

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

**In the Supreme Court of Nevada**

JACUZZI, INC. doing business as JACUZZI  
LUXURY BATH,

Petitioner,

*vs.*

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

Respondents,

and

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

Real Parties in Interest.

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**PETITIONER'S APPENDIX  
VOLUME 31  
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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





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## Case: 00182053

Contact Name	Case Owner	Deborah Nuanes
Account Name	Asset	
Brand	Warranty	
Demo/Red Tag	Serial # (Text)	
	Part Number	
	Part Number (Text)	

## Additional Information

Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	Per FS incident is closed. customer is refusing to have us resolve any issues he may have with his product. H/O refused agent to service tub.		
Description			

## Resolution Information

Category	Product
Product Issue	Product Component
Other Product Issue	Other Reason
Case Resolution	

## System Information

Created By	Hilton Calderon, 4/5/2013 9:26 PM	Last Modified By	Deborah Nuanes, 12/17/2013 5:51 PM
Business Hours	Default	Entitlement Name	
Accepted Date/Time		Case Record Type	Legacy

## Case Comments

4/17/2013 6:39 PM		4/17/2013 6:34 PM	
User	Regina Reyes	User	Regina Reyes
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	Subject line:Homeowner not allowing us to service. Does not want tub. Hot Spot Pools to service door leak. Agent called homeowner and he indicated he did not want tub and he slipped and fell.	Comment	FYI below_ Norm Murdock, CAPS Vice PresidentPhone: 303-222-3207Cell: 602-403-6267Email: norm.murdock@firststreetonline.comWebsite: www.firststreetinc.com, www.firststreetonline.com From: Nick Fawkes [mailto:nick.fawkes@aihremodelers.com] Sent: Wednesday, April 17, 2013 12:09 PMTo: 'Monique Trujillo'Cc: Todd Stout; norm.murdock@firststreetonline.comSubject: RE: Raidt, Donald Team,This customer is refusing to have us resolve any issues he may have with his product.. I have left a message that we will be more than willing to reconcile any issues he may have when he is ready to do so.. Tub will still have all applicable warranties and at this point, the file is closed.Nick Fawkes, General ManagerfirstSTREET Jacuzzinick.fawkes@aihremodelers.com303.953.7080 From: Monique Trujillo [mailto:monique.trujillo@aihremodelers.com] Sent: Wednesday, April 17, 2013 11:35 AMTo: Nick FawkesCc: Travis Peterson; Chris.Dhooghe@yahoo.comSubject: Raidt, Donald Nick, I know that you and I have both spoke with Mr. Raidt last week and we are at a standstill because he will not allow Jacuzzi to fix the door leak issue. He just wants the tub taken out. I called him today to see if I could get him to allow Jacuzzi to come out and repair and he is still adamant about taking out the tub. Could you give him a call and let him know that he won_ get a refund if we take out the tub or only partial? Thank you,Monique TrujilloMidwest Production Manager, AIHR
4/9/2013 10:31 PM		4/9/2013 10:28 PM	
User	Regina Reyes	User	Regina Reyes
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	Door has a huge leak out of the bottom of the door...coordinated service with HOT SPOT POOLS, claim#0070174.** cust not allowing us to set svc.	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 NuanesConsumer Relations, Aging in Place
4/8/2013 5:02 PM		4/8/2013 5:02 PM	
User	Regina Reyes	User	Regina Reyes
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	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 injuries to me but did insist that he was not keeping the tub.Thank you, Megan	Comment	Larry from Hot Spot said he tried to call the customer to set up service .. Per agent he is stating he slipped and fell and in doing so he hurt his back..I called the customer to confirm that he didn't want to have service done on the unit... He said he does not want it serviced he wants it out of his house. Let him know I will notify his dealer
4/5/2013 9:26 PM		4/5/2013 9:26 PM	
User	Regina Reyes	User	Regina Reyes
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	From: Calderon, Hilton On Behalf Of First Street SupportSent: Friday, April 05, 2013 2:26 PMTo: Monique Trujillo, First Street SupportCc: Gary.Yingst@aihremodelers.comSubject: RE: Raidt, Donald Serial # BDF0Y7Monique, 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 CalderonTechnical Services Consultant	Comment	From: Monique Trujillo [mailto:monique.trujillo@aihremodelers.com] Sent: Thursday, April 04, 2013 2:46 PMTo: First Street SupportCc: Gary.Yingst@aihremodelers.comSubject: Raidt, Donald Serial # BDF0Y7Jacuzzi 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 Raidt10105 Mohawk LnLeawood, KS 66206Installed 3/30/13785-218-5414Serial # BDF0Y7Thank you,Monique TrujilloMidwest Production Manager, AIHR 1460 W Canal Ct Suite 102Littleton, CO 80120303-222-3200 - Office303-222-3205 - Direct

## Attachments

Claim#0070174.rtf

Size 8KB

Ownership Jared Baker

View [View file](#)

Last Modified 6/9/2014 7:22 PM

JACUZZI005715

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007502

007502

**From:** Martinez, Audrey  
**Sent:** Tuesday, June 04, 2013 12:10 PM  
**To:** Rowan, Bob; Torres, Ray; Davis, Joseph N.; Peetz, Chris; Bachmeyer, Kurt; Koops, Brian  
**Subject:** FW: Customer comments  
**Attachments:** FSCustomerSurveys62013.xls

All- here are the copies of the comments from FS customers regarding fill time and a few other issues.

Based on the lab testing of our current faucet, 25+ minute fill times indicate an issue with the water supply. Even at 20psi, which I understand to be very low for a household, it should take less than 8 minutes to fill the tub with someone in it.

1/2"		FILL TIME IN MINUTES				
Max	Displacement 8.34 lbs per Gallon	Operating Capacity	20 PSI 6.2 GPM	30 PSI 9.1 GPM	40 PSI 10.3 GPM	50 PSI 11.1 GPM
63	18	45	7.3	4.9	4.4	4.1

I have asked Norm if they can follow up on these particular installs and determine the household pressure and determine what the cause might be. Ray has repeatedly told them they need to flush the debris from the lines and it would be good to know if that's the case in any or all of these.

Joey- I look forward to your expertise in helping address this issue.

I have attached the cumulative recap of comments on the attached spreadsheet.

### **Audrey Martinez**

Marketing Manager- Aging In Place Bathing



[www.jacuzzi.com](http://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:** SIMONA ROBERTSON [<mailto:SIMONA.ROBERTSON@firstSTREETonline.com>]  
**Sent:** Monday, June 03, 2013 2:01 PM  
**To:** Martinez, Audrey  
**Cc:** Norm Murdock  
**Subject:** Customer comments

Hi Audrey, please see below for some feedback from our customers. It's resounding how many of the customer's enjoy the tub but, complain that it takes too long to fill. Over and over again that seems to be the common issue (if any) with the tub.... I'll continue to share feedback as some interesting ones come my way.

2. How satisfied are you with the quality and performance of your Jacuzzi Walk-In tub?	1	2	3	4	5
Comments: <i>Very good once it fills (takes 24 min.)</i>					

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) ☒ Yes ☐ No

Additional Comments: *Yes, if they want to wait 24 min. to fill. Had a problem with the drain not closing & wouldn't hold water. Man came & said it was a career like I should have known & left without a word*

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) ☒ Yes ☐ No

Additional Comments: *Drain very hard to work with wet hands - Floor very slippery - takes way to long to fill. Need hand rails on both sides & door had to open or close with someone in the tub - Needs more space.*

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) ☒ Yes ☐ No

Additional Comments: I didn't realize I have to wait 1/2 for the water to fill up to my knees. It's very relaxing once it's filled. Tim DeBarny (our installer) was terrific.

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) ☒ Yes ☐ No

Additional Comments: ONLY DISATISFACTION WAS IT TOOK TO LONG TO FILL UP.

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) Yes ☒ No

Additional Comments: It takes 25 minutes to fill the tub - cold and uncomfortable while you wait. The control buttons get hung when you push them in.

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) ☒ Yes ☐ No

Additional Comments: One Thing I would ~~change~~ Change About the Jacu Walk-In Tub Is the spout. I would like it to swivel.

Best,

Simona Reid-Robertson  
phone 804-451-2309  
fax 804-524-9889  
firstSTREET for Boomers and Beyond

Survey #	Issue	Would They Recommend	Comments
1	Buttons hard to use Hard to clean Too much water/ fill time	Maybe	PG&E bill was 1 1/2x as much as usual
2	Too much water/ fill time	No	Uses too much water
3	Buttons hard to use	No	
4	Buttons hard to use Drain hard to use	No	I would not have bought if I knew what I'd have to go through
5	Too much water/ fill time	Yes	Water heater too small
6	Too much water/ fill time	Unknown	Water too slow, too long to fill up
7	Too much water/ fill time	Yes	The tub does not fill in 3 minutes as I was told
8	Buttons hard to use Installation	Yes	We were lied to about "Best Professional Installers"
9	Wrong owners manual	Yes	
10	Installation	No	I have a tub without cold water and a leaking vanity sink
11	Price/ Too expensive Installation	Yes	Hot side control valve does not align with cold valve. Silicone residue left on marble wall.
12	Too much water/ fill time	Unknown	
13	Too much water/ fill time	No	Additional 50 gallon water heater had to be installed \$1650
14	Surface too slippery	Yes	
15	Door not wide enough Tub too short	Yes	
16	Too noisy Too much water/ fill time	No	Had to buy a larger water heater after being told our 35 gallon was large enough
17	Too much water/ fill time	No	
18	Surface too slippery	Yes	The seat in the tub is very slippery
19	Too much water/ fill time	No	The tub takes too long to fill up. Should have two faucets.
20	Hand held hose too short	Unknown	Shower hose needs to be untangled. We only got about 2 feet of hose.
21	Suggestion	Yes	I would suggest a left and right extra hand grabbers on the front of the tub to help pull/lift out
22	Tub too large	No	You'd have to be 6 feet plus to get any kind of satisfaction
23	Too much water/ fill time	No	Takes too long to fill the tub
24	Tub too large	No	I'm only 5 feet tall and found it hard to reach the controls.
25	Too much water/ fill time	Yes	....if they want to wait 24 minutes to fill
26	Too much water/ fill time Surface too slippery Drain hard to use	Yes	Drain very hard to work with wet hands- floor very slippery- takes way too long to fill
27	Too much water/ fill time	Yes	I didn't realize I'd have to wait a 1/2 (hour) for the water to fill
28	Too much water/ fill time	Yes	Only dissatisfaction was it took too long to fill up
29	Too much water/ fill time Buttons hard to use	No	It takes 25 minutes to fill the tub. The control buttons get hung up when you push them in.
30	Suggestion	Yes	I would like it (spout) to swivel

007506

007506

**From:** Martinez, Audrey  
**Sent:** Tuesday, June 04, 2013 12:10 PM  
**To:** Rowan, Bob; Torres, Ray; Davis, Joseph N.; Peetz, Chris; Bachmeyer, Kurt; Koops, Brian  
**Subject:** FW: Customer comments  
**Attachments:** FSCustomerSurveys62013.xls

All- here are the copies of the comments from FS customers regarding fill time and a few other issues.

Based on the lab testing of our current faucet, 25+ minute fill times indicate an issue with the water supply. Even at 20psi, which I understand to be very low for a household, it should take less than 8 minutes to fill the tub with someone in it.

1/2"		FILL TIME IN MINUTES				
Max	Displacement 8.34 lbs per Gallon	Operating Capacity	20 PSI 6.2 GPM	30 PSI 9.1 GPM	40 PSI 10.3 GPM	50 PSI 11.1 GPM
63	18	45	7.3	4.9	4.4	4.1

I have asked Norm if they can follow up on these particular installs and determine the household pressure and determine what the cause might be. Ray has repeatedly told them they need to flush the debris from the lines and it would be good to know if that's the case in any or all of these.

Joey- I look forward to your expertise in helping address this issue.

I have attached the cumulative recap of comments on the attached spreadsheet.

### **Audrey Martinez**

Marketing Manager- Aging In Place Bathing



[www.jacuzzi.com](http://www.jacuzzi.com)

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---

**From:** Bachmeyer, Kurt  
**Sent:** Thursday, June 06, 2013 9:59 AM  
**To:** Reyes, Regina  
**Subject:** Non Slip Surface

Sent to Brian and Ray.

**Kurt Bachmeyer**  
Director of Customer Service



[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:** Reyes, Regina  
**Sent:** Thursday, June 06, 2013 9:57 AM  
**To:** Bachmeyer, Kurt  
**Subject:** FW: whirlpool stopped working

[here you go.](#)

**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:** David Jacobs [mailto:djacobs@americanhomedesign.com]  
**Sent:** Thursday, June 06, 2013 5:20 AM  
**To:** 'Ray Parnell'; Rojas, Miguel  
**Cc:** Reyes, Regina  
**Subject:** RE: whirlpool stopped working

As far as the slipping inside the tub we sale and install your product. Can you get you engineers to work on this.

*David R. Jacobs*  
*Installation Manager*  
*American Home Design*  
 615-361-6100 ext. 148  
 615-361-6405 fax

---

**From:** Ray Parnell [mailto:rparnell@americanhomedesign.com]  
**Sent:** Thursday, June 06, 2013 6:08 AM  
**To:** 'Rojas, Miguel'  
**Cc:** 'Reyes, Regina'; 'David Jacobs'; 'Lorrie Johns'; 'alan ross'  
**Subject:** RE: whirlpool stopped working

Mr. Greenville is actually Mr. Greenwell, and he is incorrect. I call every customer upon completion, and one of the questions I ask is 'did our craftsman demonstrate the use of your new tub?' On 5-14 Mr. Greenwell answered yes. In literally hundreds of calls, our craftsmen have *never* failed to demonstrate the tub for a customer, with the exception of one New-Construction install where there was no elec and no plumbing yet in the home. otherwise, I've never been told by a customer (including Mr. Greenwell) that we failed to demonstrate the tub.

unfortunately, for reasons I do not know, Mr. Greenwell has not told you the truth. he has also told us things that did not seem truthful. his demographic is prone to memory loss; maybe that is the issue, rather than malice.

with this new information, what is the status of Mr. Greenwell's service request?

the solution is to reattach the hose to the plug-in. this is a 350 mile round trip for us; hopefully you have someone closer.

is anything being done in the factory to address this recurring problem? super glue, a barbed tip for the air-hose to slide over, or some type of hose clamp maybe? Mr. Greenwell's tub is a RH door, which means that hose is pointing down. has the factory confirmed that the hose is supposed to point up to reduce the occurrence of this problem?

thank you for your attention to this.

Ray Parnell,  
Project Manager, Jacuzzi Division  
AHD / AHI

---

**From:** Rojas, Miguel [<mailto:Miguel.Rojas@jacuzzi.com>]  
**Sent:** Wednesday, June 05, 2013 2:45 PM  
**To:** Ray Parnell  
**Cc:** Reyes, Regina  
**Subject:** RE: whirlpool stopped working

Hello Ray,

I finally got in touch with Mr. David Greenville. You will need to send your installer back out for this issue. Per costumer the unit has not worked since they installed the unit and the unit was not water tested either. I told him that the installers stated that the unit did work and he said that they never showed him or showed him how to operate the unit. The on/off button was on the floor of tub when he opened the door for his first use. Also, does your company sell anything for shower floors to prevent slippage? If so can your sales man call Mr. Greenville? He slipped in the tub and was trapped for two hours trying to get out because he slipped on the floor. He said the unit needs more grip.

**Miguel Rojas**  
Consumer Service Representative



[www.jacuzzi.com](http://www.jacuzzi.com)  
14525 Monte Vista Avenue / Chino, CA 91710  
800.288.4002 ext 3025(o) 909.247.2551(f)

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---

**From:** Ray Parnell [<mailto:rparnell@americanhomedesign.com>]  
**Sent:** Thursday, May 23, 2013 9:35 AM  
**To:** Rojas, Miguel  
**Subject:** RE: whirlpool stopped working

thanks.

as stated, my understanding is each feature worked when we left the home(s).

FYI: ALL right hand tubs are factory set with the airhose pointing downward (when plugged into the existing [mounted] gangbox.) should the electricians be removing and flipping that box?

---

**From:** Rojas, Miguel [<mailto:Miguel.Rojas@jacuzzi.com>]

**Sent:** Thursday, May 23, 2013 9:59 AM

**To:** Ray Parnell

**Subject:** RE: whirlpool stopped working

Hello Ray,

The air lines are pressed into the blower, light, and power outlet for the motor. These air lines do not work under a lot of pressure so they should not be coming off. The power plug air line is one that you want to keep an eye out for if the electrician is using his own J-box connections. The air line connection should always be pointing upwards never down wards. If it points downwards they will have a high possibility of the air line coming off.

**Miguel Rojas**

Consumer Service Representative



[www.jacuzzi.com](http://www.jacuzzi.com)

14525 Monte Vista Avenue / Chino, CA 91710

800.288.4002 ext 3025(o) 909.247.2551(f)

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---

**From:** Ray Parnell [<mailto:rparnell@americanhomedesign.com>]

**Sent:** Thursday, May 23, 2013 6:50 AM

**To:** Rojas, Miguel

**Subject:** whirlpool stopped working

Good Morning Miguel,

I have two recent installs with whirlpool failure. both tubs worked when I plumb/tested here, they worked when the tub was demonstrated for the customer @ install, and also when the electrician left. I am certain that the air-hose-activator for the switch has popped off. could that be glued-secure in the factory to avoid this? (appx 1 out of 5 are off when I test them in our warehouse. I press them back into place.)

David Greenwell BDF78X

2914 WESTFIELD RD

Louisville, KY 40220

(502)473-4699

Charles Mahoney BDF337  
10615 NEW HAVEN RD  
New Haven, KY 40051  
(502)549-3568

007512

007512

**From:** Norm Murdock <norm.murdock@aihremodelers.com>  
**Sent:** Tuesday, June 18, 2013 1:29 PM  
**To:** Martinez, Audrey; Bachmeyer, Kurt  
**Subject:** FW: Customer Satisfaction Surveys

Feedback below from AHD...maybe we can discuss on call as well...

Norm Murdock, CAPS, CSA  
 Vice President



Phone: 303-222-3207

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)

LinkedIn: [www.linkedin.com/company/firststreet](http://www.linkedin.com/company/firststreet)

*designed for SENIORS®*

All three of these customers ripped us in this questionnaire, and when they say these things on a guild survey, it affected my craftsmen's bonuses. all three of these customers are pissed *because they are not happy with the limitations of the Jacuzzi product, or because they have hot water issues*. We have addressed the hot water issue with the checkbox on the new contracts. I forward every product related concern to Jacuzzi via email, and I feel like they treat me as a nuisance, rather than a customer with legitimate concerns. once, *their customer service department told one of our customers they need an 80 gallon water heater*. I was in the home with the customer when he called the jacuzzi CS help line. I got on the phone and asked the CS rep why he said 80, when the jacuzzi literature says 50; and he said the recommendation was *"based on his own personal preference."*

Last week, the same *CS team erroneously told one of our customers that AHI had "installed a scrapped tub for her"* ???!??

my guys are doing their jobs properly, but they are being penalized. I am following up with our customers to condition them for the Guild Survey, but by the time the survey gets to them, some customers (these three customers were installed several months ago) are so disgusted with the limitations of the product, that they rate the whole experience low. this is hurting our company's reputation.

who has the clout to address the real issues that are driving these comments from our customers? I haven't been able to move the ball.

Please Help.

ray

---

this is the note in our system for Howard:

Mrs. Howard called today and said the tub is 'just not what she expected' it to be, she called it 'dangerous' because she slips on the seat, and she is not happy about the jets. i explained that she can adjust the pressure on each of the six back-jets. she said she would do that, but wants us to know she is very unhappy.

this is our note from Luther:

mr called in because we just installed tub. micah filled it for them before he left and it was fine but now that they tried to use it last night they are not happy because the hot water doesnt last past the seat. so i asked about the gallon of hot water tank and he said he has a 60. so i then informed him that because we are federally mandated we have a mixing valve in it. advised him if they wanted to turn the water up on the hot water tank hey could but to be very careful not to get burnt in there sinks around the house. he did mention that they are both invalids and they can't get around easy. he demands that someone come out even after i asked him to try and use it once again and make sure he has not run the wash, dishwasher, etc. he was not happy because i told him that the installer is out of town and ray is on vacation. he hung up in my face after thanking me for not helping him.

this is our only note from Currie:

"Not happy w/hot water situation"

---

**From:** Allan Ross [<mailto:aross@americanhomedesign.com>]  
**Sent:** Friday, June 07, 2013 3:29 PM  
**To:** [djacobs@americanhomedesign.com](mailto:djacobs@americanhomedesign.com); 'Ray Parnell'; [ljohns@americanhomedesign.com](mailto:ljohns@americanhomedesign.com)  
**Subject:** FW: Customer Satisfaction Surveys

Wow , we got killed on these ! What happened and what does our survey say ??

