discussed, you know, a couple of times  
19 with Jacuzzi and trying to make sure it was -- you know, met  
20 all the standards.

21 BY MR. CLOWARD:

22 **Q How many times was that addressed with Jacuzzi?**

23 A I don't know how many times, but certainly a  
24 number of times. It would -- it would come up in -- in  
25 either direct conversation, maybe if it's -- especially if

DAVID MODENA - 12/11/2018

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1 they had referred a concern to us, if they did, which is --

2 I think we did, in preparation for this, was  
3 provided some documentation I had not seen before, because  
4 it had come through Jacuzzi, and -- but some of that I had,  
5 so -- the slippery floor issue, but it's -- it's a -- these  
6 would come up from time to time.

7 It would -- a customer would bring it up to one of  
8 our installers, and they would make a comment. They were  
9 just concerned. It wasn't over an incident, necessarily.  
10 It was just they had a concern, so we would address it from  
11 time to time with Jacuzzi and -- and acknowledge that there  
12 was -- had been expressed concerns by customers. Is there  
13 something we should do, something they should do? And so  
14 there were discussions on that.

15 I couldn't tell you exactly how many times, but  
16 I'm sure more than once or twice, probably, you know, half a  
17 dozen times, I would say.

18 **Q What's the time period of those complaints?**

19 A In reviewing and looking back, it was -- I don't  
20 know exactly for sure. We -- probably in the 2014 time  
21 frame, somewhere in there. It seemed we had probably more  
22 coherent conversations about that. Maybe -- maybe late '13,  
23 early '14 there were discussions about that. Again, there  
24 may have been some that came through Jacuzzi earlier, but I  
25 don't recall those.



DAVID MODENA - 12/11/2018

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1 Q What documents did you review?

2 A As far as what Jacuzzi had done?

3 Q You represented you had two -- two sources of  
4 information that you reviewed, one, documentation from  
5 Jacuzzi and, two, documentation that you had internally, so  
6 let's talk about Jacuzzi first.

7 A Well, the -- as a far as -- as far as slippery  
8 floors? As far as --

9 Q Yeah. That's where we're going to keep the focus  
10 on right now.

11 A Right. So what I -- what I recall was when this  
12 issue came up, the -- Ray Torres was the -- a product  
13 engineer at the time, came back and provided us information  
14 that showed that the -- the floor was to the standards of  
15 whatever the -- I don't know if it's IMO, because it's a  
16 public standard, but within the tub industry, whatever the  
17 standard was, they showed -- gave evidence of a -- that  
18 their tub was standard, as far as the floor and the way it  
19 was done.

20 Q So it's fair to say we can -- we can determine  
21 based on when Mr. Torres was employed, that's the operative  
22 time period?

23 A He was -- it may have carried on past him, but,  
24 yes, he was employed at the time that Jacuzzi addressed that  
25 issue, as far as providing evidence of their tub being

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1 manufactured to the appropriate specs relative to the floor.

2 Q What did he provide?

3 A It would have been a document. I don't know if I  
4 got it in the form of email or whatever that showed the  
5 coefficient or whatever the terminology they would have used  
6 for what the floor needed to -- how it needed to be  
7 constructed so it's sort of slip resistant. I don't know  
8 what the technical term of that would have been, but they  
9 did provide us documentation.

10 Q Coefficient of friction?

11 A I don't know if that's the right term or not, but  
12 it was -- it is -- it was specifically an engineering design  
13 element that I believe is a tub industry standard that  
14 Jacuzzi had met, relative to their floor of the tub.

15 Q Do you know what that is?

16 A No. I have no idea. I can't remember what that  
17 number would have been, no.

18 Q Is that the only information that you received  
19 from Jacuzzi?

20 A From the documentation point of view, yes, that  
21 would have been the only documentation as far as what -- how  
22 it met the standards.

23 Q I'm not limiting it to just the standards. I'm  
24 talking broadly about the slippery issue. Is that the only  
25 document that you received from Jacuzzi, or were there other

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1 emails about that?

2 MR. COOLS: Object to form.

3 MR. GOODHART: Are you talking -- is there a  
4 time frame again, Ben? Ever? Like, post Cunnison incident?  
5 Pre Cunnison incident?

6 MR. CLOWARD: Ever.

7 MR. GOODHART: Ever, okay.

8 MR. CLOWARD: His response was he reviewed  
9 information internally, and he reviewed information from  
10 Jacuzzi. So what I'm trying to do is find out the universe  
11 of information that he reviewed in this aspect of his  
12 testimony.

13 A Yeah. We -- once we -- once the discussion was  
14 sort of ongoing, then we would have -- I would have received  
15 a couple of different emails for sure, because we went about  
16 trying to find additional solutions, if you will, if someone  
17 was -- wanted to be provided additional assurance or  
18 comfort, their floor could be made even more slip resistant,  
19 you know, they were looking for other solutions that they --  
20 just on an exception basis, if we wanted to do that.

21 So Jacuzzi went and actually worked and developed  
22 and found other products that could be used to -- to, you  
23 know -- for people that just had additional concerns, if --  
24 similar to people, what they, I guess, do in their regular  
25 tub. They want to put additional stuff, they can put

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1 additional stuff down in their tub.