---

**From:** SIMONA ROBERTSON [<mailto:SIMONA.ROBERTSON@firstSTREETonline.com>]  
**Sent:** Friday, June 07, 2013 3:21 PM  
**To:** Allan Ross; Jamee Tamulis  
**Subject:** Customer Satisfaction Surveys

Good Afternoon,

Please find attached 3 completed surveys for your review.

Have a great weekend!

*Simona Reid-Robertson*

*phone 804-451-2309*

*fax 804-524-9889*

*firstSTREET for Boomers and Beyond*

007515

007515

14525 Monte Vista Avenue / Chino, CA 91710  
909.247.2158 (o) 909.217.4799 (c) 909.643.2829 (f)

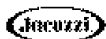
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---

**From:** Bachmeyer, Kurt  
**Sent:** Monday, June 24, 2013 2:19 PM  
**To:** Torres, Ray; Martinez, Audrey  
**Subject:** FW: Service issues on 5230/5229

Are you both in this week? I've been tasked by Bill D to get this group together and discuss steps to resolve so we don't see these issues continually coming up. Let me know – thank you.

**Kurt Bachmeyer**  
Director of Customer Service



www.jacuzzi.com  
14525 Monte Vista Avenue / Chino, CA 91710  
909.247.2187 (o) 909.606.4270 (f)

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---

**From:** Reyes, Regina  
**Sent:** Friday, June 21, 2013 2:21 PM  
**To:** Bachmeyer, Kurt  
**Subject:** Service issues on 5230/5229

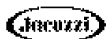
Kurt, here are the tubs we talked about:

BDD3W3 5230 mfg 10/15/12; customer I Stoldt; installed 9/18/12 installer Keith Cottett – customer reported that unit would not drain; she got stuck in tub and had to crawl out of door; installer addressing to find out why tub would not drain.

BDF78X 5229 mfg 4/17/13; customer D Greenwell; installed 4/17/13 installer American Home Design – customer reported tub didn't work during conversation he mentioned he slipped in tub, got stuck in footwell had to call fire dept to get out. Field tech later found no mfg defect, customer wasn't operating the tub properly.

BDD537 mfg 10/29/12; customer C Lashinsky; installed 12/29/12 installer Anthony Home improvement – customer called to request we replace her door under warranty. Partner slipped in tub, they had to remove the door to get her out.

**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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JACUZZI006618

REV JACUZZI006718

007516

007516



1

2

DISTRICT COURT

3

CLARK COUNTY, NEVADA

4

5

ROBERT ANSARA, as Special )

Administrator of the Estate of )

6

SHERRY LYNN CUNNISON, Deceased; )

et al., )

7

Plaintiffs, )

8

vs. )

9

FIRST STREET FOR BOOMERS &amp; )

CASE NO. A-16-731244-C

10

BEYOND, INC.; AI THR DEALER, )

INC.; HALE BENTON, Individually; )

11

HOMECLICK, LLC; JACUZZI INC., )

doing business as JACUZZI LUXURY )

12

BATH; et al. )

13

Defendants. )

14

AND ALL RELATED MATTERS )

15

16

17

VOLUME I

18

VIDEOTAPED DEPOSITION OF KURT BACHMEYER, a witness

19

herein, noticed by Richard Harris Law Firm, taken

20

at 600 Anton Boulevard, Suite 1400, Costa Mesa,

21

California, at 8:33 a.m., Monday, July 29, 2019,

22

before Nancy L. Dennis, CSR 13001.

23

24

Job No. 562915A

25

KURT BACHMEYER - 07/29/2019

Page 2

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiffs:

4 RICHARD HARRIS LAW FIRM  
5 BY BENJAMIN P. CLOWARD  
6 801 South Fourth Street  
7 Las Vegas, Nevada 89101  
8 (702) 444-4444 (702) 444-4455 Fax  
9 Email: Benjamin@RichardHarrisLaw.com

10 For Defendants/Cross-Defendants, FIRST STREET for BOOMERS  
11 & BEYOND, INC.; AITHR Dealer, Inc.; HALE BENTON:

12 THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER  
13 BY PHILIP GOODHART  
14 1100 East Bridger Avenue  
15 Las Vegas, Nevada 89125  
16 (702) 366-0622 (702) 366-0327 Fax  
17 Email: Png@thorndal.com

18 For Defendant/Cross-Defendant, JACUZZI, INC. dba JACUZZI  
19 LUXURY BATH:

20 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC  
21 BY CHRISTOPHER T. BYRD  
22 6385 South Rainbow Boulevard, Suite 400  
23 Las Vegas, Nevada 89118  
24 (702) 938-3838 (702) 938-3864 Fax  
25 Email: Unavailable

Also Present:

RON TEMPLER - JACUZZI LUXURY BATH

KRISTY PITTMAN - VIDEOGRAPHER, Litigation Services

24

25

## KURT BACHMEYER - 07/29/2019

1	I N D E X			Page 3
2	WITNESS: KURT BACHMEYER			
3	EXAMINATION BY:		PAGE	
4	MR. CLOWARD		5	
5	MR. GOODHART		244	
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8				
9	E X H I B I T S			
10	EXHIBIT	DESCRIPTION	IDENTIFIED	MARKED
11	EXHIBIT 1	Various documents	31	31
12		consisting of Bates		
13		Numbers FIRST003694		
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15	EXHIBIT 1A	Documents consisting	162	162
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18		FIRST004564		
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23	EXHIBIT 2A	A blow-up of document,	107	108
24		Bates Numbered		
25		JACUZZI1005287		
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27		"Walk in Tub: New		
28		Features;" Bates		
29		Numbered FIRST005093		
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33				
34				
35				

KURT BACHMEYER - 07/29/2019

Page 4

1 COSTA MESA, CALIFORNIA, MONDAY, JULY 29, 2019

08:33

2 8:33 A.M.

3 \*\*\*

4

5 THE VIDEOGRAPHER: We are on the record. The time  
6 is 8:33 a.m. The date is July 29th, 2019. This is the  
7 beginning of Media Number 1 in the Deposition of  
8 Kurt Bachmeyer, taken by the Plaintiff in the matter of  
9 Robert Ansara versus First Street For Boomers & Beyond,  
10 Inc., et al. The case number is A-16-731244-C. This  
11 deposition is being held at 600 Anton Boulevard,  
12 14th Floor, Costa Mesa, California.

08:33

08:33

13 The court reporter is Nancy Dennis. I am Kristy  
14 Pittman, the videographer, an employee of Litigation  
15 Services, located at 3770 Howard Hughes Parkway,  
16 Suite 300, Las Vegas, Nevada, 89169. This deposition is  
17 being videotaped at all times unless specified to go off  
18 the video record.

08:34

19 Would all present please identify themselves,  
20 beginning with the witness.

08:34

21 THE WITNESS: Kurt Bachmeyer.

22 MR. BYRD: Chris Byrd for Jacuzzi.

23 MR. TEMPLER: Ron Templer.

24 MR. GOODHART: Philip Goodhart for First Street,  
25 AITHR, and Hale Benton.

08:34

KURT BACHMEYER - 07/29/2019

Page 171

1 A. That would be Ray Torres and Brian Koops.

13:29

2 Q. Now, if a customer was reported -- reportedly  
3 trapped in a tub for two hours after slipping on the  
4 floor, is that something that would be serious?

5 A. In my opinion, yes.

13:30

6 Q. Is that something that you would have let risk  
7 management know about?

8 A. I'd call Ron or Bill.

9 Q. Okay. Now, if you turn to JACUZZI5377 --

10 A. Okay.

13:30

11 Q. -- through 5385, this look like an inquiry from  
12 Mr. Parnell requesting data on how to measure the  
13 maximum force to drain or to turn the drain knob and  
14 push the buttons.

007521

15 Do you recall kind of an email chain about that  
16 issue?

13:31

17 A. I don't right off the bat.

18 Q. Okay. Take a look at JACUZZI5380.

19 A. Okay.

20 Q. This is where -- to read this, this is from  
21 Regina --

13:31

22 A. Yes.

23 Q. -- to Ray Parnell, copying you, Norm, Kurt --  
24 or you, Norm, Audrey, David, and Ray.

25 And she says, quote, "Hi Ray, just to summarize for

13:32

KURT BACHMEYER - 07/29/2019

Page 247

1 STATE OF CALIFORNIA ) ss

2

3 I, Nancy Lee Dennis, CSR 13001, do hereby declare:

4

5 That, prior to being examined, the witness named in  
6 the foregoing deposition was by me duly sworn pursuant to  
7 Section 2093 (b) and 2094 of the Code of Civil Procedure;

8

9 That said deposition was taken down by me in  
10 shorthand at the time and place therein named and  
11 thereafter reduced to text under my direction.

12

13 I further declare that I have no interest in the  
14 event of the action.

15

16 I declare under penalty of perjury under the laws of  
17 the State of California that the foregoing is true and  
18 correct.

19

20 WITNESS my hand this 4th day of  
21 August, 2019.

22

23



24 Nancy Lee Dennis, CSR 13001

25

**From:** Bachmeyer, Kurt </O=JACUZZI ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KBACHMEYER>  
**To:** Baehr, Rich  
**CC:** Torres, Ray; Martinez, Audrey  
**Sent:** 6/27/2013 1:07:57 PM  
**Subject:** Re: Emailing: Test various Non Skid Patterns for compliance to ASTM F-462 , 5229 slip resistance

So far we have 4 cents for research.....get to it Ray!

On Jun 27, 2013, at 9:43 AM, "Baehr, Rich" <Rich.Baehr@jacuzzi.com> wrote:

> My 2 cents  
 >  
 > A while back when we had units from Brazil they had a rougher bottom on the units. We had several complaints from mostly older people that it hurt their feet, to the point that we started toning down the non skid  
 >  
 > Below is a possible solution  
 >  
 > <http://www.slipxsolutions.com/tub-tattoos-clownfish>  
 >  
 >  
 >  
 > -----Original Message-----  
 > From: Bachmeyer, Kurt  
 > Sent: Thursday, June 27, 2013 11:34 AM  
 > To: Torres, Ray; Martinez, Audrey  
 > Cc: Demeritt, William; Peetz, Chris; Baehr, Rich; Davis, Joseph N.  
 > Subject: RE: Emailing: Test various Non Skid Patterns for compliance to ASTM F-462 , 5229 slip resistance  
 >  
 > I'm not sure we are done here; we're compliant which is great but are we meeting the needs and safety requirements of this particular demographic? Seems to me if we want to be the leader in this category we would want to eliminate slippage of any kind now and in the future. My two cents.  
 >  
 >  
 >  
 > Kurt Bachmeyer  
 >  
 > Director of Customer Service  
 >  
 >  
 >  
 >  
 >  
 > [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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 >  
 >  
 >  
 >  
 > -----Original Message-----  
 > From: Torres, Ray  
 > Sent: Thursday, June 27, 2013 8:24 AM  
 > To: Martinez, Audrey

007523

007523

JACUZZI006304

REV JACUZZI006404

> Cc: Bachmeyer, Kurt; Demeritt, William; Peetz, Chris; Baehr, Rich; Davis, Joseph N.  
> Subject: Emailing: Test various Non Skid Patterns for compliance to ASTM F-462 , 5229 slip resistance  
>  
>  
> Audrey,  
>  
> Here are the two test reports, one is our generic test on a shower pan which is the worst case sheet draw in thickness  
coefficient of friction .05.(.04 is the passing standard). This is the pattern we use as a master on all jacuzzi bottoms  
today. The second report is a deep draw on the 5229 walk in tub, the coefficient of friction is .10 double that of the pan  
which is exactly what we thought it would be. In fact I have never seen a .10 average in all my years. That is darn good!  
>  
> Anyways, when you send out the reports only send page one which is the conclusion page. Do not send out the actual  
data as it sometimes with slick lawyers, (not picking on bill) could challenge results.  
>  
> Anyways great news on the bottom. Where do I charge my fees?  
> Thanks  
> ray  
>  
>  
> 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  
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assurances about the absence of viruses. We accept no liability and suggest that you carry out your own virus checks.  
>

007524

007524

JACUZZI006305

REV JACUZZI006405



**From:** Reyes, Regina </O=JACUZZI ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=RREYES>  
**To:** Nuanes, Deborah; Martinez, Audrey; Bachmeyer, Kurt  
**Sent:** 11/5/2013 3:43:08 PM  
**Subject:** slippery tubs  
**Importance:** High

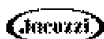
Ok, we continue to receive this feedback. I know that the FS units exceed ASTM slip resistant test protocol standards yet we continue to receive these claims. It took little effort on my part to locate a few bath mats. Not sure why Firststreet has so much trouble finding these items. In fact I was at Target last night and noticed some – but I cannot find them on their website today.

How do you feel about me pointing them in the direction of specific items?

[http://www.amazon.com/Compac-Select-Safe-T-Shapes-Bathtub-Decals/dp/B000J00EAM/ref=sr\\_1\\_fkmr0\\_2?ie=UTF8&qid=1383682960&sr=8-2-fkmr0&keywords=bath+mat+strips+for+inside+shower](http://www.amazon.com/Compac-Select-Safe-T-Shapes-Bathtub-Decals/dp/B000J00EAM/ref=sr_1_fkmr0_2?ie=UTF8&qid=1383682960&sr=8-2-fkmr0&keywords=bath+mat+strips+for+inside+shower)

**Regina Reyes**

Customer Service Manager



[www.jacuzzi.com](http://www.jacuzzi.com)

14525 Monte Vista Avenue / Chino, CA 91710

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909.247.2551 (f)

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**From:** Melanie Borgia [<mailto:melanieborgia@gmail.com>]

**Sent:** Tuesday, November 05, 2013 11:45 AM

**To:** Nuanes, Deborah; Reyes, Regina; First Street Support

**Subject:** Tub

Hello: I have so many people stating the tub seat and floor are extremely slippery. Literally, unsafe. Is there any type of mat or something that we can do to help this issue? I tried to find online anything to help, but nothing the size we need.

--

**Airtite**

Melanie Borgia

1013 Wood Street

Scranton, Pa. 18508

P: 800-687-5153

F: 570-504-2183

[melanieborgia@gmail.com](mailto:melanieborgia@gmail.com)

JACUZZI006389

REV JACUZZI006489

**From:** Reyes, Regina  
**Sent:** Monday, December 30, 2013 10:13 AM  
**To:** Martinez, Audrey; Bachmeyer, Kurt  
**Cc:** Davis, Megan  
**Subject:** FW: Flashberger repair SN #BDF8WQ  
**Attachments:** Gail's pictures 049.jpg; Gail's pictures 050.jpg; Gail's pictures 051.jpg; Gail's pictures 052.jpg

Unit mfg 4/23/13 – original issue door color mismatch.

Serviced last week, customer accepts color but not fit. See attached photos.

There is another email trail going around that Megan is going to be adding you to the distribution list. We have a big issue and we are only pointing finger per say, but due to the circumstances involved with time line and slip injuries this needs to be settled so I'm keeping you in the loop.

007526

**Regina Reyes**  
 Customer Service Manager



[www.jacuzzi.com](http://www.jacuzzi.com)

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**From:** Andrea [<mailto:andrea@homesafetybaths.com>]  
**Sent:** Friday, December 27, 2013 1:24 PM  
**To:** Nuanes, Deborah  
**Cc:** Reyes, Regina; Martinez, Audrey; SIMONA ROBERTSON  
**Subject:** Flashberger repair SN #BDF8WQ

Hi Deborah,

007526

I understand that Tom went out and replaced the door on this tub after several attempts. I called the customer yesterday and was informed that they were still not satisfied with the tub. Evidently they have sent you pictures of the way the door fits and gasket is showing (door doesn't cover the gasket?) Mr., Is also concerned with the integrity of the fiberglass where the hinge screws have been taken out and put back in. Also he says the bottom of the tub is extremely slippery, he has slipped, and also a friend has slipped in using it. We get this complaint a lot, we have two customers right now that have injured themselves seriously and are threatening law suits. We have sent out bath mats to put in the tub to three other customers because they slipped and were afraid to use the tub. Furthermore, Mr. Flashberger expressed his concern that the door hits the opposite side of the tub when you open it , is concerned about damage to the tub wall. Thinks there should be some kind of bumper there to prevent this. The door still is not an exact match but he has given up on that issue, but he does want it to fit properly. Evidently someone from there called him and told him to use it for 30 days and see if it got better,( he was not impressed with whoever called and said no matter how long he waits it is not going to change how the door fits) He doesn't. like the way the water runs down the shower wand, and all and all he said he wishes he never would have bought the tub, He thought he was getting the Cadillac of tubs, instead he got a very poorly designed mess. His job was installed in May and we are still not any closer to being resolved. He said he had no issues with the installation or with Tom Gregory who was trying to do the repair. Only with Jacuzzi's attempt to fix a flawed product. He also stated that when he contracted with us he had several friends that wanted to purchase one and after they saw the tub and new of his problems, changed their minds. So besides the \$4,895 he still owes us we have lost potential sales. We would like to know what is going to be done about this situation and what can be done for this customer. Asking him to wait for 30 days is not acceptable since he has already waited 8 months!

Andrea Dorman  
Home Safety Baths

007527

007527

Tab #	Earliest Date OSI Disclosed (Name Redacted)	Earliest Date OSI Disclosed (Unredacted)	Customer Name (First Last)	Bates Range	Summary of Complaint	Date (Mo./Yr.)	E-mail Recipients	Others Involved	AITHR on Notice?	first STREET on Notice?	Search Terms Triggered
1	n/a	3/29/19	Mark W. Sutterluety	Jacuzzi004714	"when she went to get out <u>door would not open</u> and had to <u>crawl over the unit to get out</u> ... customer is 80 years old... Once she got out she realized there was water all over the floor in the bathroom and when sh went down stairs there was water running out of her kitchen ceiling." seal at bottom of door defective	May/2008	n/a	Eda Rojas Peterman Plumbing			door
2	n/a	7/26/19	Unknown (Ref. No. 120705-000095, Serial #BDC7GD)	Jacuzzi005286 - Jacuzzi005287	Report states, " <b>broken hip</b> & says unit is <b>too slippery</b> . -Feels we should have more <b>grab bars</b> on both sides." "We will be using Megan's report to track the open incidents."	July/2012	Regina Reyes Kurt Bachmeyer Venus Gaspar Don Frederickson	Martin Guevara			slip grab bars incident
3	n/a	7/26/19	Irene Stoldt	Jacuzzi005621- Jacuzzi005623; Jacuzzi005719- Jacuzzi005720	"installed 9/18/12 installer Keith Cottett -- customer reported that unit would not drain; she <u>got stuck in the tub</u> and <u>had to crawl out of door</u> ... She was not happy at all. She is a 84 year old lady. She went to take a bath and when she was done she could not drain her tub. <u>She was stuck, she had to climb out</u> . Then she had to get a pail/bucker to drain the water out of her tub." "...the second is an old person who got stuck, no slip involved."... "I'm guessing it's Anthony who is raising the slip issue." ... "one person got stuck to weak to keep himself out of the well, and one slipped"	Sept./2012	Regina Reyes Kurt Bachmeyer Ray Torres Audrey Martinez Simona Robertson Kim Hogan Deborah Nuanes	Steve Borgia Melanie Borgia Airtite	Yes		door slip
4	n/a	3/29/19	Wanda M. Salisbury (deceased)	Jacuzzi004715	"Won't operate properly. Jets too strong that were on in back area <u>bruising skin</u> ."	Oct./2012	n/a	Appliance Doctor			
5	n/a	7/26/19	Customer C Lashinsky	Jacuzzi005621- Jacuzzi005623	"installed 12/29/12 installer Anthony Home Improvement -- customer called to request we replace her <u>door</u> under warranty. <b>Partner slipped in tub , they had to remove the door to get her out.</b> " ... "one is a dwo issue not jacuzzi, the second is an old person who got stuck, no slip involved. I'm guessing it's Anthony who is raising the slip issue." "one person got stuck to weak to keep himself out of the well, and one slipped."	Dec./2012	Regina Reyes Kurt Bachmeyer Ray Torres Audrey Martinez	Anthony Home Improvement			door slip
6	n/a	7/26/19	Manuel & Patricia Arnouville	Jacuzzi005414- Jacuzzi005416; Rev Jacuzzi005958- Rev Jacuzzi005959	"regina this is Xbox wanted to let you know that we actually hear this complaint more and more often and the numbers increasing installations. <b><i>I would highly recommend that we consider putting something a little bit more abrasive Not only on the floor but also on the <u>seats</u> as we have had customers call concerned that they slip off the <u>seat</u> so wouldn't be a bad thing to consider adding to the new job just my thoughts.</i></b> " Serial # BDFDK9 -- they are not using the tub because the wife keeps slipping off the seat and they are afraid of using the tub ... wife slips on the seat and the floor.. they are afraid she will fall . " "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." "per Ray, we do not have any plans on changing the surface."	Dec./2012	Regina Reyes Nick Fawkes Kurt Bachmeyer Jonathan Fore Audrey Martinez Tracey Dierkens Todd Stout		Yes		fall seat slip design

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7	n/a	3/29/19	Fred Fuchs	Jacuzzi004716; Jacuzzi005465- Jacuzzi005466	"Bottom slippery... the customer has called in and is very upset because <b>he says he has almost fallen 3 times</b> since having his new walk-in tub installed. He says that the <b>floor of the tub is too slippery</b> .no grip or no-slip feeling to the tub. This is a <b>very serious safety concern...</b> I really need someone to contact him ASAP to get a technician out to his home <b>before he falls</b> " "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 <b>non skid bath mats</b> .	Mar./2013	Regina Reyes Monique Trujillo First Street Support Todd Stout Norm Murdock Megan Davis Kurt Bachmeyer	Tub Medic	Yes	Yes	fall slip
8	n/a	7/26/19	Donald Raidt	Jacuzzi005367- Jacuzzi005370; Jacuzzi005715- Jacuzzi005716	"The following incident has been forwarded to you... update you on this incident that I'm forwarding this over to Kurk Bachmeyer... he <b>slipped and fell</b> causing him to <b>hurt his back</b> . . . He did not mentioned his injuries to me... Is <b>willing to get a lawyer</b> if the tub is not taken out and he is refunded..." "The customer now says that the door has a huge leak out of the bottom of the <b>door</b> . He said it flooded the bathroom and adjoining room."	Apr./2013	Deborah Nuanes Kurt Bachmeyer Regina Reyes Norm Murdock Monique Trujillo Todd Stout Travis Peterson Chris Dhooghe Gary Yingst Hilton Calderon	Megan Davis	Yes	Yes	door slip incident
9	n/a	7/26/19	Edward Kleitches	Jacuzzi005336- Jacuzzi005337	"your stainless st[ee]l <b>controls</b> should have some indentation to provide for a better <b>grip</b> , when your hands are wet it is difficult to let the water out... Beldon has a policy that their crews can not finish out the door ways after the installation is complete... If your designers were required to use these tubs for a month or so I believe they would go for functional and not 'pretty'."	May/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock	Beldon	Yes	Yes	door design
10	n/a	7/26/19	David Greenwell	Jacuzzi005372- Jacuzzi005376; Jacuzzi005621- Jacuzzi005623; Jacuzzi005717- Jacuzzi005718; Jacuzzi006854- Jacuzzi006855	"installer American Home Design... he slipped in the tub and <b>was trapped for two hours</b> ,trying to get out because he <b>slipped on the floor</b> . He said the <b>unit needs more grip</b> ." "he <b>slipped in tub</b> , got <b>stuck in the footwell had to call fire department to get out</b> ." "...the second is an old person who got stuck, no slip involved..." "I'm guessing it's Anthony who is raising the slip issue." ... "one person got stuck to weak to keep himself out of the well, and one slipped" ... "As far as the <b>slipping inside the tub</b> we sale and install your product. Can you get you engineers to work on this." "Mr. Greenwell has not told you the truth... his demographic is prone to memory loss; maybe that is the issue." "Mr. Greenwell's tub is a RH <b>door</b> " ... "The on/off button was on the floor of tub when he opened the <b>door</b> for his first use. Also, does your company sell anything for shower floors to prevent slippage? He said the unit needs more grip."	June/2013	Regina Reyes Kurt Bachmeyer Ray Torres Audrey Martinez Simona Robertson Kim Hogan Deborah Nuanes Ray Parnell David Jacobs Miguel Rojas	Steve Borgia Melanie Borgia Airtite American Home Design Brian ____		Yes	slip door design

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11	n/a	7/26/19	Home Safety Bath Customers One & Two	Jacuzzi005317-Jacuzzi005320	"the <b>bottom of the tub is extremely slippery, he has slipped</b> , and also a friend has slipped in using it. we get this [slipperiness issue] complaint a lot, we have <b>two customers right now that injured themselves seriously and are threatening law suits.</b> We have sent out bath mats to put in the tub to three other customers because they slipped and were afraid to use the tub." "door hits the opposite side of the tub when you open it." "He thought he was getting the Cadillac of tubs, instead he got a <b>very poorly designed mess</b> ."	June/2013	Megan Davis David Zajac Richard Vest Kurt Bachmeyer Regina Reyes Miguel Rojas Steve Noel Don Pierce Andy Fontana Ray Torres Audrey Martinez Deborah Nuanes Rich Baehr	Home Safety Baths Andrea Dorman Tom Gregory		Yes	door slip design
12	n/a	7/26/19	Home Safety Bath Customers Three, Four & Five	Jacuzzi005317-Jacuzzi005320	"we have sent out bath mats to put in the tub to <b>three other customers</b> because they slipped and were afraid to use the tub...."	June/2013	Megan Davis David Zajic Richard Vest Kurt Bachmeyer Regina Reyes Miguel Rojas Steve Noel Don Pierce Andy Fontana Ray Torres Audrey Martinez Deborah Nuanes	Home Safety Baths		Yes	slip
13	n/a	7/26/19	Ron Flashberger [Flashburger]	Jacuzzi005317-Jacuzzi005720; Jacuzzi005707-Jacuzzi005714	"Mr. [I assume Flashberger] says the <b>bottom of the tub is extremely slippery</b> , he has slipped, and also a friend has slipped in using it." Incident number 130510-000108... "door did not match"	June/2013	Megan Davis David Zajic Richard Vest Kurt Bachmeyer Regina Reyes Miguel Rojas Steve Noel Don Pierce Andy Fontana Ray Torres Audrey Martinez Deborah Nuanes Eda Rojas Rusty Hassell	Home Safety Baths Tom T&G Andria		Yes	slip incident door
14	n/a	7/26/19	Ron Flashberger's [Flashburger's] friend	Jacuzzi005317-Jacuzzi005320	" <b>Mr. Flashberger's friend also slipped</b> in the tub..."	June/2013	Megan Davis David Zajic Richard Vest Kurt Bachmeyer Regina Reyes Miguel Rojas Steve Noel Don Pierce Andy Fontana Ray Torres Audrey Martinez Deborah Nuanes Eda Rojas	Home Safety Baths		Yes	slip

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15	n/a	7/26/19	Mrs. Howard	Jacuzzi005302-Jacuzzi005304; Jacuzzi006895-Jacuzzi006897	"Mrs. Howard called today and she said the tub is 'just not what she expected' it to be, <u>she called it 'dangerous' because she slips on the seat...</u> "	June/2013	Norm Murdock Audrey Martinez Kurt Bachmeyer Simona Robertson Jamee Tamulis Allan Ross Ray Parnell Regina Reyes	American Home Design D. Jacobs L. Johns	Yes	Yes	slip seat
16	n/a	7/26/19	Patricia Brandon	Jacuzzi005305 - Jacuzzi005309	She wrote detailed 3-page letter & complained to Jacuzzi that, "to my chagrin, that I could only enter the [t]ub sideways. I am 83 years old, and a very little overweight, but NOT that large. Anyone who is larger than I <b>would hardly be able to enter the tub if at all.</b> Then when I sat down, I realized <b><u>I would need to be extremely cautious, because the seat is so small.</u></b> Fortunately, I grabbed the <b>hand bar</b> to prevent a fall." Further she continued that she is extremely frustrated because she spent \$15,000 on a "Jacuzzi I'm afraid to use!"	June/2013	Norm Murdock Audrey Martinez Kurt Bachmeyer Simona Robertson Jamee Tamulis Allan Ross D. Jacobs Ray Parnell Regina Reyes			Yes	fall overweight seat
17	n/a	7/26/19	Ruth Young	Jacuzzi005333; Jacuzzi005335	"my comments are as follows; 1) the tub takes too much water and takes too long to fill. 2) after sitting down, the faucets and shower head cannot be reached; <b>3) door should open out as there is barely room to squeeze by to get in; 4) it is difficult to exit as there is nothing on the right hand side to hang onto</b> . . . p.s. one thing more, I do use a rubber bath mat, as I find the bottom of the tub slippery..."	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	door slip
18	n/a	7/26/19	Jerre Chopper	Jacuzzi005190-Jacuzzi005255	Customer complained that Jacuzzi needed " <b>hand rails</b> on both sides. <b>Door hard to open or close with someone in the tub</b> -- needs more space." Customer stated, that the "drain was very hard to work with wet hands." That the "foor was very slippery." ... "The door opens inward and the pressure of the water would negate its opening." "The threshold is too high and slick."	Jun./2013	Kurt Bachmeyer Mayra Lopez Stacey Hackney Royce McCarty Jennifer Lint Bob Rowan Regina Reyes Rich Baehr Connie Dentz Miguel Rojas	Nick Fawkes Mike Kirchner John Brown Dave Modena	Yes	Yes	slip door
19	n/a	7/26/19	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 4 -- customer says the drain is hard to use and that he/she would not have bought it if I knew what I'd have to go through	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	

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20	n/a	7/26/19	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 14 -- customer says <b>surface is too slippery</b>	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	slip
21	n/a	7/26/19	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 15 -- <b>door not wide enough</b> and is too short	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	door
22	n/a	7/26/19	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 18 -- customer says <b>surface is too slippery</b> and the <b>seat</b> in the tub is <b>very slippery</b>	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	slip seat
23	n/a	7/26/19	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 21 -- customer says "I would suggest a left and right extra <b>hand grabber</b> on the front of the tub <b>to help pull/lift out</b> "	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	
24	n/a	7/26/19	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 26 -- customer says the <b>surface</b> is <b>too slippery</b> and the <b>floor</b> is very slippery	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	slip
25	n/a	7/26/19	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 29 -- buttons are hard to use	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	

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26	n/a	7/26/19	Unknown	Jacuzzi005338	Customer survey 32 -- "tub too small, <b>door not wide enough, <u>door swings in</u> not allowing access.</b> "	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	door
27	n/a	7/26/19	Unknown	Jacuzzi005338	Customer survey 34 -- "surface too slippery, <b><u>seat slippery.</u></b> "	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	slip seat
28	n/a	7/26/19	Unknown	Jacuzzi005338	Customer survey 35 -- "faucet too hard to reach, <b>door not wide enough, <u>hard to enter/exit.</u></b> " "after sitting faucet can't be reached. <b><u>Door should open out</u></b> as there is barely enough room to get in. Difficult to exit."	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	door
29	n/a	7/26/19	Unknown	Jacuzzi005338	Customer survey 36 -- "drain hard to use."	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	
30	n/a	7/26/19	Unknown	Jacuzzi005333- Jacuzzi005334	Would you recommend a Jacuzzi tub? "Not at this time. 1. Not as wide as out tub was 2. <b><u>Door swings to inside</u> not allowing adequate access for disabled person . . .</b> "	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	door
31	n/a	7/26/19	Unknown	Jacuzzi005333- Jacuzzi005334	"seat slippery -- <b><u>you fall off onto tub floor -- door opens in so very hard to get up or be helped up . . .</u></b> "	June/2013	Audrey Martinez Bob Rowan Ray Torres Joseph Davis Chris Peetz Kurt Bachmeyer Brian Koops Simona Robertson Norm Murdock		Yes	Yes	fall slip door seat

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32	n/a	7/26/19	Cathryn Reynolds aka Catherine Reynolds	Jacuzzi005284- Jacuzzi005285; Jacuzzi005288- Jacuzzi005296; Jacuzzi005689- Jacuzzi005706; Rev Jacuzzi005962- Rev Jacuzzi005964; Rev Jacuzzi006027- Rev Jacuzzi006042; Rev Jacuzzi006228-Rev Jacuzzi006232	"customer feels tub is too <b>slippery</b> . Is suggesting that we offer a mat that fits the tub. What she bought doesn't fit. Will try to find a mat for her... she <b>slipped twice but caught herself</b> . She thinks the <b>tub is too slippery</b> and wants us to offer a <b>mat</b> for the floor... claims she <b>continues to slip</b> in the tub." "Ok, blind sided. I called the customer to explain how our product exceeds requirements set by American Society for Testing and Materials by 1.5 times. Her response to me was, So what you are telling me is that you are not going to do anything about my problem... The rep can stop by but not sure what they can tell her other than it's passed the national non slip <b>testing</b> which we can provide you... By the way, at one point it was true that we did not recommend the mats but Ray has confirmed that it is ok to add mats with caution that they need to remove after use so that the suction do not retail water."	Aug./2013	Tracey Dierkens FirstStreet Support Yvette Maldonado Ashley Davidson Christina Ruggera Megan Davis Regina Reyes Kurt Bachmeyer Audrey Martinez Norm Murdock Deborah Nuanes Dave Modena Simona Robertson Todd Stout Steve Dykes Beth Galvan Ryan Shutt Tim Miller Casiller SYtermans	Brad Beldon Hausnwer	Yes	Yes	slip testing
33	n/a	n/a	Intentionally Left Blank	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
34	n/a	8/12/19	Robert Brannock	Rev Jacuzzi005960 – Rev Jacuzzi005961	"consumer called in stating <b>that the floor is very slippery</b> ... she is requesting that someone sends her a bath mat that is slip resistant. She has bought a few and has not worked."	Aug./2013	Deborah Nuanes Simona Robertson Stephanie Majors Katy Yeatts Regina Reyes	Fairbanks Construction	Yes		slip
35	n/a	7/26/19	Mrs. Borroz	Jacuzzi005314- Jacuzzi005316; Jacuzzi005435- Jacuzzi005438	"Mrs. Borroz called in and left a message for me. <b>She slipped in her tub and hit her arm on the grab bar</b> . She is requesting we send her a matt to put in the bottom of the tub, so it is <b>not so slippery</b> ....do you have any suggestions? I had already suggested to her to go to Wal-Mart or Bath and Body and get one there, but she is saying they are all too big..."	Sept./2013	Regina Reyes Kurt Bachmeyer Audrey Martinez Norm Murdock Ashley Davidson		Yes	Yes	slip
36	n/a	7/26/19	Atlas Home Improvement Customers One, Two & Three	Jacuzzi005638- Jacuzzi005646	"we are having a <b>few</b> customers <b>slipping on bottom</b> of a Jacuzzi tub, I am wondering if you have any recommendations on a product and or a bath mat suitable for this issue."	Oct./2013	Regina Reyes Kurt Bachmeyer Audrey Martinez Ray Torres Don Pierce Ruth Coester Megan Davis Norm Murdock Steve Buckley	Bobby Darian Matt Cooke Atlas Home Improvement	Yes	Yes	slip
37	n/a	7/26/19	Airtite Customers One, Two & Three (at a minimum)	Jacuzzi005666- Jacuzzi005667	"Hello: I have <b>so many people stating the tub seat and floor are extremely slippery. Literally, unsafe</b> . Is there any type of mat or something that we can do to help this issue? I tried to find online anything to help, but nothing the size we need."	Nov./2013	Regina Reyes Deborah Nuanes Audrey Martinez Kurt Bachmeyer FirstStreet Support	Melanie Borgia Airtite		Yes	slip seat
38	n/a	n/a	Intentionally Left Blank	n/a	n/a	n/a	n/a	n/a	n/a	n/a	

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39	n/a	8/12/19	Carmen Perilloux	Rev Jacuzzi005965 – Rev Jacuzzi005967	"per Mrs. Perilloux, <b>she is 80 years old and has slipped on her tub</b> once and she is afraid to use it. She in complaining that her bathroom floor keeps getting wet, there is water leaking from underneath the tub onto the bathroom floor.... Leaked on bathroom tile - causing customer to fall."	Dec./2013	Regina Reyes Steve Noel	Daniel Ingstad Ryan Chenowith Pools and Spa Pro LA			slip fall
40	n/a	n/a	Intentionally Left Blank	n/a	n/a	n/a	n/a	n/a	n/a	n/a	
41	n/a	7/26/19	Unknown Injuries	Jacuzzi005327	" <b>we have a big issue</b> and . . . Due to the circumstances involved with time line and <i>slip injuries, this needs to be settled</i> ...." (injuries plural)	Dec./2013	Megan Davis David Zajic Richard Vest Kurt Bachmeyer Regina Reyes Miguel Rojas Steve Noel Don Pierce Andy Fontana Ray Torres Audrey Martinez Deborah Nuanes Eda Rojas	Home Safety Baths		Yes	slip
42	n/a	8/12/19	Judy Lippincott	Rev Jacuzzi005968- Rev Jacuzzi005969; First004897	"Mrs. Lippincott called today to advise that <i>she is not happy with her unit</i> . <b>She slips on the seat</b> and has to hold onto the handle to take a bath. She also said that <b>she almost slipped this morning getting out</b> and said there was soap residue on the floor after she used the shower. Her final complaint was the door being too narrow and she has to move around after she is in the unit to be able to close the door."	Jan./2014	Regina Reyes Ashley Davidson Deborah Nuanes Audrey Martinez				slip door seat
			<b>Sherry Cunnison</b>	<b>Subject Incident</b>	<b>She was in a Jacuzzi Step walk-in tub that she purchased and was not able to unplug to let water out. She was ~350lbs and not able to climb out, she was stuck for 2 days until police and fire dept broke into home. she was semi conscious and died 2 days later. Fire department states plug malfunctioned.</b>	<b>Feb./2014</b>					
43	n/a	7/26/19	FirstStreet Customers One & Two	Jacuzzi005643	"FS has a couple of tubs in the field <u>that people want removed because the customers claim they are too slipperv</u> to use. We proposed Liquiguard Solid Step Cote - an after- market anti [s]lip coating that <b>Emmett Luder uses on tubs for the elderly.</b> "	Mar./2014	Ray Torres Audrey Martinez Matt Cooke Norm Murdock Don Pierce Megan Davis Regina Reyes Ruth Coester	Steve Buckley Atlas Home Improvement Darian Bobby David Bobby	Yes	Yes	slip elderly
44	n/a	3/29/19	Shirli M. Billings, PhD	Jacuzzi004712- Jacuzzi004713	"I had to climb out of the tub because I could not find a way to release the water."	Mar./2014	n/a				
45	n/a	8/23/19	Customer 00220052	Jacuzzi006858	"tub was installed on 3/27. <b>Was getting out and stl[d] on the bottom of the tub. got stuck on the floor of the tub</b> . Husband use the tub and he almost slip. They <i>purchase the non slip</i> to go on the <i>bottom of the tub</i> " "customer <i>fell in the tub - slippe[d] got stuck and hurt her back</i> . Did not go to the doctor[']s."	Mar./2014	Regina Reyes		No	No	slip