2 BY MR. CLOWARD:

3 Q What was the additional stuff they put down in the  
4 tub?

5 A It's called Kahuna Grip, I believe, is what it  
6 was.

7 Q What was it?

8 A Kahuna Grip, I think, is what the name of it. It  
9 was -- it's a product that's already out there and it can be  
10 adhered to the tub. It just gives it more grip. It's was  
11 provided after-market and upon request.

12 Q And, certainly, there were emails about that?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes. I'm sorry.

16 Q And those emails have been provided in this case?

17 A Yes.

18 MR. GOODHART: As you and I have discussed,  
19 Ben, the only emails that my office has provided to you so  
20 far predate the death of Ms. Cunnison.

21 I believe what Mr. Modena is talking about  
22 are emails, as he indicated and testified earlier, that were  
23 from early 2014, which have postdated the death. So First  
24 Street has not produced those emails, given the discussions  
25 that we have had in the past. I know you've raised an

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1 MR. CLOWARD: Okay.

2 MR. GOODHART: -- Jacuzzi will provide the  
3 emails, since they have been ordered to provide those emails  
4 about post-death --

5 MR. CLOWARD: We would ask you --

6 MR. GOODHART: -- discussions.

7 MR. CLOWARD: We would ask that First Street  
8 provide them as well, because there may be internal  
9 communications within the folks at First Street who have the  
10 boots on the ground, who are in actually installing the  
11 product in consumers' homes. I think a better source of  
12 that information would actually be First Street, to be quite  
13 honest with you.

14 So we'd ask that you produce those. If not,  
15 I'm happy to take it up with the commissioner.

16 MR. GOODHART: I think we're going to have  
17 to, Ben. I apologize. It's --

18 MR. CLOWARD: Not a problem.

19 MR. GOODHART: We can agree to disagree on  
20 that one.

21 MR. CLOWARD: Not a problem. We'll move on.  
22 Thank you.

23 MR. GOODHART: Thanks.

24 BY MR. CLOWARD:

25 Q Okay. Sir, so why don't you just tell me as much

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1 as you can about the -- the Kahuna Grip emails.

2 A When -- when the issue -- when we -- I guess, when  
3 the issue was raised, I don't know the exact date when we  
4 had a discussion with them to where -- what would have  
5 instigated them going to the next level of trying to find  
6 something, may have been, you know, the second email or  
7 something that --

8 Anyway, we started a discussion with them, and it  
9 was just back and forth on here are some -- first they  
10 provided us the information the tub is to specs. This is --  
11 satisfied that. But then what else can we do? Is there  
12 something else we can do? Is there something that could be  
13 done to make it more aggressive?

14 And they came up with this solution, and it was  
15 just an off-the-shelf product that, I think, was used in --  
16 I think maybe for boats or things that are for wet surfaces,  
17 and so I think the -- probably was designed for -- I'm just  
18 going off recollection here -- for, like, surfboards, but,  
19 anyway, it's a product that --

20 And so they worked with that, looked at that and  
21 tried to see if there's any issues that -- would it work?  
22 Is there any other alternative situation that would come  
23 from using that and deemed it was certainly more aggressive  
24 and would give you another solution on top of what they've  
25 already done in manufacturing the tub.

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1           They then decided to -- there was an issue came  
2   up, they will make it available to us, and we would -- if  
3   it -- if it was something that was -- a customer raised as  
4   an issue, we could contact them directly and they would send  
5   one out and we'd put it -- you could install it right --  
6   since you could lay it out on the floor, it'd stick to the  
7   floor of the tub.

8           **Q     Okay. Is it fair to say that there were concerns**  
9   **about the tub being slippery from the time that First Street**  
10 **requested from Mr. Torres information about the slip**  
11 **resistence of the tub?**

12                   MR. COOLS: Object to the form.

13                   MR. GOODHART: Join.

14           **A     I'm sorry. Ask that question again. I didn't**  
15 **quite understand.**

16                   MR. CLOWARD: Sure. Madam reporter, would  
17 you mind reading that again?

18                   (The record was read.)

19           **A     Did Jacuzzi show concern --**

20                   MR. GOODHART: Same objection.

21                   THE DEPONENT: Are you done?

22                   MR. CLOWARD: Join.

23                   THE DEPONENT: I'm sorry.

24                   MR. GOODHART: Go ahead.

25   BY MR. CLOWARD:

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1           Q     So now that we -- just to make sure we have a  
2     clean record with clean question, clean objections, and then  
3     hopefully a clean answer: Fair to say there was concern  
4     about the slipperiness of the tub from the time First Street  
5     was requesting information about the slip resistance from  
6     Ray Torres?

7           A     Yes.

8                     MR. GOODHART: Object to the form of the  
9     question.

10                    MR. COOLS: Join.

11     BY MR. CLOWARD:

12           Q     Okay. And that concern came from consumers  
13     themselves?

14                    MR. GOODHART: Object to form.

15                    MR. COOLS: Join.

16                    THE DEPONENT: Go ahead and answer?

17                    MR. GOODHART: Yeah.

18           A     Yes. It would have been from consumers probably  
19     bringing it to our attention through an installer or  
20     something. It wouldn't have been through a salesperson,  
21     because they wouldn't be together at the time. They'd  
22     normally be from an installer. The consumer may have said  
23     she was concerned, may have asked about it, had a concern,  
24     or it could come in through our production department. They  
25     would -- if they were having used the tub, they may have



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1 called in to our production area and just asked.