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46	n/a	7/26/19	Customer Carman	Jacuzzi005381	"customer Carman, the issue was documented as drain handle to hard too turn."	May/2014	Ray Torres Audrey Martinez David Jacobs Norm Murdock Regina Reyes Yvette Maldonado Deborah Nuanes Diane Shifflett	Ray Parnell American Home Design Alan Ross	Yes	Yes	
47	n/a	7/26/19	Customer Harris	Jacuzzi005380; Jacuzzi005721- Jacuzzi005722; Rev Jacuzzi005970- Rev Jacuzzi005971	"customer Harris was documented as slippery tub and buttons and drain handle hard to turn..." "customer <i>slipped and fell in the tub</i> , she said the <b>floor of the tub is very slippery...</b> <i>Slippery floor</i> ... She said <b>she slipped off of the seat</b> ... I have attached a IAPMO that states the tub <i>meets required testing</i> ."	May/2014	Ray Torres Audrey Martinez David Jacobs Norm Murdock Regina Reyes Yvette Maldonado Deborah Nuanes Diane Shifflett		Yes	Yes	slip seat testing
48	8/17/18	11/27/18	Michael Kanarek (deceased)	Rev Jacuzzi005972- Rev Jacuzzi005973	"Advised that our units exceed the standard by 1.5 times. Said [Michael] <i>slipped from the seat and broke his toe</i> ... Said he was holding onto both handles on the right side with his right hand. <b>Mr. Kanarek said that our unit is unsafe and we need to do something about it</b> . He is asking for compensation for suffering and x-ray <i>swollen foot</i> ... <i>[he's] suffering</i> . He said he doesn't know if we want to sue him or not... [H]e is 80 years old and he wants compensation. <b>He is very upset and scared to use the bath</b> . She said <b>no one advised that the tub could be slippery</b> . Now they cover the seat and put strips on the floor. This happened 2.5 to 3 weeks ago. They want compensation for the suffering... Isabel called for us to note that the tub she purchased had a <b>very slippery seat and floor</b> . Her <b>husband slipped and fell and his big toe got caught in the drain and it broke the toe</b> . He is in extreme pain. She did not realize something like this could happen because we advertise a safe walk in tub."	May/2014	n/a				slip seat
49a	n/a	8/12/19	Charles Horn & Esther L.W. Horn	Rev Jacuzzi005974- Rev Jacuzzi005980; Rev Jacuzzi006233- Rev Jacuzzi006243	"customer called and said <b>the floor is slippery and fell</b> . He also wanted me to note that <i>he is not happy</i> that <b>he slipped in the tub and Jacuzzi will not do anything to correct the non-slip.</b> " "the customer is complaining that even with that on there, <b>the surface becomes hazardously very slippery</b> when he stands up to take a shower and uses soap."	July/2014	Kurt Bachmeyer Megan Davis Deborah Nuanes Terrance Shumake Rick McCullar Sonja Kelsie Hilton Calderon Saul Desautal	Nancy Anderson Touch Up Doc			slip

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49b	n/a	7/26/19	Paul Kinzer	Jacuzzi005341- Jacuzzi005345; Jacuzzi005483- Jacuzzi005485	"He apparently has <i>fallen while exiting the tub</i> as his main complaint is that the <i>floor is too slippery</i> ... the floor, seats and walls of the tub are too slippery. Mr. Kinzer <i>slips off the seat</i> when in the tub and <i>slips on floor</i> when getting out; the <i>grab bar</i> is slippery; Mr. Kinzer's hands slip when grabbing the bar; the door knocks his knees when closing the door and it's <i>hard for him to get into the tub.</i> " <i>"This is the man who has been injured in his tub."</i> "we would like to have the agent also supply the slip resistant coating . . . we will supply the product.... 20 minute application..."	July/2014	Norm Murdock Audrey Martinez Kurt Bachmeyer Simona Robertson Regina Reyes Dave Modena Todd Stout Stacy Hackney Nick Fawkes Ashley Davidson Deborah Nuanes Megan Davis	Beldon	Yes	Yes	fall door slip seat exiting
50	n/a	8/12/19	Clovis Ball	Rev Jacuzzi005993- Rev Jacuzzi005997; Rev Jacuzzi006248- Rev Jacuzzi006251	Needs to have <i>extra grab installed</i> "felt the <i>floor was too slippery</i> "	Sept./2014	Regina Reyes Megan Davis				slip
51	n/a	8/27/19	Lynda & Abe Luna	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2015	n/a				
52a	8/17/18	11/27/18	Barbara Morrison	Jacuzzi002927- Jacuzzi002937; Rev Jacuzzi005940- Rev Jacuzzi005947	"complaint of <i>slippery floor</i> - wants JLB to do something or tub be removed" ... " <i>slippery tub and seat</i> ... bruised his face from faucet impact." ... "She is in contact with her attorney. She is going to fil[e]... Date of Incident 1/21/15 -Alleges <i>slippery tub caused the fall</i> . She hit her face on the faucet and now has a black eye."	Feb./2015	Deborah Nuanes Ashley Davidson Regina Reyes Sonja Kelsie Kurt Bachmeyer Connie Dentz		Yes		slip seat fall incident
52b	n/a	8/12/19	CPSC Report #20150202-72E1B-1466080 (Serial #BDK86N)(71-year-old female in Missouri)	Jacuzzi005731- Jacuzzi005733	"Caller's wife was going to stand, used the bar to brace herself but her feet slid out causing her to fall. The bar should give her leverage and floor is supposed to be slip free. The bar held but the floor was not slip free. The caller's wife <i>sustained minor injuries including left foot and left knee bruising then back and tailbone bruising and pain</i> . The caller's wife treated herself the first week, just taking pain pills but the pain was too bad for self treatment... <i>The callers spoke with the manufacturer January 20th, 2015, spoke with [REDACTED] and on the 21st, caller doesn't remember name of representative. January 22nd, he spoke with [REDACTED] who was a manager but of no assistance</i> . He will try again but does plan to contact Consumer Protection. Submitter added [REDACTED] called him on 2/5/15 and said she ordered the part for his tub and as soon as it comes in she will call them to set a date to have it installed. Submitter noted today in 2/9/15 and they have not heard from her."	Feb./2015	Unknown	Unknown			fall slip
53	8/17/18	11/27/18	Eucelta Herman (deceased)	Rev Jacuzzi005998- Rev Jacuzzi006016; First004901	"Patricia [Herman] called in. She bought tub for her mom. She bought this tub due to the flyer and what it offered. <i>Seat - Slippery</i> - Fairbanks came out and sprayed something on the seat not it ruff and due to her moms age the skin is thin and is leaving marks (scratches) on her. (FS recommend Solid Step Cote which you have to brush or rolled in on)... RE: Jacuzzi Walk In Tub ADA Contoured <i>Seat Design and Grab Bars</i> - Fairbanks Construction"	Feb./2015	Audrey Martinez Regina Reyes Connie Dentz Deborah Nuanes Gordon Fairbanks Rick Ragle Megan Davis Simona Robertson Katy Yeatts	Fairbanks Construction	Yes	Yes	slip seat grab bars design

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54	n/a	8/12/19	Joan Carrison	Rev Jacuzzi006017- Rev Jacuzzi006021; Rev Jacuzzi006312- Rev Jacuzzi006316	"Tub is <u>too slippery</u> and does not know how to adjust the jets"	Mar./2015	Deborah Nuanes				slip
55	n/a	8/12/19	Lois Gordee	Rev Jacuzzi006022- Rev Jacuzzi006026; Rev Jacuzzi006325- Rev Jacuzzi006328	Slippery tub	Mar./2015	Sonja Kelsie				slip
56	n/a	3/29/19	Lois E. Gillespie	Jacuzzi004711	"Her first experience in this tub was absolutely a terrifying one that she will never forget... Then after her bath she attempted to drain the water only to find that the drain did not function at all. She was <u>stuck in her new bath tub with no way out!</u> The <u>drain would not open</u> to get rid of the water . After approximately two hours of crying she obtained the courage to climb over the side wall of the tub and thankfully did so without falling.... She was terrified as the <u>water level was well above her face</u> and she was <u>in her home alone</u> at 85 years old.... <u>Could not reach [the phone] to call for help</u> ... she was <u>forced to climb over the rather tall door and tub</u> , praying the entire time, hoping to reach the safety of her restroom floor."	Mar./2015	Thomas Benjamin				fall door
57	8/17/18	11/27/18	Jerry Robinson (deceased)	Jacuzzi002938- Jacuzzi002940	"per daughter... her dad has <u>slipped twice on this tub</u> ... dad was trying to get up [from] the seat and exit the tub and he <u>slipped and hurt his elbows and back</u> .... End-up <u>calling the fire department to assist her with getting her husband out</u> of the tub.... <u>Do not feel safe using</u> their walk-in tub."	Mar./2015	Hilton Calderon	Fairbanks Construction			slip seat
58	n/a	8/12/19	Suzanne P. Murphy	Rev Jacuzzi005981-Rev Jacuzzi005992; Rev Jacuzzi006048-Rev Jacuzzi006052; Rev Jacuzzi006372-Rev Jacuzzi006381	" <u>floor in tub is very slippery</u> . She hasn't used in a year." " <u>floor is slippery</u> and was not that way when she purchased the tub." "customer called in about <u>her slippery floor on her tub and very upset</u> that nobody that she has talked to in the past has ever gotten back to her."	Apr./2015	Deborah Nuanes Megan Davis Richard Vest Porsche Smith Christina - AITHR Ashley Davidson		Yes		slip
59	n/a	8/12/19	Michael S. Fried & Barbara J. Fried	Rev Jacuzzi005744-Rev Jacuzzi005763	"the customer called and is very upset. He says <u>they have to use the breakers in the garage to turn the tub on and off</u> . He says that <u>he is afraid that this will trap his wife in the tub</u> because if she takes a bath, she won't be able to stop the jets. " <u>Consumer got stuck in her tub</u> because they had to turn it off at the breaker... finish on door is falling apart"	May/2015	Deborah Nuanes Megan Davis FirstStreet Support Ashley Davidson Yvette Maldonado Christina Ruggera	Linda Garcia Garcia Associates Jim Lukievics (Spa Tech)	Yes	Yes	fall door
60	8/17/18	11/27/18	Charles Wharff	Jacuzzi002989- Jacuzzi002990	"[T]he first time Mr. Wharff... used the tub, he <u>fell in front of the seat and became wedged between the open door and the seat</u> . He <u>suffered significant injury</u> as a result of this incident. Mr. Wharff... <u>would not have fallen if the tub had not been excessively slippery</u> , and <u>would have suffered much less if he had not become wedged in by the inward-opening door</u> , <u>which became a trap for him</u> ."	May/2015	n/a	Community Builders			fall slip door seat incident
61	n/a	8/27/19	Velma & Clark Rutledge	Jacuzzi006903	LX07000 shipped to customer	May/2015	n/a				
62	n/a	8/12/19	Racheal Mayes	Rev Jacuzzi006043- Rev Jacuzzi006047; Rev Jacuzzi006359- Rev Jacuzzi006362	Dissatisfied with walk-in tub "is too small to reach the handles" " <u>scared when if she slips the handle will be the first thing she hits</u> "	Jun/2015	Porsche Smith Martin Guevara		Yes		slip

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63	n/a	8/12/19	Jean Tarbutton	Rev Jacuzzi006053- Rev Jacuzzi006057; Rev Jacuzzi006279- Rev Jacuzzi006282	AITH sent someone out <b>when he reported the floor was slippery</b> “reported the floor was slippery to put some product on the flooring of the tub – it has worked – but has left stain at bottom of tub”	July/2015	Sonja Kelsie				slip
64	n/a	8/27/19	Margaret Scribner	Jacuzzi006903	LX07000 shipped to customer	July/2015	n/a				
65	n/a	8/12/19	Dale J. Kilburn, Jr.	Rev Jacuzzi006063- Rev Jacuzzi006067; Rev Jacuzzi006252- Rev Jacuzzi006258	Slippery on bottom “customer not happy with tub, wants to return if possible, <b>him and his wife have trouble slipping</b> , says unit is too <b>slippery even on seat area.</b> ”	Aug./2015	Christopher Alvarado Deborah Nuanes Megan Davis Dwayne Joyner Sonja Kelsie Terrance Shumake Martin Guevara		Yes		slip seat
66	n/a	8/12/19	Nancy A. Horstmeyer	Rev Jacuzzi006058- Rev Jacuzzi006062; Rev Jacuzzi006337- Rev Jacuzzi006340	<b>Slipped</b> and also cold air blows from under tub	Aug./2015	Ruth Coester	Bella Robles			slip
67	n/a	8/27/19	Chris Riggins	Jacuzzi006903	LX07000 shipped to customer	Aug./2015	n/a				
68	n/a	8/12/19	Mr. Bregman & Eleanor Anita Bregman	Rev Jacuzzi006068- Rev Jacuzzi006072; Rev Jacuzzi006333- Rev Jacuzzi006336	Walk in tub <b>slippery on bottom</b>	Sept./2015	Richard Vest		Yes		slip
69	n/a	8/27/19	Catherine Haddad	Jacuzzi006903	LX07000 shipped to customer	Sept./2015	n/a				
70	n/a	8/27/19	Martha Fluke	Jacuzzi006903	LX07000 shipped to customer	Oct./2015	n/a				
71	n/a	8/27/19	Sheila Thompson	Jacuzzi006903	LX07000 shipped to customer	Oct./2015	n/a				
72	n/a	8/12/19	Doris Celentano	Rev Jacuzzi006082- Rev Jacuzzi006086; Rev Jacuzzi006271- Rev Jacuzzi006274	She cannot get into tub and close the door without sitting. <b>Floor is far too slippery...</b> Water cannot be turned on while sitting. She is 4” 120 lbs	Nov./2015	Megan Davis				slip door
73	n/a	8/12/19	Patricia Cloud & Richard Sowards Cloud	Rev Jacuzzi006073-Rev Jacuzzi006081; Rev Jacuzzi006350-Rev Jacuzzi006354	"Her and <b>her son slips and falls in the tub while us[ing]</b> "	Nov./2015	Porsche Smith Simona Robertson Sonja Kelsie Deborah Nuanes Regina Reyes	Atlas		Yes	fall slip
74	n/a	8/12/19	Bettie Crawford	Rev Jacuzzi005948-Rev Jacuzzi005952; Rev Jacuzzi006089-Rev Jacuzzi006093	“drain stopper not closing – won’t seal... <b>bottom of floor is verry slippery.</b> ”	Dec./2015	Martin Guevara Regina Reyes				slip
75	n/a	8/27/19	Donald Tennant	Jacuzzi006903- Jacuzzi006904	LX07000 shipped to customer	Dec./2015	n/a				
76	n/a	8/27/19	Ruggiero	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	/2016	n/a				
77	n/a	8/27/19	Jesse Pino	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	/2016	n/a				
78	n/a	8/27/19	Louis & Mary Fondario	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	/2016	n/a				
79	n/a	8/27/19	Rita Raby	Jacuzzi006903	LX07000 shipped to customer	/2016	n/a				
80	n/a	8/12/19	Karen Sommers	Rev Jacuzzi005764-Rev Jacuzzi005771; Rev Jacuzzi005799-Rev Jacuzzi005800	“the customer called and said she used a whole bottle of bubble bath and <b>it caused her to fall and the tub is still slick</b> , no matter what she does. <u>She slides off the seat.</u> ”	Feb./2016	Rebecca Stidman FirstStreet Support Yvette Maldonado Deborah Nuanes Teresa Reyes	Community Builders	Yes	Yes	fall seat
81	n/a	8/27/19	Harry Sawyer	Jacuzzi006903	LX07000 shipped to customer	Mar./2016	n/a				
82	n/a	8/27/19	Ingrid Voggel	Jacuzzi006903	LX07000 shipped to customer	Mar./2016	n/a				

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83	n/a	8/27/19	Janet Sanders	Jacuzzi006903	LX07000 shipped to customer	Mar./2016	n/a				
84	n/a	8/27/19	Pauline Bonaventura	Jacuzzi006903	LX07000 shipped to customer	Mar./2016	n/a				
85	n/a	8/12/19	Delvina L. Posch & Norbert M. Posch	Rev Jacuzzi006094-Rev Jacuzzi006098; Rev Jacuzzi006264-Rev Jacuzzi006270	Wants <b>extra grab bar and non-slip mat</b>	Apr./2016	Richard Vest Porsche Smith Deborah Nuanes Yvette Maldonado Christina Ruggera Katie Gaita		Yes		slip
86	n/a	8/27/19	Brenda & Greg Burris	Jacuzzi006903	LX07000 shipped to customer	Apr./2016	n/a				
87	8/17/18	11/27/18	Sandy Haywood	Jacuzzi002941-Jacuzzi002944	"air controls not working... Buttons hurt her fingers and she could not turn the tub off the other night and <b>had to crawl out of tub onto her toilet</b> ."	Apr./2016	Deborah Nuanes Dwayne Joyner Megan Davis Deborah Nuanes Debbe Hart	A Custom Refinish, LLC			
88	n/a	8/27/19	Joshua Young	Jacuzzi006903	LX07000 shipped to customer	Apr./2016	n/a				
89	n/a	8/12/19	Betty Cox	Rev Jacuzzi005953-Rev Jacuzzi005957; Rev Jacuzzi006099-Rev Jacuzzi006103; Rev Jacuzzi006139-Rev Jacuzzi006145; Jacuzzi006906	"customer called and <b>the floor is too slippery</b> . Tub is slow to fill and drain." LX07000 shipped to customer; invoiced at \$0	May/2016 Aug./2016	Dwayne Joyner Megan Davis Rebecca Stidman Deborah Nuanes	Community Builders			slip
90	n/a	8/27/19	Patricia Shawver	Jacuzzi006903	LX07000 shipped to customer	May/2016	n/a				
91	n/a	8/27/19	Susan Cheune	Jacuzzi006903	LX07000 shipped to customer	May/2016	n/a				
92	n/a	8/27/19	Lorraine Mosca	Jacuzzi006903	LX07000 shipped to customer	May/2016	n/a				
93	n/a	8/12/19	Robert M. Bair, Sr.	Rev Jacuzzi006109-Rev Jacuzzi006121; Rev Jacuzzi006363-Rev Jacuzzi006366	<b>Slipped in the tub and broke hand-held shower</b>	June/2016	Megan Davis Sonja Kelsie Deborah Nuanes FirstStreet Support	Sergio Sanchez Huntington Brass		Yes	slip
94	n/a	8/12/19	Robert W. Thwaites, Jr.	Rev Jacuzzi006104-Rev Jacuzzi006108; Rev Jacuzzi006367-Rev Jacuzzi006371	"Tub is slippery – <b>he falls</b> ... drain is not staying open... He has been complaining about this for months and no results... Having a problem getting in and out walk-in tub"	June/2016	Martin Guevara Deborah Nuanes Richard Vest Porsche Smith Abdiel Hernandez	Shawn	Yes		fall slip
95	8/17/18	11/27/18	Leonard Baize	Jacuzzi002915-Jacuzzi002926	Got into the tub and then discovered that the <b>seat area was too narrow</b> . Got <b>stuck in the tub</b> causing bruising to his stomach area and scrapes. <b>Door</b> to tub <b>leaked</b> ."	June/2016	n/a		Yes	Yes	door seat
96	n/a	8/27/19	Sonia Willis	Jacuzzi006903	LX07000 shipped to customer	Jun./2016	n/a				
97	8/17/18	11/27/18	Ruth R. Cumutte	Jacuzzi002965-Jacuzzi002966	" <b>air jets thrus[t] her forward, causing her to land on knees with head underwater</b> – panicked and <b>tried frantically to get a hold of bar to pull herself up</b> – "The Walk-In Tub is a <b>death trap</b> " – "could have drowned" - Alert 911 useless... "I am a senior citizen, 85 yrs. + and a victim of exploitation of the elderly" Incident Date 7/18/2016, Incident Location Unspecified	Jul./2016					elderly incident
98	n/a	8/27/19	Martha March	Jacuzzi006904	LX07000 shipped to customer	Jul./2016	n/a				
99	n/a	n/a	Intentionally Left Blank	n/a	n/a	n/a	n/a	n/a	n/a	n/a	