2 BY MR. CLOWARD:

3 Q Okay. So someone would call into that CRM system  
4 and --

5 A They'd call into our Denver office, and -- and  
6 they would get, typically, production, and they would be the  
7 one that would notate that.

8 Q Okay. And, obviously, it was enough of a concern  
9 that First Street requested information from Ray Torres  
10 about the slipperiness of the tub itself, true?

11 MR. GOODHART: Object to form.  
12 Argumentative.

13 MR. COOLS: Join.

14 THE DEPONENT: Answer?

15 MR. GOODHART: Yeah.

16 A Any concern like that, yes, we -- we would brought  
17 to their attention, because those are potential liability  
18 issues so we would have brought to their attention just as  
19 an issue that warrants discussing, make sure we're doing all  
20 we could.

21 BY MR. CLOWARD:

22 Q Okay. And just so that you're aware of how the  
23 objections -- how that plays out, that way, you know, you  
24 can feel confident knowing when you're supposed to answer  
25 and --

1 have -- our counsel would have it.

2 Q Okay. So let's just -- let's just take a look  
3 here. We'll go to page -- back to page 3196. This is Mark  
4 Gordon's response. And, Mark Gordon, again, is the  
5 president of First Street at the time, true?

6 A CEO, yes.

7 Q What was your position at the time?

8 A I would have been president of AITHR, I believe,  
9 at this October 31st -- I think so. Yes, president of  
10 AITHR.

11 Q Okay. And what is your current position?

12 A Senior vice president of First Street.

13 Q Is -- is Mark Gordon still the president and CEO?

14 A Yes.

15 Q Okay. So, here, Mark is responding to you, it  
16 looks like, and he says -- I'm going to go about the  
17 third -- the third line down. He says, quote, anything  
18 related to safety, more, slash, better position grab bars or  
19 nonslip surfaces, etc. Can't they spray gritty surface in  
20 the bottom of the tub for almost no cost, question.

21 A Uh-huh.

22 Q And then earlier we were talking about kind of the  
23 slipperiness of the tub. There was some communications  
24 between First Street and Jacuzzi, true?

25 A Yes.

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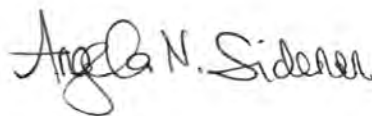
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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Angela N. Sidener, CCR, RPR, and Notary  
3 Public in and for the Commonwealth of Virginia at large, and  
4 whose commission expires November 30, 2022, do certify that  
5 the aforementioned appeared before me, was sworn by me, and  
6 was thereupon examined by counsel; and that the foregoing is  
7 a true, correct, and full transcript of the testimony  
8 adduced.

9 I further certify that I am neither related  
10 to nor associated with any counsel or party to this  
11 proceeding, nor otherwise interested in the event thereof.

12 Given under my hand and notary seal at  
13 Richmond, Virginia, this 14th day of December, 2018.

14  
15   
16

17 Angela N. Sidener, CCR, RPR  
18 Notary Registration No. 7378859  
19  
20  
21  
22  
23  
24  
25

---

**From:** Reyes, Regina  
**Sent:** Monday, January 07, 2013 9:45 AM  
**To:** Nick Fawkes  
**Cc:** Bachmeyer, Kurt; Fore, Jonathan; Martinez, Audrey  
**Subject:** RE: Arnouville, Manuel - Serial #BDFDK9

Hi Nick,

I discussed this internally and at this time we will not have any plans to change the surface to make it more abrasive. If the nonskid bath stickers will be used by the customer we would only recommend they apply them to the floor and not the seat.

Regards,

**Regina Reyes**  
Customer Service Manager



www.jacuzzi.com  
14525 Monte Vista Avenue / Chino, CA 91710  
909.247.2170 (o) Office Hours 8 a.m. to 5:00 p.m. PT  
909.247.2551 (f)

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---

**From:** Nick Fawkes [mailto:nick.fawkes@aihremodelers.com]  
**Sent:** Friday, December 21, 2012 12:16 PM  
**To:** Reyes, Regina  
**Subject:** Re: Arnouville, Manuel - Serial #BDFDK9

Regina this is Xbox wanted to let you know that we actually hear this complaint more and more often and the numbers increasing installations. I would highly recommend that we consider putting something a little bit more abrasive Not only on the floor but also on the seats as we have had customers call concerned that they slip off the seat so wouldn't be a bad thing to consider adding to the new job just my thoughts.

Sent from my iPhone

On Dec 21, 2012, at 12:59 PM, "Reyes, Regina" <[Regina.Reyes@jacuzzi.com](mailto:Regina.Reyes@jacuzzi.com)> wrote:

Hi Tracey,

Sorry for the delay, this is one that I have been pondering how to address and the only thing I can come up with is that maybe they apply some non skid bath mats or stickers. We don't have an accessory to supply and we have not heard of this before, but I will check.

**Regina Reyes**

Customer Service Manager

<image001.jpg>

[www.jacuzzi.com](http://www.jacuzzi.com)

14525 Monte Vista Avenue / Chino, CA 91710

909.247.2170 (o) Office Hours 8 a.m. to 5:00 p.m. PT

909.247.2551 (f)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

---

**From:** Tracey Dierkens [<mailto:tracey.dierkens@aihremodelers.com>]

**Sent:** Tuesday, December 18, 2012 2:35 PM

**To:** Reyes, Regina

**Cc:** [nick.fawkes@aihremodelers.com](mailto:nick.fawkes@aihremodelers.com); Todd Stout

**Subject:** FW: Arnouville, Manuel - Serial #BDFDK9

**Importance:** High

Regina,

I guess I need to talk to you about this....

Can you help?

*Tracey Dierkens*

*303-222-3200*

*303-222-3204 Direct*

---

**From:** Calderon, Hilton [<mailto:Hilton.Calderon@jacuzzi.com>] **On Behalf Of** First Street Support

**Sent:** Tuesday, December 18, 2012 3:20 PM

**To:** Tracey Dierkens; First Street Support

**Cc:** Todd Stout; Nick Fawkes

**Subject:** RE: Arnouville, Manuel - Serial #BDFDK9

**Importance:** High

Tracey,

This is the first time I heard of this type of complain, you will need to direct this issue with our manager: Regina Reyes. As far as I know the floor has a nonslip pattern design that prevents the user from slipping but the seat is plain, it has no slip pattern design.

Regards,

**Hilton Calderon**

Technical Services Consultant

<image001.jpg>

[www.jacuzzi.com](http://www.jacuzzi.com)

14525 Monte Vista Avenue / Chino, CA 91710

800.288.4002 (o) 866.588.0922 (f)

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---

**From:** Tracey Dierkens [<mailto:tracey.dierkens@aihremodelers.com>]

**Sent:** Monday, December 17, 2012 10:07 AM

**To:** First Street Support

**Cc:** Todd Stout; [nick.fawkes@aihremodelers.com](mailto:nick.fawkes@aihremodelers.com)

**Subject:** Arnouville, Manuel - Serial #BDFDK9

Customers tub was installed on 12/13, and they say the wife slips on the seat and the floor. Nick would like to know if there is anything you can do to help the customer out? They are not using the tub because they are afraid she will fall.

Arnouville, Manuel & Patricia

5010 N Bayou Black Drive

Gibson, LA 70356

(985)575-3695

Thank you!

*Tracey Dierkens*

*303-222-3200*

*303-222-3204 Direct*

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007490

007490

**From:** Martinez, Audrey </O=JACUZZI ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AUDREY MARTINEZ66B76F91>  
**To:** Torres, Ray  
**Sent:** 11/1/2012 2:42:07 PM  
**Subject:** FW: New Tub Features

Any input you can offer? Aside from the "spray a gritty surface" comment...L

I will formulate a response but would like your professional opinion. Thanks!

**Audrey Martinez**

Marketing Manager- Aging In Place Bathing



www.jacuzzi.com  
 13925 City Center Drive, Suite 200 / Chino Hills, CA 91709  
 909.247.2582 (o) 909.762.3203 (c)

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**From:** Norm Murdock [mailto:norm.murdock@aihremodelers.com]  
**Sent:** Wednesday, October 31, 2012 1:12 PM  
**To:** Martinez, Audrey  
**Cc:** 'DAVE MODENA'  
**Subject:** FW: New Tub Features

Audrey-

Please see Mark's comments below...if you or your team have anything to add regarding his points & how we can call out new selling features of the P2 tub, please pass them along.

Thanks!

Norm Murdock, CAPS  
 Vice President



Phone: 303-953-7082  
 Cell: 602-403-6267  
 Email: [norm.murdock@firststreetonline.com](mailto:norm.murdock@firststreetonline.com)  
 Website: [www.firststreetinc.com](http://www.firststreetinc.com), [www.firststreetonline.com](http://www.firststreetonline.com)

*designed for SENIORS®*

-----Original Message-----

**From:** MARK GORDON [mailto:MARK.GORDON@firstSTREETonline.com]  
**Sent:** Wednesday, October 31, 2012 10:50 AM  
**To:** DAVE MODENA; JOHN FLEMING  
**Cc:** JOHN ROBERGE; NORM MURDOCK  
**Subject:** RE: New Tub Features

Several questions.

Are there any improvements related to the "equity" of Jacuzzi.....improved hydrotherapy: increased water circulation, more jets, better jets, redesigned jets, warmer water etc.

JACUZZI006516

REV JACUZZI006616

007491

007491



Anything related to safety----more/better positioned grab bars, or non-slip surfaces etc (can't they spray a gritty surface in the bottom of the tub for almost no cost?)

Anything related to comfort----more ergonomic seat, easier to reach/operate controls and faucets, neck rest etc.

Of the things you mention, I think we the dual pin system can be used as a reason to believe the tub won't leak, and reinforce the lifetime "no leak" guarantee. I would stay away from saying the word "lock", as it might scare seniors regarding how they can get out in an emergency if it is "locked" (I know there is a back up system, but that is too complicated to talk about in copy and should be saved for the sales presentation).