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100	n/a	8/12/19	Herminio Ballio	Rev Jacuzzi006123 - Rev Jacuzzi006127; Rev Jacuzzi006275 - Rev Jacuzzi006278	Wife is handicapped and slips easily, <b>tub is slippery at bottom, seat slippery too</b>	Aug./2016	Martin Guevara	Mike Kretz			slip seat
101	n/a	8/12/19	Karen W. Lugo	Rev Jacuzzi006128 - Rev Jacuzzi006138; Rev Jacuzzi006316 - Rev Jacuzzi006321	"Mom <i>slipped</i> and got her <i>foot and leg so lodged into the corner of the tub, that she couldn't pull herself out</i> ... had to call paramedics. It took two <i>paramedics/ men</i> to dislodge my mom from this slip... She is <i>afraid to slip now</i> ." Requested <i>non-slip mats or texturing</i> made for walk-in tubs... "Do you have specially fitted non-slip mats for the walk-in tubs? It appears as though her foot slipped and was lodged in the bottom of the doorway of the bathtub. Is there anything that you have to make the bottom of the doorway non-slip?"	Aug./2016	Myra Martinez Regina Reyes				slip door
102	n/a	8/12/19	Kathe W. Dolan	Rev Jacuzzi006146 - Rev Jacuzzi006156; Rev Jacuzzi006321 - Rev Jacuzzi006325; Jacuzzi006861 - Jacuzzi006862	<b>Slipped and fell in bath</b> and it <i>took 45 minutes</i> for her to <i>get up and out of the bath</i> ... Wants <u>door</u> to open outwards, not inward.	Aug./2016	Ruth Coester Deborah Nuanes Eda Rojas Stephanie Majors Megan Davis Terrance Shumake				slip door
103	n/a	8/27/19	Joseph Smolko	Jacuzzi006904	LX07000 shipped to customer	Aug./2016	n/a				
104	n/a	8/27/19	Kay Morris	Jacuzzi006904	LX07000 shipped to customer	Aug./2016	n/a				
105	n/a	8/27/19	Jamie Roberts	Jacuzzi006904	LX07000 shipped to customer	Aug./2016	n/a				
106	n/a	8/27/19	Elizabeth Scribner-Conboy	Jacuzzi006904	LX07000 shipped to customer	Sept./2016	n/a				
107	8/17/18	11/27/18	Noreen C. Rouillard	Jacuzzi002945- Jacuzzi002948	"Tub takes too long to drain" ... "wife Noreen got injured" ... "last time it took 47 min to drain, she could not wait, <i>felt stuck and tried to crawl out of the tub but fell and hurt herself</i> " ... "she wants a tub that is going to drain faster and feels there has been this defect since it was installed" ... "She <i>banged her head</i> directly on tile and has <i>bruises</i> ."	Sept./2016	Regina Reyes Martin Guevara Deborah Nuanes				
108	n/a	8/27/19	Phil Spiva	Jacuzzi006904	LX07000 shipped to customer	Oct./2016	n/a				
109	n/a	8/23/19	Arreallia Harrison	Jacuzzi006852- Jacuzzi006853	"floor is too <i>slippery</i> "	Oct./2016	Megan Davis				slip
110	8/17/18	11/27/18	Nancy Marie Jones	Jacuzzi002949- Jacuzzi002963; Rev Jacuzzi006341-Rev Jacuzzi006349	"jets aren't working; she is very distressed... bathroom is flooded and she is now <i>sorry that she spent so much money on this tub</i> . Would not drain she had to sit in the tub for a long time... she <i>slipped and hurt her back</i> ."	Nov./2016	FirstStreetSupport Rebecca McCall Regina Reyes CJ Conner Alicia Decoster Deborah Nuanes Abdiel Hernandez Megan Clairmore Jessica Haggard	Alan Long Alan's Jacuzzi and Tub Repair	Yes	Yes	slip
111	n/a	8/27/19	Vicky & Dave Hogg	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	Deborah Nuanes				
112	n/a	8/27/19	Marie Hughes	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	n/a				
113	n/a	8/27/19	Linda Smolko	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	n/a				
114	n/a	8/27/19	Dale Shelley	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	n/a				
115	n/a	8/27/19	Errol Chadderton	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	n/a				
116	n/a	8/27/19	Linda Gross	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	n/a				

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117	n/a	8/27/19	Brian Albert	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	/2017	n/a				
118	n/a	8/12/19	Maile Marie Good	Rev Jacuzzi006175- Rev Jacuzzi006186; Rev Jacuzzi006287; Rev Jacuzzi006294- Rev Jacuzzi006298	“tub is <b>extremely slippery when</b> she allows the water to drain completely, because the <b>bottom is slipper[y]</b> , she broke her tub on the drainer. Do you have any suggestions the customer can use to avoid the slippery feeling in the tub?”	Jan./2017	FirstStreetSupport Regina Reyes Christopher Alvarado	Jinnie Young Community Builders		Yes	slip
119	n/a	3/29/19	Susan Joyce Pullen (deceased)	Jacuzzi004696- Jacuzzi004710; Jacuzzi006775- Jacuzzi006800; Jacuzzi006906	"Non Slip Surface is Slippery... cs is complaining that <b>floor of tub is slippery</b> ... can not stick slip proof mat to tub due to non skid surface... says she has <b>slipped multiple times</b> ... cs's mother <b>fell in tub</b> ... feels <b>floor design is irresponsible</b> [sic]... cs's mother got <b>stuck in tub</b> , then shortly after <b>got blood clots and died</b> ... cs feels their mother may not have died if they had not fallen in tub" ... "complaining about floor grip. cajun grip mat for tub sent as a one time courtesy [sic]... <b>Tub slippery</b> / should not have texture... wants to speak to manager... tub is a <b>dangerous tub</b> ... should be smooth and not have texture ... <b>Mother slipped various times and [passed] away</b> ... doesn't know whether it was the tub or something else he slipped various times as well, said we sent a mat... he threw it away because it did not help... Customer wants to take legal action because he <b>thinks the tub killed his mom</b> . He was already given the Kahona mat, but feels the <b>bottom i[s] far to[o] slippery</b> . Offered IMAPO listing, declined it... <b>Mat is useless</b> ... <b>slipped on tub 3 times</b> . complaining about texture. [his] mother slipped as well, mention we sent a mat to him."	Jan./2017	Regina Reyes Megan Davis Sonja Kelsie Christopher Alvarado Terrance Shumake Abdiel Hernandez Paige Miller Richard Vest Monique Gonzalez Evelyne Ruiz Tiffany Horne			fall slip design	
120	n/a	8/27/19	Rick & Kay Miller	Jacuzzi006904	LX07000 shipped to customer	Feb./2017	n/a				
121	n/a	8/27/19	Gertrude Gorney	Jacuzzi006904	LX07000 shipped to customer	Mar./2017	n/a				
122	n/a	8/12/19	Louise Diane Marbury	Jacuzzi005778- Jacuzzi005789	“consumer reporting that her drain release is not working. She said that it had stuck once before <b>causing her to be trapped in the tub</b> ... She was hysterical because this is the <b>2nd time she had been trapped in the tub</b> ... Elderly consumer got stuck in her WIT because the drain release would not work."	May/2017	Megan Davis Steven Barton Dwayne Joyner Paige Miller Martin Guevara				elderly
123	n/a	8/12/19	Nellie R. McDiffett	Jacuzzi005775- Jacuzzi005777	“ <b>the customer called and said I already wrote what I do not like about the jacuzzi walk-in tub I bought in 2014</b> . I cannot reach the spigots to turn them on once... <b>I can't lie back in it or would slide down into the bottom</b> ... too short to brace feet at other end... advertising is misleading... Takes a long time to fill and <b>there was no non-skid bottom</b> to it so they did come out and put one in and on the seat..." "You appeal to the elderly and folks with arthritis etc."	July/2017	Martin Guevara Paige Miller Regina Reyes				seat elderly
124	n/a	8/12/19	Paul Taubman	Rev Jacuzzi006187- Rev Jacuzzi006190; Rev Jacuzzi006355- Rev Jacuzzi006358	“looking for slip resistant mat”	July/2017	Terrance Shumake				slip

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Tab #	Earliest Date OSI Disclosed (Name Redacted)	Earliest Date OSI Disclosed (Unredacted)	Customer Name (First Last)	Bates Range	Summary of Complaint	Date (Mo./Yr.)	E-mail Recipients	Others Involved	AITHR on Notice?	first STREET on Notice?	Search Terms Triggered
125	n/a	8/12/19	Lucille Marie Burgess & her husband	Rev Jacuzzi006192- Rev Jacuzzi006196	"Consumer called because her husband noticed that the <b>bottom</b> of her walk-in tub was a little <b>slippery</b> . She wanted to know if we offered a <b>bath mat</b> for the tub.... Told her that we <b>do not offer mats</b> with our tubs however; she could probably try and locate one through her local hardware store. She said that they do not have the correct size and that the suction covers do not stay attached."	Aug./2017	Monica Castillo Paige Miller Marie Padilla				slip
126	n/a	8/12/19	Alice Roehl	Rev Jacuzzi005935 – Rev Jacuzzi005939; Rev Jacuzzi006197 – Rev Jacuzzi006217; Jacuzzi006906	"Jacuzzi <b>tub has slippery bottom</b> even though it's supposed to be non-skid... <b>she slipped when trying to get out and almost drowned</b> ... sent Kahuna mat as a courtesy"	Nov./2017	Martin Guevara Christopher Alvarado Tiffany Horne Terrance Shumake Paige Miller	Hausner Construction	Yes		slip
127	n/a	8/12/19	David L. Williams and Debbie Williams	Rev Jacuzzi006218- Rev Jacuzzi006222; Rev Jacuzzi006259- Rev Jacuzzi006263; Jacuzzi006906	"customer not happy with tub; wants to trade this in as this is too big; this is also <b>too slippery</b> ... Consumer called in stating that she wanted to purchase some <b>bath mats</b> for her mother's walk-in tub... Consumer's daughter called back and wants to know what we are doing about the bath mat. I explained <b>these are accessory</b> and not a warranty item. She thought we were sending it out for free. <b>sending mat out as a 1x courtesy</b> ... <b>wants to purchase more kahuna grip mats.</b> "	Jan./2018	Paige Miller Martin Guevara Nailah Harris Abdiel Hernandez Monique Gonzalez				slip
128	n/a	8/27/19	Mr. & Mrs. Zimmerman	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2018	n/a				
129	n/a	8/27/19	David & Sandra Plowden	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2018	n/a				
130	n/a	8/27/19	William V. Gruber	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2018	n/a				
131	n/a	8/27/19	Charmaine Peterson	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2018	n/a				
132	n/a	8/12/19	Christen Manual	Rev Jacuzzi006223- Rev Jacuzzi006227; Rev Jacuzzi006244- Rev Jacuzzi006247	"walk in tub, slipping on bottom... lady is <b>slipping on floor</b> they have <b>tried everything I suggested.</b> "	Jun./2018	Richard Vest				slip
133	n/a	8/27/19	Esther Feldberg	Jacuzzi006863- Jacuzzi006866	" <b>Tub Slippery</b> ... ref to dealer, Fairbanks Construction... <b>recommend Kahuna grip ."</b>	Oct./2018	Monique Gonzalez	Fairbanks Construction			slip
134	n/a	n/a	Intentionally Left Blank	Rev Jacuzzi006175– Rev Jacuzzi006186; Rev Jacuzzi006283– Rev Jacuzzi006284; Rev Jacuzzi006302– Rev Jacuzzi006303	n/a	n/a	n/a	n/a		Yes	
135	n/a	8/27/19	Pearl Levin	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2019	n/a				
136	n/a	8/27/19	Customers of Bathwraps by Liners Direct	Jacuzzi006867- Jacuzzi006871	" <b>Slippery Floor</b> ?? ... We have had a few customer[s] complaining that the <b>floor of the tub is slippery and they almost fell</b> . Please advise as to resolution... Jacuzzi does meet all the required standards on the anti-slip flooring on the tubs. There is a product that the customer can purchase, it is called a <b>Kahuna Grip bath mat</b> . It is <b>not needed</b> and is just <b>offered as an additional peace of mind</b> for those customers that feel they need that."	Unknown	Michelle Blake Teresa Reyes Regina Reyes Megan Davis				slip

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137	n/a	8/27/19	Anne Flack	Jacuzzi006882- Jacuzzi006885; Jacuzzi006906	" <u>tub basin</u> is becoming more <u>slippery</u> ... -informed him we do not recommend any products to treat it for anti-s[l]ip, but <i>ordered a Kahuna grip matt [sic] as a courtesy</i> "	May/2019	Tiffany Home				slip
138	n/a	8/27/19	Nicholas Kuchta	Jacuzzi006886- Jacuzzi006889; Jacuzzi006906	" <u>slips in tub</u> ... customer called and upset that he cannot use his tub at this time... he says <u>floor was very slippery</u> ... he had a <i>mat installed</i> a few years ago but now that is <i>slippery too</i> ... <i>Sending Kahuna Grip Mat as a courtesy ."</i>	May/2019	Martin Guevara Bella Robles				slip
139	n/a	8/27/19	Myrna Klayven	Jacuzzi006891- Jacuzzi006894; Jacuzzi006906	" <u>Floor is Slipper</u> y... <u>floor on bathtub is slippery</u> -states she is <i>needing a new grip mat</i> ... sending one as courtesy"	July/2019	Bella Robles				slip
140	n/a	4/3/19	Arnold Kemper and Norma Kemper	First004883	" <u>Slippery on floor and seat - afraid of it</u> ..." Too narrow, trouble turning around... Installer agreed to take it out and install a new shower or tub.	Unknown	n/a	Sandy Badu		Yes	slip seat
141	n/a	4/3/19	Arthur Salerno and Nancy Salerno	First004886	The <u>floor of the tub was slippery</u> when wet and requires a bath mat for safety. He did not feel that the tub met his expectation as advertised as non- slip. The pillow that was provided was hard and uncomfortable and could not be used.	Unknown	n/a	Sandy Badu		Yes	slip
142	n/a	4/3/19	Artie Lee Gatewood and Elisabeth Gatewood	First004889	"1st time I got in... I <u>fell flat to the floor</u> is so slick."	Unknown	n/a	Sandy Badu		Yes	
143	n/a	4/3/19	Benjamin J. Blunt and Dorothy Blunt	First004882	"I was very surprised tub came with <u>no nonskid on floor + seat of tub</u> ... called Aging in the Home Remodelers [and Jacuzzi], they sent someone to install <u>non-skid + pillow for seat</u> . Where was the planning in production? Even one adverti[s]ed has that... This is safe? Was this an old tub? Was this a reject?"	Unknown	n/a	Sandy Badu		Yes	seat
144	n/a	4/3/19	Carole Bruen	First004872-First004878	"I find the <u>floor of the tub to be very slippery</u> ." "Bob, As discussed, we have stopped applying the slip-resistant product to the tub/shower products based on our last discussion, and your assurance that the product is totally safe and not slippery. Unfortunately, consumers are saying otherwise... I will be sending you another 10 surveys where customers are saying that the products are slippery/unsafe... We(FS) cannot apply solutions in the field since if something happens, our lawyers and your lawyers will just fight over who is at fault(ie did we apply it correctly).We really need a universal solution. Sorry to keep harping on this----but it is coming from consumers, not me( I have no idea if the product is slippery/unsafe----or not)."	Unknown	Bob Rowan Mark Gordon Dave Modena Joseph N. Davis Sandy Badu Nick Fawes Todd Stout Ashley Davidson	Yes	Yes		slip
145	n/a	4/3/19	Clifford Gerhart and Ruth Gerhart	First004887	" <u>The door should open out, not in</u> . It's to[o] confining to get into the tub. It takes too long to fill with water... <u>Bottom of tub + seat are slippery</u> ."	Unknown	n/a	Sandy Badu		Yes	door slip seat
146	n/a	4/3/19	Cyrus Stair and Catherine Stair	First004893	Very poor follow-up after installation, were told that at a follow-up or would have someone come out to apply something on the floor of the tub to handle the <u>slippery</u> surface, still did not hear.	Unknown	n/a	Sandy Badu		Yes	slip
147	n/a	4/3/19	Dorothy Kostro	First004884	The floor is <u>slippery</u> , the seat to[o] low.	Unknown	n/a	Sandy Badu		Yes	slip seat

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Tab #	Earliest Date OSI Disclosed (Name Redacted)	Earliest Date OSI Disclosed (Unredacted)	Customer Name (First Last)	Bates Range	Summary of Complaint	Date (Mo./Yr.)	E-mail Recipients	Others Involved	AITHR on Notice?	first STREET on Notice?	Search Terms Triggered
148	n/a	4/3/19	Gladys Manning	First004896	almost <b>slid off the seat the first time and almost did not get out</b> . Without the pillow she would not be able to use the tub at all.	Unknown	n/a	Sandy Badu		Yes	seat
149	n/a	4/3/19	Mary M. King & Robert King	First004894	<b>"I have fallen off the seat and ended up in the tub and had to call for help to get me out</b> . I have fallen <b>twice trying to get out of the tub</b> . The six inch step from tub to floor is... for <b>safety</b> . Can't reach the handles of the tub to turn the water on and off and can't let water out of the tub. She must have an attendant with her at all times. Very expensive mistake to purchase the walk-in tub.	Unknown	n/a	Sandy Badu		Yes	fall seat
150	n/a	4/3/19	Michael Lindsey and Maritta Jane Lindsey	First004892	There were not enough details on the unit, so could not tell whether the promised water filtration system worked or not and the lack of information provided with the unit. The water jets need water pressure controls by the occupant, top two jets of the 6 need to be relocated to hit the occupant's calves. elongate door gasket by four inches. <b>better non-slip floor</b>	Unknown	n/a	Sandy Badu		Yes	slip door
151	n/a	4/3/19	Milton Leblanc and Shirley Leblanc	First004891	<b>Find the seat and bottom a little slippery - had to put a mat down.</b>	Unknown	n/a	Sandy Badu		Yes	slip seat
152	n/a	4/3/19	Mr. & Mrs. Ed Jacobson	First004890	<b>Tub bottom and tub seat are slippery</b>	Unknown	n/a	Sandy Badu		Yes	slip seat
153	n/a	4/3/19	Robert Kirby and Patricia Kirby	First004885	<b>"I would tell them about the slippery floor</b> , and that it takes a long time to fill up."	Unknown	n/a	Sandy Badu		Yes	slip
154	n/a	4/3/19	Stephen Kuseryk, Sr. and Shirley Kuseryk	First004895	The shower grip was slippery - hard to hold; <b>tub seat is slippery - slide off.</b>	Unknown	n/a	Sandy Badu		Yes	slip seat
155	n/a	4/3/19	Terry A. Hendee & Cheryl A. Hendee	First004899	Poorly design tub surround, not enough room to get in tub to close door; difficulty turning drain [k]nob; <b>tub seat and tub floor very slippery</b>	Unknown	n/a	Sandy Badu		Yes	slip door seat design
156	n/a	4/3/19	Virginia Nicklas	First004888	problem with the <b>slippage on the bottom</b> of the tub and <b>had to install 6 strips on the bottom of the Jacuzzi tub so that she could get out</b> . Due to her height of 5'9", exiting the tub is a bit cramped and a tight fit.	Unknown	n/a	Sandy Badu		Yes	slip exiting

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**From:** Reyes, Regina  
**Sent:** Tuesday, November 05, 2013 12:43 PM  
**To:** Nuanes, Deborah; Martinez, Audrey; Bachmeyer, Kurt  
**Subject:** slippery tubs  
  
**Importance:** High

Ok, we continue to receive this feedback. I know that the FS units exceed ASTM slip resistant test protocol standards yet we continue to receive these claims. It took little effort on my part to locate a few bath mats. Not sure why Firststreet has so much trouble finding these items. In fact I was at Target last night and noticed some – but I cannot find them on their website today.

How do you feel about me pointing them in the direction of specific items?

[http://www.amazon.com/Compac-Select-Safe-T-Shapes-Bathtub-Decals/dp/B000J00EAM/ref=sr\\_1\\_fkmr0\\_2?ie=UTF8&qid=1383682960&sr=8-2-fkmr0&keywords=bath+mat+strips+for+inside+shower](http://www.amazon.com/Compac-Select-Safe-T-Shapes-Bathtub-Decals/dp/B000J00EAM/ref=sr_1_fkmr0_2?ie=UTF8&qid=1383682960&sr=8-2-fkmr0&keywords=bath+mat+strips+for+inside+shower)

**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:** Melanie Borgia [<mailto:melanieborgia@gmail.com>]  
**Sent:** Tuesday, November 05, 2013 11:45 AM  
**To:** Nuanes, Deborah; Reyes, Regina; First Street Support  
**Subject:** Tub

Hello: I have so many people stating the tub seat and floor are extremely slippery. Literally, unsafe. Is there any type of mat or something that we can do to help this issue? I tried to find online anything to help, but nothing the size we need.

--

**Airtite**

Melanie Borgia

1013 Wood Street

Scranton, Pa. 18508

P: 800-687-5153

F: 570-504-2183

[melanieborgia@gmail.com](mailto:melanieborgia@gmail.com)

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**From:** Pierce, Don  
**Sent:** Wednesday, March 19, 2014 8:09 AM  
**To:** Bachmeyer, Kurt; Martinez, Audrey; Torres, Ray  
**Cc:** Reyes, Regina; Coester, Ruth; Davis, Megan  
**Subject:** RE: Slippery floors W.I.T.