I think the low step should be talked about in the absolute-"Low step threshold makes entry easy and safe", not relative to the previous tub, such as "lower and safer" (unless we are lower and safer than the competition, in which case that is how it should be positioned).

I think we can mention the wider door (but it's really not much of a benefit unless you are big/fat).....but we shouldn't talk about "closing over the knees". That is really hard to understand and should be saved for the in home sale/demonstration.

Net, hopefully there is something we can say regarding hydrotherapy, safety, or comfort. Otherwise, there is not much of a consumer marketing story here (other than the over used, but somewhat effective and vague "new and improved"), since as Dave alludes to, it's difficult to say "more attractive" or "sleeker".....since beauty is in the eye of the beholder.

So we need to invent some marketing hype, ideas include (these aren't headlines but more like call outs):

The new Jacuzzi Walk in Tub---endorsed by, and proud supporter of the Wounded Warrior Project.

The new Jacuzzi Walk in Tub---the brand more doctors recommend.

The new Jacuzzi Walk in Tub---the best selling brand in America!

Mark

007492

007492

JACUZZI006517

REV JACUZZI006617

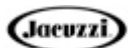
---

**From:** Reyes, Regina  
**Sent:** Wednesday, March 06, 2013 4:54 PM  
**To:** Monique Trujillo; First Street Support  
**Cc:** Todd Stout; Norm Murdock; Davis, Megan; Bachmeyer, Kurt  
**Subject:** RE: Fuchs, Fred Serial # BDFN3C - URGENT!!!

Hi Monique, we can send a finish agent out to inspect the tub. If the tub requires a resurface we will resurface it, however if it does not yet the customer's position is that it is slippery we cannot make changes to the surface. We would instead recommend that the customer use non skid bath mats.

We'll let you know what happens after the inspection. Thank you.

**Regina Reyes**  
 Customer Service Manager



[www.jacuzzi.com](http://www.jacuzzi.com)

14525 Monte Vista Avenue / Chino, CA 91710

909.247.2170 (o) Office Hours 8 a.m. to 5:00 p.m. PT

909.247.2551 (f)

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**From:** Monique Trujillo [<mailto:monique.trujillo@aihremodelers.com>]  
**Sent:** Wednesday, March 06, 2013 3:58 PM  
**To:** First Street Support  
**Cc:** Todd Stout; Norm Murdock; Reyes, Regina; Davis, Megan  
**Subject:** Fuchs, Fred Serial # BDFN3C - URGENT!!!  
**Importance:** High

Jacuzzi Team,

The customer has called in and is very upset because he says he has almost fallen 3 times since having his new walk-in tub installed. He says that the floor of the tub is too slippery. He says there is no grip or no-slip feeling to the tub. He said he is no longer able to use the tub until this problem is fixed.

This is a very serious safety concern and I really need someone to contact him ASAP to get a technician out to his home before he falls.

Fred Fuchs  
239 4th AVE North  
South Saint Paul, MN 55075

651-451-3609  
Serial # BDFN3C

Thank you,

Monique Trujillo  
Production Manager  
**AITHR Dealer Inc.**  
**1460 W. Canal Ct., Suite 102**  
**Littleton, CO 80120**

Office Phone: 303-222-3200 Direct Phone: 303-222-3205

Email: [Monique.Trujillo@AIHRemodelers.com](mailto:Monique.Trujillo@AIHRemodelers.com) \*\*\* PLEASE NOTE NEW EMAIL ADDRESS\*\*\*

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007494

007494

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**From:** Gaspar, Venus  
**Sent:** Monday, July 09, 2012 12:54 PM  
**To:** Reyes, Regina  
**Cc:** Frederickson, Don; Bachmeyer, Kurt  
**Subject:** FW: All FirstStreet Unresolved Incidents  
**Attachments:** FirstStreet Incident Report.xls

Regina,

Per the discussion in the meeting, please remove me off the distribution for this report. We will be using Megan's report to track the open incidents.

Thank you,

Venus Gaspar

ext. 2144

-----Original Message-----

From: [Regina.Reyes@jacuzzi.com](mailto:Regina.Reyes@jacuzzi.com) [<mailto:Regina.Reyes@jacuzzi.com>]

Sent: Friday, July 06, 2012 3:05 PM

To: [undisclosed-recipients@custhelp.com](mailto:undisclosed-recipients@custhelp.com)

Subject: All FirstStreet Unresolved Incidents

Note: The attached file contains a spreadsheet in xml format. Upon opening the file you may receive a warning message stating the format is different from that specified by the file extension. It is safe to open to the file.

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Title

Sub Title

Date Created	Date Last Updated	Date Closed	Status	Reference #	Disposition Hierarchy	Disposition ID	Subject	Contact Type	DLR/Agent Name	ShipTo Account Name	Model	Serial Number	Manufacture Date	Assigned Account
06/29/2012 08:46 AM	07/05/2012 01:01 PM	06/29/2012 08:46 AM	Solved	120629-000038	Referrals	Referred to International Sister Company	Systems clean order- trans to Mary in co op	Consumer	No Value	No Value	NS80959	BDC046	03/02/2012	Larren Castro
06/29/2012 11:06 AM	07/06/2012 12:18 PM	07/06/2012 12:18 PM	Solved	120629-000101	Coordinated Service Repair	Coordinated Service Repair	Issue: leaks from the door. C/A Fridays to do job follow up 7-10	Consumer	No Value	No Value	NS81958	BDC83F	No Value	Megan Davis
06/29/2012 12:14 PM	06/29/2012 12:14 PM	06/29/2012 12:14 PM	Solved	120629-000133	Registered product for warranty	Registered product for warranty	REGISTRATION	Consumer	No Value	No Value	NS81959	BDOB8Q	06/04/2012	Sonja Whitlow
06/29/2012 12:36 PM	07/06/2012 11:29 AM	No Value	Waiting	120629-000132	Product/Operation/Warranty Info Provided	Product/Operation/Warranty Info Provided	Issue: Tub not turning on C/A -pendig	Consumer	No Value	No Value	NS80959	BDC9L1	05/04/2012	Regina Reyes
06/29/2012 01:01 PM	06/29/2012 01:01 PM	06/29/2012 01:01 PM	Solved	120629-000159	Referrals	Referrals	INQUIRED OF THE DELAY IN RECEIVING THE REPLACEMENTSURROUND - REF TO FIRSTSTREET INSTALLER	Consumer	No Value	No Value	NS81959	BDC253	05/03/2012	Sonja Whitlow
06/29/2012 01:41 PM	07/05/2012 01:00 PM	No Value	Waiting	120629-000170	Coordinated Service Repair	Coordinated Service Repair	Issue: Door closed you can see a 1/4" gap between gasket and U-frame 5" above the floor at the bottom corner opposite to hinge. C/A .coordinated service with BETZ ENT. service will be done 7/9/12.	FirstStreet Dealer/Installer	FIRSTSTREET BOOMERS & BEYOND	LIFE CHANGE SOLUTIONS	NS81959	BDOB8Q	06/04/2012	Regina Reyes
06/29/2012 02:57 PM	07/06/2012 09:30 AM	No Value	Waiting	120629-000212	Documented complaint	Documented complaint	Issue: no cold water coming from faucet. Repair Action: to send faucet kit for installer to repair-F/U 7-9 SO# 158314	Consumer	No Value	No Value	NS80959	No Value	No Value	Regina Reyes
07/03/2012 02:49 PM	07/06/2012 09:48 AM	No Value	Waiting	120702-000029	Tech troubleshot/Identify failed part	Door Seal	Issue: DOOR LEAKING ALONG THE BOTTOM C/A Betz to be doing repair. no parts to be sent. F/U 7-9	Consumer	No Value	No Value	NS81959	BDOB8Q	06/04/2012	Regina Reyes
07/03/2012 06:38 AM	07/03/2012 06:38 AM	07/03/2012 06:38 AM	Solved	120703-000007	Tech troubleshot/Identify failed part	Door Assembly (walk in)	Issue: has 4 customers with handles not closing tight enough - may nd thicker striker plate- Repair Action: will call back with serial numbers	FirstStreet Dealer/Installer	FIRSTSTREET BOOMERS & BEYOND	Paradise Contractors	NS80959	No Value	No Value	Martin Guevara
07/03/2012 07:17 AM	07/03/2012 07:17 AM	07/03/2012 07:17 AM	Solved	120703-000029	Registered product for warranty	Registered product for warranty	REGISTRATION	Consumer	No Value	No Value	NS80959	BDC67Z	05/16/2012	Sonja Whitlow
07/03/2012 08:51 AM	07/03/2012 08:51 AM	07/03/2012 08:51 AM	Solved	120703-000085	Registered product for warranty	Registered product for warranty	registration	Consumer	No Value	No Value	NS80959	BDC4MF	05/06/2012	Sonja Whitlow
07/03/2012 09:36 AM	07/06/2012 02:01 PM	No Value	Waiting	120703-000069	Coordinated Service Repair	Coordinated Service Repair	Issue: door leaking-filled 1" above bottom of door, 3-4" scratch on grab bar. Repair Action: sent new strike plate SO# 158333 & finish agent for grab bar repair. Service performed on 07-05 . Corrective Action: hinge adjustment sched 7-10	Consumer	No Value	No Value	NS80958	BDC4L9	05/09/2012	Regina Reyes
07/03/2012 10:14 AM	07/06/2012 10:16 AM	No Value	Waiting	120703-000117	No Value	No Value	Issue:Leak at door CC would not stop leak. C/A Paula to do repair. follow 7-11	Consumer	No Value	No Value	NS81959	BDOB8Z	No Value	Megan Davis