The company Audrey refers to makes two products for tub and showers. SolidStepCote 02 (DIY Tub and shower) has a texture like 200-grit sandpaper. Also SolidStepCote 03 (DIY Tub and Shower) has a texture like 100-grit sandpaper. I have no experience with either. However, I agree with Kurt if it does not impact the integrity of the shell it should not void the warranty. Of course we would not be responsible for application, durability, ability to clean or satisfaction.

This product is a water based application that an installer can do with no chemical experience. Durability is about 2-3 years.

There are more permanent solutions however, they require catalysis and trained person to install.

Surface Specialist can provide both. Of course the product that requires professional application is not sold to consumers. Surface Specialists does sell this product to Kohler to use in their plant.

**Donald R. Pierce**  
National Service Manager

**Jacuzzi Luxury Bath**  
289 Jonesboro Rd. PMB 373  
McDonough, Ga. 30253  
Cell: 404-353-1956  
Fax: 770-898-6830

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**From:** Bachmeyer, Kurt  
**Sent:** Wednesday, March 19, 2014 10:11 AM  
**To:** Martinez, Audrey; Torres, Ray; Pierce, Don  
**Cc:** Reyes, Regina; Coester, Ruth; Davis, Megan  
**Subject:** RE: Slippery floors W.I.T.



Unless there is something in this product that may influence the integrity of the acrylic shell and or structure I see no reason why this would void the warranty to the consumer. That said – I know nothing about this product or its chemical composition – Ray and Don may be able to assist us with that part of the answer.

Adding a few others so once we make a stance or recommendation we are all aware of the decision.

## Kurt Bachmeyer

Director of Customer Service



[www.jacuzzi.com](http://www.jacuzzi.com)

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**From:** Martinez, Audrey  
**Sent:** Tuesday, March 18, 2014 4:50 PM  
**To:** Bachmeyer, Kurt; Torres, Ray  
**Subject:** FW: Slippery floors W.I.T.

FS has a couple of tubs in the field that people want removed because the customers claim they are too slippery to use. We proposed Liquiguard Solid Step Cote- an after market anti slip coating that Emmett Luder uses on tubs for the elderly. Will this void their warranty??

## Audrey Martinez

Marketing Manager- Aging In Place Bathing



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**From:** Norm Murdock [<mailto:norm.murdock@aihremodelers.com>]  
**Sent:** Tuesday, March 18, 2014 3:08 PM  
**To:** Martinez, Audrey  
**Subject:** RE: Slippery floors W.I.T.

Can you please confirm that the use of this product on Jacuzzi tubs will not void your lifetime warranty? We just need that confirmation in order to use this product.

Thanks!

Norm Murdock, CAPS, CSA  
Vice President

**firstSTREET**  
*for Boomers and Beyond®*

Phone: 303-222-3207

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®*




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**From:** Martinez, Audrey [<mailto:audrey.martinez@jacuzzi.com>]

**Sent:** Wednesday, October 16, 2013 12:59 PM

**To:** Torres, Ray; Steve Buckley

**Cc:** Norm Murdock

**Subject:** RE: Slippery floors W.I.T.

We have a dealer who uses this product regularly with great results:

Liquidguard - Solid Step Cote  
Liquidguard Technologies  
(800) 790-9299

Let me know if you need any additional information.

**Audrey Martinez**

Marketing Manager- Aging In Place Bathing



[www.jacuzzi.com](http://www.jacuzzi.com)

13925 City Center Drive, Suite 200/ Chino Hills, CA 91709

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**From:** Torres, Ray  
**Sent:** Tuesday, October 15, 2013 10:55 AM  
**To:** Steve Buckley; Martinez, Audrey  
**Subject:** RE: Slippery floors W.I.T.

Yes we could add an additional bar, Audrey may have a bath mat or an non slip application to help, I will defer to her.....

**Raymond Torres**  
 VP Operations & Engineering – Jacuzzi Luxury Bath



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**From:** Steve Buckley [<mailto:sbuckley@atlashomeimprovement.com>]  
**Sent:** Tuesday, October 15, 2013 10:54 AM  
**To:** Torres, Ray  
**Cc:** Matt Cooke; Darian Bobby ([bobbydar@hotmail.com](mailto:bobbydar@hotmail.com)); David Bobby  
**Subject:** Slippery floors W.I.T.

Hi Ray ,

Just wondering your thoughts on this . We are having a few customers slipping on bottom of Jacuzzi tub, I am wondering if you have any recommendations on a product and or a bath mat suitable for this issue . Looking for something easy for the elderly.

Also, are we able to purchase and install the new top mounted grab bar on existing installs ? This may help as well .

Please advise .

Thank you  
 Steve Buckley  
 Production Manager/Bath division  
[SBuckley@atlashomeimprovement.com](mailto:SBuckley@atlashomeimprovement.com)  
 Atlas Home Improvement  
 10824 Plaza Drive

Whitmore Lake, MI 48189  
800-378-1924 (734) 658-3627 Cell (810) 227-8079 Fax

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**From:** Bachmeyer, Kurt  
**Sent:** Wednesday, March 19, 2014 7:11 AM  
**To:** Martinez, Audrey; Torres, Ray; Pierce, Don  
**Cc:** Reyes, Regina; Coester, Ruth; Davis, Megan  
**Subject:** RE: Slippery floors W.I.T.

Unless there is something in this product that may influence the integrity of the acrylic shell and or structure I see no reason why this would void the warranty to the consumer. That said – I know nothing about this product or its chemical composition – Ray and Don may be able to assist us with that part of the answer.

Adding a few others so once we make a stance or recommendation we are all aware of the decision.

**Kurt Bachmeyer**  
Director of Customer Service



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**From:** Martinez, Audrey  
**Sent:** Tuesday, March 18, 2014 4:50 PM  
**To:** Bachmeyer, Kurt; Torres, Ray  
**Subject:** FW: Slippery floors W.I.T.

FS has a couple of tubs in the field that people want removed because the customers claim they are too slippery to use. We proposed Liquiguard Solid Step Cote- an after market anti slip coating that Emmett Luder uses on tubs for the elderly. Will this void their warranty??

**Audrey Martinez**  
Marketing Manager- Aging In Place Bathing



[www.jacuzzi.com](http://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:** Tuesday, March 18, 2014 3:08 PM  
**To:** Martinez, Audrey  
**Subject:** RE: Slippery floors W.I.T.

Can you please confirm that the use of this product on Jacuzzi tubs will not void your lifetime warranty? We just need that confirmation in order to use this product.

Thanks!

Norm Murdock, CAPS, CSA  
 Vice President

**firstSTREET**  
*for Boomers and Beyond®*

Phone: 303-222-3207

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®*




---

**From:** Martinez, Audrey [<mailto:audrey.martinez@jacuzzi.com>]  
**Sent:** Wednesday, October 16, 2013 12:59 PM  
**To:** Torres, Ray; Steve Buckley  
**Cc:** Norm Murdock  
**Subject:** RE: Slippery floors W.I.T.

We have a dealer who uses this product regularly with great results:

Liquidguard - Solid Step Cote  
 Liquidguard Technologies  
 (800) 790-9299

Let me know if you need any additional information.

**Audrey Martinez**

Marketing Manager- Aging In Place Bathing



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**From:** Torres, Ray

**Sent:** Tuesday, October 15, 2013 10:55 AM

**To:** Steve Buckley; Martinez, Audrey

**Subject:** RE: Slippery floors W.I.T.

Yes we could add an additional bar, Audrey may have a bath mat or an non slip application to help, I will defer to her.....

**Raymond Torres**

VP Operations & Engineering – Jacuzzi Luxury Bath



[www.jacuzzi.com](http://www.jacuzzi.com)

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**From:** Steve Buckley [<mailto:sbuckley@atlashomeimprovement.com>]

**Sent:** Tuesday, October 15, 2013 10:54 AM

**To:** Torres, Ray

**Cc:** Matt Cooke; Darian Bobby ([bobbydar@hotmail.com](mailto:bobbydar@hotmail.com)); David Bobby

**Subject:** Slippery floors W.I.T.

Hi Ray ,

Just wondering your thoughts on this . We are having a few customers slipping on bottom of Jacuzzi tub, I am wondering if you have any recommendations on a product and or a bath mat suitable for this issue . Looking for something easy for the elderly.

Also, are we able to purchase and install the new top mounted grab bar on existing installs ? This may help as well .

Please advise .

Thank you

Steve Buckley

Production Manager/Bath division

[SBuckley@atlashomeimprovement.com](mailto:SBuckley@atlashomeimprovement.com)

Atlas Home Improvement

10824 Plaza Drive

Whitmore Lake, MI 48189

800-378-1924 (734) 658-3627 Cell (810) 227-8079 Fax

007556

007556



---

**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

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---

**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)

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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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## Case: 00166521

Contact Name	Case Owner	Regina Reyes
Account Name	Asset	
Brand	Warranty	
	Serial # (Text)	
	Part Number	
	Part Number (Text)	

### Additional Information

Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	Wife slips on the seat and the floor...referred Tracey to contact Regina Reyes. suggested they use nonskid mats will speak to ray t as well.		
Description			

### Resolution Information

Category	Product
Product Issue	Product Component
Other Product Issue	Other Reason
Case Resolution	

### System Information

Created By	Hilton Calderon, 12/18/2012 10:23 PM	Last Modified By	Regina Reyes, 1/7/2013 5:48 PM
Business Hours	Default	Entitlement Name	
Accepted Date/Time		Case Record Type	Legacy

### Case Comments

1/7/2013 5:48 PM

User	Regina Reyes	User	Regina Reyes
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	<p>From: Reyes, Regina Sent: Monday, January 07, 2013 9:40 AM To: 'Nick Fawkes' Cc: Bachmeyer, Kurt; Fore, Jonathan; Martinez, Audrey Subject: RE: Arnouville, Manuel - Serial #BDFDK9Hi 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,</p>	Comment	<p>per Ray, we do not have any plans on changing the surface. if they use the non skid stickers they should not use them on the seat, only the floor.</p>

1/7/2013 5:48 PM

12/21/2012 8:22 PM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	<p>Thanks Nick. I_♦♦m passing this on to Ray, our Director of Engineering to see what he has to say.</p>

12/27/2012 5:51 PM

JACUZZI005858

REV JACUZZI005958

User **Regina Reyes**  
 Public ☐  
 Comment **Hi Regina, I was wondering if you heard back from Ray on this one. Thank you, Megan**

12/21/2012 8:22 PM

User **Regina Reyes**  
 Public ☐  
 Comment **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**

12/18/2012 10:23 PM

User **Regina Reyes**  
 Public ☐  
 Comment **From: Calderon, Hilton On Behalf Of First Street Support  
 Sent: Tuesday, December 18, 2012 2:20 PM  
 To: Tracey Dierkens; First Street Support  
 Cc: Todd Stout; nick.fawkes@aihremodelers.com  
 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**

12/21/2012 8:00 PM

User **Regina Reyes**  
 Public ☐  
 Comment **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\_ have an accessory to supply and we have not heard of this before, but I will check. Regina Reyes**

12/18/2012 10:23 PM

User **Regina Reyes**  
 Public ☐  
 Comment **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  
 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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## Case: 00198623

Contact Name	Case Owner	Martin Guevara
Account Name	Asset	
Brand	Warranty	
	Serial # (Text)	
	Part Number	
	Part Number (Text)	

### Additional Information

Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	No MFG Defects. tub installed- wife used it for first time- floor very slippery- upset - wants free bath mat or something to make it slip resistant- Referred to First Street but wants a sugg brand to use		
Description			

### Resolution Information

Category	Product
Product Issue	Product Component
Other Product Issue	Other Reason
Case Resolution	

### System Information

Created By	Martin Guevara, 8/20/2013 1:32 PM	Last Modified By	Martin Guevara, 1/13/2014 5:48 PM
Business Hours	Default	Entitlement Name	
Accepted Date/Time		Case Record Type	Legacy

### Case Comments

8/22/2013 8:00 PM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	<p>From: Nuanes, Deborah Sent: Thursday, August 22, 2013 12:59 PM To: Stephanie Majors (stephanie@fairbanksconstruction.com) Cc: 'SIMONA ROBERTSON' (SIMONA.ROBERTSON@firstSTREETonline.com); KATY YEATTS (katy.yeatts@firststreetonline.com) Subject: RE: Robert Brannock Serial BDGV89 Just in case you need the customer information Robert Brannock 2851 Long Lake Drive Titusville, FL 32780 Phone: 321-267-8763</p> <p>From: Nuanes, Deborah Sent: Thursday, August 22, 2013 12:50 PM To: Stephanie Majors (stephanie@fairbanksconstruction.com) Cc: 'SIMONA ROBERTSON' (SIMONA.ROBERTSON@firstSTREETonline.com); KATY YEATTS (katy.yeatts@firststreetonline.com) Subject: Robert Brannock</p>

8/22/2013 8:00 PM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	Per Martin he said was okay to close.

JACUZZI005860

REV JACUZZI005960

Serial BDGV89Hi Stephanie,We had a customer called in stating that the floor is very slippery. This is a non-manufacturing defect. She is requesting that someone sends her a bath mat that is slip resistant. She\_♦♦s bought a few and has not worked.

---

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007563

007563

JACUZZI005861

REV JACUZZI005961

**Cc:** Martinez, Audrey; "Norm Murdock"; Bachmeyer, Kurt; 'David Jacobs'  
**Subject:** RE: Harris BDHX2L installer requesting engineering information on control buttons

You understand incorrectly come see me on this.  
Thanks

**Raymond Torres**

VP Operations & Engineering – Jacuzzi Luxury Bath



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---

**From:** Reyes, Regina  
**Sent:** Monday, May 19, 2014 2:04 PM  
**To:** 'Ray Parnell'  
**Cc:** Martinez, Audrey; "Norm Murdock"; Bachmeyer, Kurt; 'David Jacobs'; Torres, Ray  
**Subject:** RE: Harris BDHX2L installer requesting engineering information on control buttons

Hi Ray,

Just to summarize for the group, the issue regarding customer Harris was documented as slippery tub and buttons and drain handle hard to turn. The request is for Jacuzzi to share how to measure the maximum force required to turn the drain knob and push the buttons. At the time the initial request came into us we did consult with our team since this is not standard information published in our product specifications or manuals. This information is currently not documented but we may be able to obtain it for future use. I will follow up to see when the information may be available for release.





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**Case: 00221310**

Contact Name	Case Owner	Deborah Nuanes
Account Name	Asset	
Brand	Warranty	
Demo/Red Tag	Serial # (Text)	
	Part Number	
	Part Number (Text)	

**Additional Information**

Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	Customer slipped and states she is not strong enough to press the button and turn drain knob		
Description			

**Resolution Information**

Category	Product
Product Issue	Product Component
Other Product Issue	Other Reason
Case Resolution	

**System Information**

Created By	Yvette Maldonado, 4/15/2014 3:14 PM	Last Modified By	Jared Baker, 6/7/2014 4:01 PM
Business Hours	Default	Entitlement Name	
Accepted Date/Time		Case Record Type	Legacy

**Case Comments****4/30/2014 9:12 PM**

User **Regina Reyes**  
 Public ☐  
 Comment **Per Regina okay to close she emailed Ray Parnell**

**4/30/2014 12:18 AM**

User **Regina Reyes**  
 Public ☐  
 Comment **email regarding issues are in attachments**

**4/24/2014 9:11 PM**

User **Regina Reyes**  
 Public ☐  
 Comment **From: Maldonado Yvette Sent: Thursday April 24 2014 2:10 PM To: 'Ray Parnell' Subject: Harris BDHX2L Hello Ray Currently I have requested information on how to measure the maximum force to turn the drain knob and push the**

**4/16/2014 9:35 PM**

User **Regina Reyes**  
 Public ☐  
 Comment **Sent Regina a email asking who do I send this to.**

**4/15/2014 3:14 PM**

User **Regina Reyes**

JACUZZI005721

buttons. The information you are requesting currently is not published you may need to contact Firststreet for further information. I have attached a IAPMO that states the tub meets required testing.

Public ☐

3-18 rpcustomer slipped and fell in the tub, she said the floor of the tub is very slippery. she said she slipped off of the seat. she said she has neuropathy, and she doesn't have the hand strength to push the buttons or turn the knob to drain the tub.these are the notes from the customer\_♦♦s initial call to us:the \_♦♦slippery floor\_♦♦ concern has been addressed by your most recent newsletter (offering the non-slip coating). I will offer that as an option when the other concerns are addressed. the other concerns all seem to be engineering / product tolerance issues. It would be great if these concerns can be remedied; but the next best thing would be for us to understand the product tolerances (ie- is there a way to measure the maximum force needed to turn the drain knob or push in the buttons?)We were not comfortable telling a concerned customer that they have to accept the tub as it is (because the product meets it\_♦♦s spec-tolerances), unless/until we know that to be true.thank youray

Comment

4/15/2014 3:14 PM

User **Regina Reyes**  
Public ☐  
Comment **LVM called customer**

Attachments

**Harris file 2.msg**

---

Size **87KB**  
Ownership **Jared Baker**  
View **[View file](#)**  
Last Modified **6/9/2014 7:15 PM**

**Harris BDHX2L installer requesting engineering information on control buttons.msg**

---

Size **71KB**  
Ownership **Jared Baker**  
View **[View file](#)**  
Last Modified **6/9/2014 7:15 PM**

007566

007566



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## Case: 00221310

Contact Name	Case Owner	Deborah Nuanes
Account Name	Asset	
Brand	Warranty	
	Serial # (Text)	
	Part Number	
	Part Number (Text)	

### Additional Information

Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	Customer slipped and states she is not strong enough to press the button and turn drain knob		
Description			

### Resolution Information

Category	Product
Product Issue	Product Component
Other Product Issue	Other Reason
Case Resolution	

### System Information

Created By	Yvette Maldonado, 4/15/2014 3:14 PM	Last Modified By	Jared Baker, 6/7/2014 4:01 PM
Business Hours	Default	Entitlement Name	
Accepted Date/Time		Case Record Type	Legacy

### Case Comments

4/30/2014 9:12 PM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	Per Regina okay to close she emailed Ray Parnel

4/30/2014 12:18 AM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	email regarding issues are in attachments

4/24/2014 9:11 PM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	From: Maldonado Yvette Sent: Thursday April 24 2014 2:10 PMTo: 'Ray Parnell'Subject: Harris BDHX2LHello Ray Currently I have requested information on how to measure the maximum force to turn the drain knob and push the buttons. The information you are requesting currently is

4/16/2014 9:35 PM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	Sent Regina a email asking who do I send this to.

4/15/2014 3:14 PM

User	Regina Reyes
Public	<input type="checkbox"/>

JACUZZI005870

REV JACUZZI005970

not published you may need to contact Firststreet for further information. I have attached a IAPMO that states the tub meets required testing.

Comment 3-18 rpcustomer slipped and fell in the tub, she said the floor of the tub is very slippery. she said she slipped off of the seat. she said she has neuropathy, and she doesn't have the hand strength to push the buttons or turn the knob to drain the tub.these are the notes from the customer\_♦♦s initial call to us:the \_♦♦slippery floor\_♦♦ concern has been addressed by your most recent newsletter (offering the non-slip coating). I will offer that as an option when the other concerns are addressed. the other concerns all seem to be engineering / product tolerance issues. It would be great if these concerns can be remedied; but the next best thing would be for us to understand the product tolerances (ie- is there a way to measure the maximum force needed to turn the drain knob or push in the buttons?)We were not comfortable telling a concerned customer that they have to accept the tub as it is (because the product meets it\_♦♦s spec-tolerances), unless/until we know that to be true.thank youray

4/15/2014 3:14 PM

User **Regina Reyes**  
Public ☐  
Comment **LVM called customer**

## Files

### Harris BDHX2L installer requesting engineering information on control buttons

Last Modified **6/9/2014 7:15 PM**  
Created By **Jared Baker**

### Harris file 2

Last Modified **6/9/2014 7:15 PM**  
Created By **Jared Baker**

## Attachments

### Harris file 2

Size **87KB**  
Ownership **Jared Baker**  
View [Download](#)  
Last Modified **6/9/2014 7:15 PM**

### Harris BDHX2L installer requesting engineering information on control buttons

Size **71KB**  
Ownership **Jared Baker**  
View [Download](#)  
Last Modified **6/9/2014 7:15 PM**



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## Case: 00221310

Contact Name	Case Owner	Deborah Nuanes
Account Name	Asset	
Brand	Warranty	
Demo/Red Tag	Serial # (Text)	
	Part Number	
	Part Number (Text)	

Additional Information			
Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	Customer slipped and states she is not strong enough to press the button and turn drain knob		
Description			

Resolution Information	
Category	Product
Product Issue	Product Component
Other Product Issue	Other Reason
Case Resolution	

System Information			
Created By	Yvette Maldonado, 4/15/2014 3:14 PM	Last Modified By	Jared Baker, 6/7/2014 4:01 PM
Business Hours	Default	Entitlement Name	
Accepted Date/Time		Case Record Type	Legacy

## Case Comments

4/30/2014 9:12 PM

User Regina Reyes  
Public ☐  
Comment Per Regina okay to close she emailed Ray Parnel

4/30/2014 12:18 AM

User Regina Reyes  
Public ☐  
Comment email regarding issues are in attachments

4/24/2014 9:11 PM

User Regina Reyes  
Public ☐  
Comment From: Maldonado Yvette Sent: Thursday April 24 2014 2:10 PM To: 'Ray Parnell' Subject: Harris BDHX2L Hello Ray Currently I have requested information on how to measure the maximum force to turn the drain knob and push the

4/16/2014 9:35 PM

User Regina Reyes  
Public ☐  
Comment Sent Regina a email asking who do I send this to.

4/15/2014 3:14 PM

User Regina Reyes

buttons. The information you are requesting currently is not published you may need to contact Firststreet for further information. I have attached a IAPMO that states the tub meets required testing.

Public ☐

3-18 rpcustomer slipped and fell in the tub, she said the floor of the tub is very slippery. she said she slipped off of the seat. she said she has neuropathy, and she doesn't have the hand strength to push the buttons or turn the knob to drain the tub.these are the notes from the customer\_♦♦s initial call to us:the \_♦♦slippery floor\_♦♦ concern has been addressed by your most recent newsletter (offering the non-slip coating). I will offer that as an option when the other concerns are addressed. the other concerns all seem to be engineering / product tolerance issues. It would be great if these concerns can be remedied; but the next best thing would be for us to understand the product tolerances (ie- is there a way to measure the maximum force needed to turn the drain knob or push in the buttons?)We were not comfortable telling a concerned customer that they have to accept the tub as it is (because the product meets it\_♦♦s spec-tolerances), unless/until we know that to be true.thank youray

4/15/2014 3:14 PM

User **Regina Reyes**  
Public ☐  
Comment **LVM called customer**

Comment

Attachments

Harris file 2.msg

Size **87KB**  
Ownership **Jared Baker**  
View [View file](#)  
Last Modified **6/9/2014 7:15 PM**

Harris BDHX2L installer requesting engineering information on control buttons.msg

Size **71KB**  
Ownership **Jared Baker**  
View [View file](#)  
Last Modified **6/9/2014 7:15 PM**

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**From:** Martinez, Audrey  
**Sent:** Tuesday, June 11, 2013 4:03 PM  
**To:** Rowan, Bob; Torres, Ray; Davis, Joseph N.; Peetz, Chris; Bachmeyer, Kurt; Koops, Brian  
**Subject:** FW: Here are a few more comments  
**Attachments:** customer letters.pdf; FSCustomerSurveys62013.xls

Updated with recent comments. Note two letters attached, one of which I believe was sent to us directly.

**Audrey Martinez**  
Marketing Manager- Aging In Place Bathing



[www.jacuzzi.com](http://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:** SIMONA ROBERTSON [<mailto:SIMONA.ROBERTSON@firstSTREETonline.com>]  
**Sent:** Tuesday, June 11, 2013 12:37 PM  
**To:** Martinez, Audrey  
**Cc:** Norm Murdock  
**Subject:** Here are a few more comments

Audrey, here are a few more comments as well as 2 letters customers sent along with their completed survey.

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) ☒ Yes ☐ No 77

Additional Comments: Only thing is I wished it didn't have to be filled above all the jets to work. Does it have to be up by maybe I close the back top??

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) Yes NOT AT THIS TIME

Additional Comments: 1. NOT AS WIDE AS OUR TUB WAS 2. DOOR SWINGS TO INSIDE NOT ALLOWING ADEQUATE ACCESS FOR DISABLED PERSON 3. INSTALLATION WAS NOT AS EXPECTED - WE WANTED SHOWER ROOM IN THE BACK WALL SIDE, NOT THE TUB SHAVED UP AGAINST THE BACK WALL.

Optional: \*You agree that by signing this survey, we

Age(s) 71, 72

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) Yes No 49

Additional Comments: Its beautiful But takes a long time to fill up to use - //

Would you recommend the Jacuzzi Walk-In Tub to a friend or relative? (Circle One) Yes No

Additional Comments: seat slippery - you fall off onto Tub floor door opens in so very hard To get up or be helped up - No dot caulking has holes in it NOT WORTH

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Simona Reid-Robertson  
phone 804-451-2309  
fax 804-524-9889  
firstSTREET for Boomers and Beyond



---

**From:** Bachmeyer, Kurt  
**Sent:** Wednesday, March 19, 2014 7:11 AM  
**To:** Martinez, Audrey; Torres, Ray; Pierce, Don  
**Cc:** Reyes, Regina; Coester, Ruth; Davis, Megan  
**Subject:** RE: Slippery floors W.I.T.

Unless there is something in this product that may influence the integrity of the acrylic shell and or structure I see no reason why this would void the warranty to the consumer. That said – I know nothing about this product or its chemical composition – Ray and Don may be able to assist us with that part of the answer.

Adding a few others so once we make a stance or recommendation we are all aware of the decision.

**Kurt Bachmeyer**  
 Director of Customer Service



www.jacuzzi.com  
 14525 Monte Vista Avenue / Chino, CA 91710  
 909.247.2187 (o) 909.606.4270 (f)

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---

**From:** Martinez, Audrey  
**Sent:** Tuesday, March 18, 2014 4:50 PM  
**To:** Bachmeyer, Kurt; Torres, Ray  
**Subject:** FW: Slippery floors W.I.T.

FS has a couple of tubs in the field that people want removed because the customers claim they are too slippery to use. We proposed Liquiguard Solid Step Cote- an after market anti slip coating that Emmett Luder uses on tubs for the elderly. Will this void their warranty??

**Audrey Martinez**  
 Marketing Manager- Aging In Place Bathing



www.jacuzzi.com

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

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.

FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER,  
INC.; HALE BENTON, Individually; HOMECCLICK, LLC;  
JACUZZI INC., doing business as JACUZZI LUXURY BATH;  
BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD,  
Individually and as BUDDS PLUMBING; DOES 1 through 20;  
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,

Defendants.

**VIDEO DEPOSITION OF: RUTH R. CURNETTE**  
**TAKEN BY: PLAINTIFFS**  
**DATE: WEDNESDAY, AUGUST 7, 2019**  
**TIME: 9:05 A.M. - 12:13 P.M.**  
**LOCATION: 17498 SE 110th COURT**  
**SUMMERFIELD, FLORIDA 34491-8022**  
**REPORTED BY: Courtney L. Wear, RMR, CRR**  
**Stenographic Court Reporter**  
**Notary Public, State of Florida**

OWEN & ASSOCIATES COURT REPORTERS  
P.O. BOX 157, OCALA, FLORIDA 34478  
352.624.2258 owenassoc@aol.com

## APPEARANCES:

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APPEARING ON BEHALF OF PLAINTIFFS

**PHILIP GOODHART, Esquire**

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E-mail: png@thorndal.com

APPEARING ON BEHALF OF DEFENDANTS FIRST STREET  
FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC.,  
and HALE BENTON**BRITTANY M. LLEWELLYN, Esquire**

WEINBERG WHEELER HUDGINS GUNN &amp; DIAL

6385 South Rainbow Boulevard, Suite 400

Las Vegas, Nevada 89118

E-mail: bllewellyn@wwhgd.com

APPEARING ON BEHALF OF DEFENDANT JACUZZI, INC.

## ALSO PRESENT:

Greg Waugh, Videographer

Sara Niland, Caregiver

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I N D E X

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P R O C E E D I N G S

THE VIDEOGRAPHER: All right. This is tape number one to the videotaped deposition of Ruth Curnutte taken in the matter of Robert Ansara and others, versus First Street For Boomers & Beyond Inc., and others.

Deposition is being held at 17498 Southeast 110th Court in Summerfield, Florida on August 7th, 2019. The time's approximately 9:05 p.m. -- or a.m.

My name is Greg Waugh, I'm the videographer. Court Reporter is Courtney Wear.

So, Counsel, please introduce yourself for the record, beginning with the plaintiff.

MR. CLOWARD: Benjamin Cloward for the Cunnison family.

MR. GOODHART: Philip Goodhart for First Street, AITHR and Hale Benton.

MS. LLEWELLYN: Brittany Llewellyn for Jacuzzi, Inc.

THE VIDEOGRAPHER: Madam Court Reporter will now swear in the witness and we'll proceed.

THE REPORTER: Ma'am, can you raise your right hand.

Do you swear the testimony you're about to

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1 give will be the truth, the whole truth, and  
2 nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 Whereupon,

5 RUTH R. CURNUTTE,  
6 a witness herein having been first duly sworn, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CLOWARD:

10 Q. Okay. Hi, Ms. Curnutte. How are you?

11 A. I'm fine, thank you.

12 Q. Can you hear me okay?

13 A. Yes.

14 Q. Okay. If you need me to speak up just let me  
15 know.

16 A. Yes.

17 Q. Okay. So this video is taking your recording  
18 to show to the jurors in a case in Las Vegas. And so if  
19 during the process if you say uh-huh or huh-uh I may ask  
20 is that a yes or is that a no, it's just to make sure  
21 that everybody is clear what you mean. Okay?

22 A. Yes, sir.

23 Q. Okay. So have you ever been deposed before?

24 A. No.

25 Q. Okay. So this is the first time?

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1 A. Yes.

2 Q. All right. Well, why don't you tell the  
3 jurors just a little bit about yourself. Where are you  
4 from?

5 A. Oh, I was born in Romania on April 15th, '31.  
6 And in 1939 my parents moved to Germany, it was due to  
7 the occupation of the Russian in Romanian territory.

8 In the meantime both of my parents are  
9 deceased. I don't have any relatives here. My own  
10 relative is my niece in Germany who has the power of  
11 attorney for all decisions, and Millhorn is my lawyer.  
12 And I have a trust, and everything is in the trust and  
13 my niece makes all the decisions which are necessary to  
14 my well-being.

15 Q. Okay. Are you able to testify for us today,  
16 though?

17 A. Yes, I do.

18 Q. Okay. So let's talk about, I guess, the  
19 reason why we're here.

20 Did you purchase a Jacuzzi walk-in bathtub at  
21 some point?

22 A. Yes, I did. April 3rd, I think it was, 19 --  
23 2016.

24 MR. CLOWARD: Okay. So the first thing I  
25 guess I would do is we're just going to attach the

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1 deposition subpoena notice as an exhibit to the  
2 record. And we'll attach that as Exhibit 1.

3 (Plaintiffs' Exhibit No. 1 marked for  
4 identification.)

5 MR. CLOWARD: Where do you want me to put  
6 these?

7 THE REPORTER: On the side upside down.

8 BY MR. CLOWARD:

9 Q. Then I'm going to show you, I guess, the  
10 reason how we came across your name was a letter that  
11 you apparently wrote. And I want you to just take a  
12 look -- here's a computerized version -- see if you  
13 recognize that document.

14 A. Oh, yes, I do. Yes, I do. I --

15 Q. And what is that?

16 A. I complained about the Jacuzzi, which was  
17 delivered, was not the one I originally had in mind, but  
18 they delivered it anyway because I assume it was sitting  
19 in their warehouse. And I had problems the first time I  
20 had used it. Well, it was delivered -- it was installed  
21 in April. And I had to wait three months for the 911  
22 emergency button to be delivered. And I was not  
23 supposed to use the Jacuzzi without the button because  
24 of problem of possibly dangerous circumstances using the  
25 bathtub.

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1           And the first time I used it I had it filled,  
2   and when I turned it on, the jets, I was thrushed [sic]  
3   against the bottom -- the footwell is much lower than  
4   the seat, and I was thrushed against the wall and I  
5   ended up on my knees, and I was submerged -- my head was  
6   underwater. And I frantically tried to get ahold of  
7   something to get out of the water. It was the scariest  
8   moment because I didn't know whether I can save myself  
9   because I live alone. And it was the most horrifying  
10   experience I had with a Jacuzzi.

11           I did not intend to have such a huge Jacuzzi.  
12   I was just released from the hospital a week ago at that  
13   time with pneumonia, and I thought it would help me.  
14   But this was the only time I used it, and ever since the  
15   three past years it is just sitting there like a big  
16   monster. And it's something I complained about it, but  
17   I did not get any results, even though I notified all  
18   entities I could find in the book to notify for help.  
19   But the end result was nothing -- nobody could do  
20   anything for me. And the final -- the final checkup for  
21   safety was done by the installer -- by the owner of the  
22   Jacuzzi, which is located in Ocala. Not even the State  
23   or the other entities came to my aid to clarify what  
24   could be done that I could use the Jacuzzi.

25           I could not -- as I said in that -- in that

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1 A. Yes.

2 Q. And power of the jets pushed you off the  
3 seat?

4 A. Yes.

5 Q. Okay. Did you slip off of the seat before  
6 you turned the jets on?

7 A. It just -- it just -- it just swept me  
8 against -- against the wall.

9 Q. Okay.

10 A. The foot wall. And the well is much deeper.  
11 And this is why it was way above my head, the water,  
12 because I fell on my knees. I was in the tub on my  
13 knees against the wall.

14 Q. Okay.

15 A. In the footwell.

16 Q. So the jets pushed you off the seat?

17 A. Yes.

18 Q. If you had not turned the jets on, do you  
19 think you would have slipped off of the seat?

20 A. It was slippery. It was slippery. This is  
21 why they thought they can -- they can justify by  
22 installing the non-slippery two mats on the seat and on  
23 the footwell. But I did not even try whether that  
24 works, or not.

25 Q. Okay. Now, did you also slip on the floor in

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1 the footwell?

2 A. Yes.

3 Q. Okay.

4 A. Well, yes, it was slippery. It was all  
5 slippery.

6 Q. Okay. But you were able to stand up --

7 A. No.

8 Q. -- eventually?

9 A. I was not able to stand up after I was pushed  
10 against the wall and fell into the footwell with the  
11 waterway above my head. There was no way that I could  
12 stand up.

13 Q. Okay.

14 A. I was trying to get ahold of something to  
15 pull myself up.

16 Q. Okay. But you pulled yourself up and then  
17 you were out of the water, your head was out of the  
18 water?

19 A. Yes.

20 Q. And then did you stand up?

21 A. Well, I was hanging on for dear life on  
22 that -- on that shower -- shower head. And drained the  
23 water right away. And then I got out as fast as I could  
24 after the water drained out.

25 Q. Let me go back.

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1 MR. GOODHART: I'm looking for Exhibit 17,  
2 which is the contract.

3 MR. CLOWARD: While you look for that I just  
4 have a couple other questions.

5 REDIRECT EXAMINATION

6 BY MR. CLOWARD:

7 Q. You were asked about your kneecaps and the  
8 injuries that resolved to your kneecaps.

9 Was this a traumatic event for you?

10 A. No. No, it was just bruising, bruising which  
11 went away after a couple of weeks.

12 Q. Okay.

13 A. The pain. There was just a little bit of  
14 brownish -- brownish/purple for a while, and then it  
15 went away.

16 Q. Okay. What about emotionally, was it  
17 emotion --

18 A. Oh, that was scariest part of it all. I was  
19 scared -- scared of the whole thing, that monstrosity  
20 sitting there. I was not about to even think about  
21 taking another chance on taking another bath or filling  
22 it. I was not even inclined to do that, no matter how  
23 bad I felt.

24 Somewhere is a picture --

25 Q. Bless you. We need just a little more.

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1 off on that. Sometimes that creates more work for  
2 the court reporter. Most people just waive that.  
3 It's basically checking her work. But, you know,  
4 that's entirely up to you. It just creates more  
5 work for actually both of you because you'd have to  
6 go line by line, you know.

7 THE WITNESS: Yeah, right.

8 MR. CLOWARD: So do you want to waive that?

9 THE WITNESS: Yes, I waive -- I waive it,  
10 yeah.

11 MR. CLOWARD: Okay. So we'll go off the  
12 record now. And anything else, Counsel?

13 MR. GOODHART: I think we're concluding the  
14 deposition. Correct?

15 MR. CLOWARD: Yes, correct.

16 MR. GOODHART: Thank you. I appreciate your  
17 help.

18 THE WITNESS: You're quite welcome.

19 MS. LLEWELLYN: Thank you, Ms. Curnutte.

20 THE VIDEOGRAPHER: This ends the deposition.  
21 Time is 12:13. We're off the record.

22 (Plaintiffs' Exhibit Nos. 8 and 40 marked for  
23 identification.)

24 (This proceeding concluded at 12:13 p.m.)  
25

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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF FLORIDA }

4 COUNTY OF MARION }

5 I, COURTNEY L. WEAR, RMR, CRR, do hereby  
6 certify that I was authorized to and did  
7 stenographically report the foregoing video deposition  
8 of RUTH R. CURNETTE; that a review of the transcript  
9 was not requested; and that the foregoing transcript,  
10 pages 7 through 98, is a true record of my stenographic  
11 notes.

12 I FURTHER CERTIFY that I am not a relative,  
13 employee, attorney or counsel of any of the parties',  
14 nor am I a relative or employee of any of the parties'  
15 attorneys or counsel with the action, nor am I  
16 financially interested in the action.

17 Signed this day of 8-12-2019, Marion County,  
18 Florida.

19  
20  
21  
22  
23 /s/ Courtney L. Wear  
24 COURTNEY L. WEAR, RMR, CRR  
25

## 1 CERTIFICATE OF OATH

2  
3 STATE OF FLORIDA}

4 COUNTY OF MARION}

5 I, COURTNEY L. WEAR, Registered Merit  
6 Reporter, Certified Realtime Reporter, a Notary Public  
7 for the State of Florida, and Court Reporter, certify  
8 that the witness, RUTH R. CURNETTE, personally appeared  
9 before me this day of 8-7-2019 and was duly sworn.10 WITNESS my hand and official seal this day  
11 of 8-12-2019.12  
13 Identification: FL Driver's License  
14  
15  
1617 /s/ Courtney L. Wear  
18 COURTNEY L. WEAR  
19 Notary Public-State of Florida  
Comm No: GG 26093620 Comm. Expires: December 12, 2022  
21  
22  
23  
24  
25

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Ref: Ser# BDPK 7, model: LW45, Job: 16198  
 Subj: Death Trap - Gaugzi Walk-In Tub.

On April 3, 2016, I signed a contract for installation of a Walk-In Tub. The agent was Kevin Lewis. The Fairbanks Construction Co. of Ocala, FL, installed the unit 4-1-2016. I was advised never to use the tub without the 911 Alert system in reach.

On July 18, 2016, after finally receiving the 911 Alert, I decided to try the Walk-In Tub.

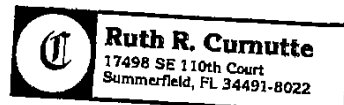
After 30 minutes the tub filled with 50 gal. of water. I opened the air jets at my back. At that moment I was thrust forward, landed on my knees and my head was under water. I was in panic and tried frantically to get a hold of the bar to pull myself up. I could have drowned. The Alert 911 would have been totally useless out of reach. The Walk-In Tub is a death trap.

The tape demonstration and brochures given by the agent Kevin Lewis do not compare to the tub installed. The tub is an old model. The new models (copies encl.) require 30 gal of water and are half the size which was actually installed.

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P. 2

It takes 30 min. to fill the tub with 50 gallons. The shower head is barely in tricked mode and does not work proper. Numerous calls to the agent, The Fairbanks Construction Co., and Rick Regal, installation Supervisor, Mr. Fairbanks were not returned. Mr. Maller, of The Fairbanks Co., was rude, who returned the phone call, stated "you got what you ordered, you do not get another tub!"

The agent Kevin Lewis did not return any of my calls. Details re: Water capacity was not disclosed and the publications were misrepresented.

I am a senior citizen, 85 yrs. old and a victim of exploitation of the elderly. I live on a fixed income and invested \$15,500.- of my savings for health reasons, because my network does not qualify me for a senior establishment.