07/03/2012 10:50 AM	07/06/2012 09:57 AM	No Value	Waiting	120703-000136	No Value	No Value	Issue: Leak from door C./A pending golden west to do Job 158349	Consumer	No Value	No Value	NS80958	BDC6L3	No Value	Megan Davis
07/05/2012 06:27 AM	07/06/2012 02:00 PM	07/05/2012 06:27 AM	Solved	120705-000007	Registered product for warranty	Registered product for warranty	REGISTRATION	Consumer	No Value	No Value	NS80959	BDC8D5	05/22/2012	Sonja Whitlow
07/05/2012 07:56 AM	07/06/2012 06:56 AM	07/06/2012 06:56 AM	Solved	120705-000042	Registered product for warranty	Registered product for warranty	REGISTRATION	Consumer	No Value	No Value	NS80959	BDC21T	04/24/2012	Sonja Whitlow
07/05/2012 08:35 AM	07/05/2012 11:25 AM	No Value	Waiting	120705-000039	Coordinated Service Repair	Coordinated Service Repair	Issue: door latch came off. Repair Action: sending door handle kit to Nu-Ware SO# 158374. Service scheduled for 07-10	Consumer	No Value	No Value	NS80959	BDC4FN	04/29/2012	Regina Reyes
07/05/2012 09:51 AM	07/05/2012 09:51 AM	07/05/2012 09:51 AM	Solved	120705-000095	Product/Operation/Warranty Info Provided	Product/Operation/Warranty Info Provided	Issue: broken hip & says unit is too slippery- feels we should have more grab bars on both sides- Repair Action: n/a - Referred to First ST for accessories	Consumer	No Value	No Value	NS81959	BDC7GD	05/30/2012	Martin Guevara
07/05/2012 10:33 AM	07/05/2012 10:33 AM	07/05/2012 10:33 AM	Solved	120705-000127	Product/Operation/Warranty Info Provided	Product/Operation/Warranty Info Provided	Handle is damaged out the box has scratches ont he handle....requested a new handle...has not installed the unit yet....holding up installation....shipping overnight . placed order 158395 for handle kit	Dealer Sales Associate	99	No Value	NS80959	BDC994	06/05/2012	Miguel Rojas
07/05/2012 02:56 PM	07/05/2012 02:56 PM	07/05/2012 02:56 PM	Solved	120705-000245	Documented complaint	Dealer/Serv Tech Complaint	Issue: unhappy with performance of tub- Raleigh Pools promised to swap tub out with other model- referred to Simona at First ST	Consumer	No Value	No Value	NS80959	No Value	No Value	Martin Guevara
07/06/2012 06:55 AM	07/06/2012 06:55 AM	07/06/2012 06:55 AM	Solved	120706-000013	Registered product for warranty	Registered product for warranty	REGISTRATION	Consumer	No Value	No Value	NS81958	BDC7H9	05/21/2012	Sonja Whitlow
07/06/2012 06:55 AM	07/06/2012 01:29 PM	No Value	Waiting	120706-000012	Tech troubleshot/Identify failed part	Handle & Strike Plate	Issue: Part of handle popped off C/A Replace handle Pending	Consumer	No Value	No Value	NS80959	BDC21T	No Value	Ruth Coedler
07/06/2012 06:36 AM	07/06/2012 08:36 AM	07/06/2012 08:36 AM	Solved	120706-000047	Registered product for warranty	Registered product for warranty	REGISTRATION	Consumer	No Value	No Value	NS80959	BDOCT5	06/13/2012	Sonja Whitlow
07/06/2012 09:05 AM	07/06/2012 11:19 AM	No Value	Waiting	120706-000055	Coordinated Service Repair	Coordinated Service Repair	Issue: grab bar paint peeling, right inside door frame has gouge: Repair Action: coordinating finish repair with Ripplemeyer Service-scheduled for 07-10	Consumer	No Value	No Value	NS80958	BDDCVK	06/20/2012	Regina Reyes
07/06/2012 09:29 AM	07/06/2012 09:29 AM	No Value	Waiting	120706-000067	Tech troubleshot/Identify failed part	Air Actuator Panel (push button)	buttons hard to push, need service, the buttons work it is just to hard for his wife to push, he also has problems	Consumer	No Value	No Value	NS81958	BDC68J	No Value	Rich Vest
07/06/2012 10:23 AM	07/06/2012 10:23 AM	No Value	Waiting	120706-000096	Tech troubleshot/Identify failed part	Air Actuator Panel (push button)	loose air button... did not know which one	Consumer	No Value	No Value	NS81958	BDC6N9	02/24/2012	Rich Vest
07/06/2012 12:20 PM	07/06/2012 12:20 PM	07/06/2012 12:20 PM	Solved	120706-000163	Registered product for warranty	Registered product for warranty	confirmed registration	Consumer	No Value	No Value	NS80958	BDDCVK	06/20/2012	Sonja Whitlow
07/06/2012 01:08 PM	07/06/2012 01:08 PM	No Value	Waiting	120706-000183	No Value	No Value	Issue: old tub was larger then new tub. Tile is missing on front. Installer told him not on contract also door frame was not finished C/A	Consumer	No Value	No Value	NS81959	BDC2R6	No Value	Megan Davis

Record Count: 28

---

**From:** dnuanes <deborah.nuanes@jacuzzi.com>  
**Sent:** Tuesday, April 09, 2013 3:33 PM  
**To:** Bachmeyer, Kurt; monique.trujillo@aihremodelers.com  
**Cc:** Reyes, Regina; norm.murdock@firststreetonline.com  
**Subject:** FWD: Hot Spot Pools to service door leak. Agent called homeowner and he indicated he did not want tub and he slipped and fell.

The following incident has been forwarded to you by:  
Deborah Nuanes([deborah.nuanes@jacuzzi.com](mailto:deborah.nuanes@jacuzzi.com))

**Sender's Comment**

Hello Everyone,

I just wanted to update you on this incident that I'm forwarding this over to Kurk Bachmayer. Please address all questions and updates to him.

Thank you,  
Deborah Nuanes  
Consumer Relations, Aging in Place

**Contact Information**

**First Name:** Donald  
**Last Name:** Raidt  
**Type:** Consumer  
**Title:**  
**Primary Phone:** 785-218-5414  
**DLR/Agent #:**  
**DLR/Agent Name:**  
**Lowe's Store #:**  
**Region/Territory:**  
**ShipTo Acct Sequence:**  
**ShipTo Account Name:** RENOVATIVE SOL - LEAVENWORTH

**Reference #130405-000181**

**Summary:** Hot Spot Pools to service door leak. Agent called homeowner and he indicated he did not want tub and he slipped and fell.

**Rule State:** 02. In Progress

**Product Level 1:** Jacuzzi Luxury Bath

**Product Level 2:** Walk-in

**Product Level 3:** FirstStreet

**Category Level 1:** Service Request

**Category Level 2:** Warranty

**Date Created:** 04/05/2013 02:26 PM

**Last Updated:** 04/09/2013 03:31 PM

**Status:** Waiting

**Assigned:** Deborah Nuanes

**Serial Number:** BDF0Y7

**Purchase DLR/Agent #:** 70001017

**PurchaseDLR/Agent:** FIRSTSTREET BOOMERS & BEYOND

**Model:** LW50959

**Model Desc:** FS 5229 C LH SLN HTR SKT WHT

**Manufacture Date:** 03/18/2013

**Early Warning:** No

**Auth Date:**

**Auth #:**

**Auth By:**

**Auth Amount:**

**Auth Parts:**

**Auth Labor:**

**Auth Travel:**

**Brand:** JLB

**First Call Resolutio:**

**Warranty Status:** Yes

**Account Number:**

**FIR #:**

**Region/District:**

**Date CCR Created:**

**FIR Disposition:**

**CCR#:**

**Sales Order #:**

**Date Consumer Contacted:** 04/08/2013

**Service Date:**

007498

007498

**Balance Due:** No  
**Follow Up Date:** 04/09/2013  
**CCR \$:**

#### Auth Comments

#### District Sales Rep

#### Description of Problem

#### Discussion Thread

##### Response Via Email (Deborah Nuanes)

04/09/2013 03:28 PM

Hello Everyone,

I just wanted to update you on this incident that I'm forwarding this over to Kurk Bachmayer. Please address all questions and updates to him.

Thank you,  
 Deborah Nuanes  
 Consumer Relations, Aging in Place

##### Customer By Phone (Entered by Megan Davis)

04/08/2013 10:02 AM

Hello Monique

Our service provider contacted Donald Raidt to set up service and he notified them he did not want to set service because he no longer wants the tub. He told them he slipped and fell causing him to hurt his back. I called him to follow up and he told me he doesn't want the unit due to the leaks and is willing to get a lawyer if the tub is not taken out and he is refunded. He did not mentioned his injures to me but did insist that he was not keeping the tub.

Thank you,  
 Megan

##### Response Via Email (Hilton Calderon)

04/05/2013 02:26 PM

From: Calderon, Hilton On Behalf Of First Street Support  
 Sent: Friday, April 05, 2013 2:26 PM  
 To: Monique Trujillo; First Street Support  
 Cc: [Gary.Yingst@aihremodelers.com](mailto:Gary.Yingst@aihremodelers.com)  
 Subject: RE: Raidt, Donald Serial # BDF0Y7

Monique,

The service will be done by HOT SPOT POOLS (816-781-8884) under claim# 0070174; no charge parts order# 168739 shipping on Monday via



UP1. I called Mr. Raidt and left him a voice message that his tub will be service by HOT SPOT POOLS as soon as parts arrive to their shop. HOT SPOT POOLS (Amy) will call customer first thing Monday morning to schedule service.

Regards,  
Hilton Calderon  
Technical Services Consultant

**Customer Via Email (Entered by Hilton Calderon)**

04/05/2013 02:26 PM

From: Monique Trujillo [mailto:[monique.trujillo@aihremodelers.com](mailto:monique.trujillo@aihremodelers.com)]  
Sent: Thursday, April 04, 2013 2:46 PM  
To: First Street Support  
Cc: [Gary.Yingst@aihremodelers.com](mailto:Gary.Yingst@aihremodelers.com)  
Subject: Raidt, Donald Serial # BDF0Y7

Jacuzzi Team,

Customers tub was just installed. It did not leak at time of installation. The customer now says that the door has a huge leak out of the bottom of the door. He said it flooded the bathroom and adjoining room.

Please send a Jacuzzi Tech to the customers home ASAP.

Donald Raidt  
10105 Mohawk Ln  
Leawood, KS 66206  
Installed 3/30/13

785-218-5414  
Serial # BDF0Y7

Thank you,

Monique Trujillo  
Midwest Production Manager, AIHR  
1460 W Canal Ct  
Suite 102  
Littleton, CO 80120  
303-222-3200 - Office  
303-222-3205 - Direct