I live alone and after my experience of almost drowning, I have not used the tub since. I cannot afford the loss of \$15,500.-.

I would appreciate your help desperately. I have enclosed copies and documents for your review.

I look forward to your reply and a resolution of an exchange to my problem within the next 2 weeks.

Please contact me at your earliest at above address or by phone at (352) 307-0103. Please, please help!

Sincerely,  
Ruth Cumutte

Encl.:

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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,

CASE NO: A-16-731244-C  
DEPT NO: 11

vs.

FIRST STREET FOR BOOMERS & BEYOND,  
INC., AITHR DEALER, INC.; HALE  
BENTON, Individually, HOMECLICK, LLC;  
JACUZZI INC., doing business as JACUZZI  
LUXURY BATH; 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.

AND ALL RELATED MATTERS

The Video Deposition of:

PATRICIA K. HERMAN

Reported by Linde R. Blosser  
On Friday, August 9, 2019  
At 900 Fox Valley Drive  
Longwood, Florida  
On Behalf of the Plaintiffs  
Commencing at 9:56 a.m.

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<p style="text-align: right;">Page 2</p> <p>APPEARANCES:</p> <p>GRAHAM R. SCOFIELD, ESQUIRE  Allen &amp; Scofield Injury Lawyers, LLC  3575 Piedmont Road NE  Building 15  Suite L-130  Atlanta, Georgia 30305  graham@atinjurylawyers.com  Attorney for Sherry Lynn Cunnison</p> <p>PHILIP N. GOODHART, ESQUIRE  Thorndal Armstrong Delk Balkenbush &amp; Eisinger  1100 East Bridger Avenue  Las Vegas, Nevada 90181  Png@thorndal.com  Attorney for First Street Boomers &amp; Beyond,  AITHR Dealer, Inc., and Hale Benton</p> <p>BRITTANY M. LLEWELLYN, ESQUIRE  Weinberg, Wheeler, Hudgins, Gunn &amp; Dial, LLC  6385 South Rainbow Boulevard  Suite 400  Las Vegas Nevada 89118  bllewellyn@wwhgd.com  Attorney for HomeClick, LLC, Jacuzzi, Inc.,  Jacuzzi Luxury Bath</p> <p>VIDEOGRAPHER: Gary Markman</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;"><b>TABLE OF CONTENTS</b></p> <p><u>WITNESS:</u></p> <p>PATRICIA K. HERMAN  Direct Examination by Mr. Scofield..... 5  Cross-examination by Mr. Goodhart..... 40  Cross-Examination by Ms. Llewellyn..... 73  Recross-examination by Mr. Goodhart..... 96</p> <p><u>EXHIBITS:</u></p> <p>Plaintiffs' Exhibit 1  [Owner's Manual]..... 10  Plaintiffs' Exhibit 2  [Photograph]..... 11  Plaintiffs' Exhibit 3  [Photograph]..... 11  Plaintiffs' Exhibit 4  [Photograph]..... 11  Plaintiffs' Exhibit 5  [Photograph]..... 11  Plaintiffs' Exhibit 6  [Photograph]..... 11  Plaintiffs' Exhibit 7  [Photograph]..... 11  Plaintiffs' Exhibit 8  [Promotions]..... 12  Plaintiff's Exhibit 9  [Email, 7/17/2014]..... 12  Plaintiffs' Exhibit 10  [Calendar Printout]..... 12  Plaintiffs' Exhibit 11  [Email, 8/11/14], ..... 18  Plaintiffs' Exhibit 12  [Email, 10/14/14]..... 18  Plaintiffs' Exhibit 13  [Email, 2/26/15]..... 18  Plaintiffs' Exhibit 14  [Email, 2/26/15]..... 18  Plaintiffs' Exhibit 15  [Email 1/7/17]..... 18  Plaintiffs' Exhibit 16  [Email, 3/25/15]..... 20  Plaintiffs' Exhibit 17  [Email, 3/27/15]..... 24  Plaintiffs' Exhibit 18  [Email, 4/6/15]..... 27</p>
<p style="text-align: right;">Page 4</p> <p style="text-align: center;"><b>TABLE OF CONTENTS</b></p> <p><u>EXHIBITS:</u></p> <p>Plaintiffs' Exhibit 19  [Informational Booklet]..... 37  Plaintiffs' Exhibit 20  [Brochure Pictures]..... 39</p> <p>CERTIFICATE OF REPORTER..... 101  CERTIFICATE OF OATH..... 102</p> <p>INDEX..... 103</p> <p style="text-align: center;">-----</p> <p>(REPORTER'S KEY TO PUNCTUATION)</p> <p>"--" at end of question or answer indicates an interruption.  ". . ." indicates a trail-off by the speaker. No testimony omitted.  "Uh-huh" indicates an affirmative sound.  "Huh-uh" indicates a negative sound.</p>	<p style="text-align: right;">Page 5</p> <p style="text-align: center;"><b>PROCEEDINGS</b></p> <p>1  2 THE VIDEOGRAPHER: We're now on the record.  3 Today's date is Friday, August 9th, 2019. The time  4 is 9:16 a.m.  5 Will the court reporter please swear in the  6 witness.  7 (Patricia K. Herman was administered the oath by  8 the court reporter.)  9 MS. HERMAN: I do.  10 -----  11 <b>DIRECT EXAMINATION</b>  12 BY MR. SCOFIELD:  13 Q. Ms. Herman, good morning.  14 <b>A. Good morning.</b>  15 Q. My name is Graham Scofield. I represent a lady  16 by the name of Sherry Cunnison. She's filed a lawsuit  17 regarding an experience she had with the Jacuzzi walk-in  18 tub, and I understand that you and your mother had an  19 experience with a Jacuzzi walk-in tub as well. Is that  20 right?  21 <b>A. That's correct.</b>  22 Q. Okay. And since I represent the plaintiffs in  23 this case, I'm going to be asking the questions first. I  24 think you probably know that by virtue of being an  25 attorney yourself. Right?</p>

<p style="text-align: right;">Page 10</p> <p>1 (Plaintiffs' Exhibit 1 [Owner's Manual] was 2 marked for identification.) 3 BY MR. SCOFIELD: 4 Q. Okay. What else do we have here? 5 <b>A. These are pictures of the bathroom where the tub 6 was actually installed into.</b> 7 <b>The first one is going to be just from looking 8 at it from the walking-in area.</b> 9 <b>The second one is going to be the side of the 10 tub there.</b> 11 <b>The third one is going to be, actually, the tub 12 with the door closed.</b> 13 <b>Fourth one is the tub with the door open.</b> 14 <b>Aerial shot -- and I don't know if you can see 15 that or not. There's a little film that's on the tub, 16 which I think my emails explains to.</b> 17 <b>This is the tub looking down at it.</b> 18 <b>And this one, I don't know if you can see that 19 little patch there, but that's the inside of the tub too.</b> 20 Q. Okay. 21 <b>A. Those are pictures of the tub. And that's as of 22 yesterday.</b> 23 Q. All right. 24 MR. SCOFIELD: So I'm going to mark these 25 consecutively, okay?</p>	<p style="text-align: right;">Page 11</p> <p>1 (Plaintiffs' Exhibit 2 [Photograph], Plaintiffs' 2 Exhibit 3 [Photograph], Plaintiffs' Exhibit 4 3 [Photograph], Plaintiffs' Exhibit 5 [Photograph], 4 Plaintiffs' Exhibit 6 [Photograph], and Plaintiffs' 5 Exhibit 7 [Photograph] were marked for 6 identification.) 7 BY MR. SCOFIELD: 8 Q. What else do you have in front of you? 9 <b>A. I have the information that started this whole 10 thing. I had purchased the Jacuzzi tub for my mom, 11 because they said later on she may lose her mobility. So 12 this is before she lost her mobility.</b> 13 <b>But I noticed that it had an ADA-compliant 14 contoured seat design. That was the only reason why I 15 purchased the Jacuzzi tub.</b> 16 <b>I liked the Jacuzzi name. I mean, we have 17 Jacuzzi tubs in our other tubs (sic). But since it had 18 the ADA-compliant seat, that sold me more than -- I think 19 there was another one that was out at the same time, a 20 little threshold walk-in tub.</b> 21 <b>So these are the actual things that started the 22 whole issue. So that is why. So these are the actual 23 promotions that I got with Fairbanks Construction that 24 promoted that ADA-contoured seat.</b> 25 Q. Okay.</p>
<p style="text-align: right;">Page 12</p> <p>1 MR. SCOFIELD: And I'm going to mark those as 2 Exhibit 8. 3 (Plaintiffs' Exhibit 8 [Promotions] was marked 4 for identification.) 5 THE WITNESS: The next thing I have, I have some 6 printouts of the calendar. I have this one backwards 7 in time, so excuse me. 8 The first printout was the calendar from when I 9 actually had the installation, which occurred on July 10 30th, 2014. And that was by Fairbanks. The sales 11 promo came before that, but I don't remember when. 12 It was only a couple of days. 13 Then on August 14, Duane at Fairbanks came back 14 out, because I was complaining about the contoured 15 seat and they were going to see what they could do 16 about changing that out. 17 MR. SCOFIELD: I'll mark that as Exhibit 10. 18 (Plaintiff's Exhibit 9 [Email, 7/17/2014] and 19 Plaintiffs' Exhibit 10 [Calendar Printout] were 20 marked for identification.) 21 THE WITNESS: Then he came back out again on 22 August 20th, 2014. This is all about the contoured 23 seat issue. And they were going to look and see what 24 they can do at that point, because they were claiming 25 that it was a fixture, even though we had already</p>	<p style="text-align: right;">Page 13</p> <p>1 discussed this issue when it was on the driveway. 2 MR. SCOFIELD: Uh-huh. 3 THE WITNESS: And then they came back out on 4 October 2014, still trying to take care of the same 5 issue. 6 After all of that had happened, they then 7 suggested -- because it went into the holidays. 8 Which, of course, I continued to bother Gordon 9 Fairbanks, who is the general -- general contractor 10 out of Ocala. They're the authorized dealer that put 11 in the tub. 12 So I was a little upset about that. Now, the 13 reason I was upset about that too is I wanted that 14 contoured seat. And when they actually put it in, I 15 had my mom get in it the next day, because I wanted 16 to clean it because -- you know. So I cleaned it. 17 So then I had her get in it the next day. And I 18 was on my way to go out and do laundry, and on -- on 19 the side of the wall that's this way (indicating), I 20 have a mirror. So she's sitting in the tub, and I'm 21 just making sure she's okay and she's all right. 22 So as I'm gathering up the laundry and I'm about 23 to walk out, I just looked back, and when I looked 24 back, she just fell into the bottom of the tub. 25 So I ran back over to the tub, and I grabbed and</p>

1 I pulled her out, and I'm like, "Are you okay?" And  
2 I helped her to get back on the seat. And I let go  
3 of her, and she just slid down again.

4 So then I'm tall, so I had to jump over the tub  
5 and get into the tub and lift her up and hold her  
6 there. Put my knee in between her legs, my arm on  
7 her chest, turn off the tub, drain the tub, and then  
8 get her out.

9 So that all happened in the first week of  
10 August, and then that's when I started calling. And  
11 they had to come out to see what was going on,  
12 because I needed the contoured seat. So that was the  
13 reason why I got the contoured seat.

14 All right. So after they came out, we went  
15 through this issue up until late October, early  
16 November of 2014. Fairbanks finally responded and  
17 said, "Look." They're just the general contractor  
18 that installs the tub. If the tub is an issue, I  
19 need to take it up with Jacuzzi.

20 I called Jacuzzi, and Jacuzzi told me that I  
21 needed to actually contact -- what is that lady's  
22 name? -- Age in Marketing. Yes. I needed to contact  
23 FirstSTREET online, because they're the ones that  
24 actually handle the advertising. Jacuzzi in no time  
25 ever has ever made a walk-in tub with a contoured

1 Apparently, they had pulled everything off line  
2 about the contoured seat, but I had screenshots of  
3 that stuff too. Because when they were saying there  
4 was no such thing, it was odd to me.

5 Anyway, so then Audrey Martinez is saying  
6 there's no such thing, I'm making it up. These are  
7 all the emails from her, which are extremely nasty,  
8 and I don't even want to go through that.

9 Then I had to talk to Ron Templer, who is  
10 supposed to be general counsel of Jacuzzi, who was  
11 one of the nastiest corresponding people I've ever  
12 dealt with either. His lovely writing is there.

13 Then -- and all I wanted, simply, was just a tub  
14 with a seat, or get me a modification of a seat. And  
15 Fairbanks Construction said they would put in some  
16 sort of an electronic Hoyer lift for my mom to be  
17 lowered into the tub so she wouldn't slide. None of  
18 that was ever done.

19 So eventually, what ended up happening was  
20 Fairbanks Construction came back out. They had to  
21 take the door off of the tub, and we just used the  
22 tub as just a sit and then a shower. And that was  
23 it. Because my mother was not litigious, and she  
24 didn't want to sue Jacuzzi or anybody.

25 But I did tell Jacuzzi -- and I even sent them

1 seat.

2 And I'm like, "But I'm looking at it, and it  
3 says it."

4 "That's not our issue" is what Jacuzzi told me.

5 So then that was from Deborah Nuanes, who is the  
6 consumer relations for Aging in Place.

7 So these are the emails that I first got. So  
8 that was the first email I got when I started  
9 fighting about these things.

10 I called back to Jacuzzi after I talked to the  
11 Aging in Marketing place, and I spoke with somebody  
12 by the name of Nick, who transferred me to Megan  
13 Davis, who is a supervisor over the FirstSTREET tubs  
14 division, and her phone was disconnected.

15 So, anyway, I called back, and I spoke with  
16 Nick, and then Megan went to lunch. So I was  
17 transferred to voicemail. I never heard from these  
18 people. So that happened on that day.

19 Naturally, you know, I'm using the tub with the  
20 shower. I'm still waiting for Fairbanks to help me.  
21 Fairbanks isn't doing anything.

22 Then I started bothering Jacuzzi. Audrey  
23 Martinez. She's the one who told me that it never  
24 had any mention of any ADA-contoured seat. I showed  
25 them what I have.

1 pictures of modifications they can do. They didn't  
2 want to help me, because they didn't want to use a  
3 competitor's brand. And I'm like, "But this is a  
4 dangerous tub."

5 Fairbanks construction, the people that came  
6 out, told me, that if you're 80, that the pressure of  
7 the water is going to push you.

8 The gentleman that sold me the tub never said  
9 anything about that. And I wouldn't even think about  
10 it because the seat was contoured, so I wouldn't have  
11 to worry about that.

12 But the seat is actually -- not only is it not  
13 contoured, Jacuzzi told me it's angled down because  
14 it doesn't want standing water to collect and get  
15 bacteria.

16 So you've got jets pushing you, and they are  
17 strong jets. And I got into that tub myself. And  
18 I'm tall. I'm five-eleven. And it is a strong jet.  
19 And if I put my feet out, I can catch myself so I  
20 won't slide off. I'm strong enough that I can  
21 actually put my feet down and I won't slide.

22 But for somebody that's elderly, the seat is  
23 kind of high to begin with, and the amount of water  
24 that's pressing them is fast.

25 So I told Ron Templer, I told Audrey Martinez --

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<p style="text-align: right;">Page 26</p> <p>1 Jacuzzi and Fairbanks didn't believe me, even though they 2 already had my full cash payment. I think if I would have 3 done financing, I wouldn't have an issue.</p> <p>4 But since they already had the money, they 5 didn't believe me. They had to make me go in to my mom's 6 doctor, her oncologist, to get something to show that 7 there was something wrong with her.</p> <p>8 Then I had to go to her physical therapist to 9 show there was something wrong with her. Then I had to go 10 to an occupational therapist to show she couldn't actually 11 do her ADL, her activities of daily living.</p> <p>12 And then I had to go to -- I had a private 13 psychotherapist for my mom, who had helped me line up 14 different people that I need, subspecialties, because I 15 would never leave my mom. So I was there all the time.</p> <p>16 And they had to know if that person -- just if I 17 was telling the truth about what was going on with my mom. 18 And that really upset me, because it shouldn't matter. 19 You have the money. Nobody just pays out of pocket for 20 these tubs. And you lied about the tub, and you have the 21 proof that the tub is a lie.</p> <p>22 And even if Jacuzzi didn't know about it, you've 23 got to understand that there's still materials out there 24 saying this is what it is, and it's not.</p> <p>25 And they could have fixed it. They could have</p>	<p style="text-align: right;">Page 27</p> <p>1 bought it from the manufacturer and just stuck it in 2 there. I wasn't going to tell anybody. I just needed a 3 tub for my mom.</p> <p>4 Sorry. I digress. Sorry.</p> <p>5 (Plaintiffs' Exhibit 18 [Email, 4/6/15] was 6 marked for identification.)</p> <p>7 BY MR. SCOFIELD:</p> <p>8 Q. This is Exhibit 18.</p> <p>9 A. Okay.</p> <p>10 Q. Jacuzzi 5025 to 5026. Can you identify that for 11 us?</p> <p>12 A. Yes. Okay. So this is the -- this is April 13 6th, an email that I wrote to Audrey, cc'ing Bob Rowan and 14 Gordon Fairbanks and Rick Ragle.</p> <p>15 And this is when they brought out that NASA 16 thing I was telling you about, that they just supposedly 17 stick it on the seats. This was after we tried it out.</p> <p>18 Okay. "Good afternoon, Audrey. Last Thursday, 19 Fairbanks, Rick" -- I put "Eagle" because I didn't know 20 his name -- "and another gentleman came out and repaired 21 the leaking faucet and hand shower and removed your 22 product that was previously placed on the seat to prevent 23 my mother from slipping off the seat into the tub.</p> <p>24 "After cleaning the seat and letting it dry for 25 several hours, Rick then applied the material that you had</p>
<p style="text-align: right;">Page 28</p> <p>1 sent to the seat."</p> <p>2 Okay. And let me back up, because they did do 3 another step that I did forget. They came out on March 4 25, and they sprayed the seat, and that's what Audrey was 5 talking about. It wasn't the NASA thing first. They 6 sprayed the seat with the textured stuff that you actually 7 have in the hot tubs. It's like when you're walking on 8 the bottom of a swimming pool, that really abrasive stuff 9 that will, like, scratch your feet and scratch your skin. 10 And my mom at this time was like 79, I think it was. So 11 anyway -- but it was abrasive. And I didn't know it was 12 going to be like that. It didn't work anyway, because she 13 slid.</p> <p>14 So they sent these people now out to wipe that 15 off. Now, that was what we were all talking about on the 16 March 25 email. So when I was upset about that didn't 17 work, then this is now the NASA thing.</p> <p>18 Okay. So Rick and the other people that came 19 from Fairbanks came with this glue stuff -- because it was 20 like a spray glue they sprayed on there. So they came and 21 they took that off, the adhesive off.</p> <p>22 Then they "applied the material that you had 23 sent to the seat" -- because they FedEx'ed the material 24 out to me, and I gave them the FedEx package.</p> <p>25 "This was last Thursday. The" -- excuse me.</p>	<p style="text-align: right;">Page 29</p> <p>1 "The tub was not used on Thursday. I have 2 attached pictures of the faucet, hand, and shower seat. I 3 have no complaints with the work that was completed by 4 Rick and his associate.</p> <p>5 "I must tell you that when I first saw the 6 package that the material was shipped in, the FedEx letter 7 envelope, I was a little taken back. When Rick opened the 8 package and showed me the actual product, I was extremely 9 skeptical and worried. However, since I've repeatedly 10 told you that I need a contoured seat, that my mother is 11 in a wheelchair, not mobile, not weight-bearing, my 12 concern about her slipping again in your tub and your 13 reply was to send this product for my mother to utilize, 14 which would solve the problem of her slipping off of the 15 seat of your tub, I trusted you with my mom's safety.</p> <p>16 "On Friday morning, my mother utilized the new 17 product for the first time for a seated shower. Both of 18 our anxiety levels were up because we were worried about 19 her slipping off the seat.</p> <p>20 "When my mother entered the dry tub and sat on 21 the dry seat, she had no slippage. When my mother used 22 the shower wand, which was relocated to the left side of 23 the tub to the right, there was no slippage. The shower 24 wand placement works perfectly for my mother. The water 25 pressure is the strongest it has ever been.</p>

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<p style="text-align: right;">Page 98</p> <p>1 that -- I think on Exhibit 20, there seems to be some</p> <p>2 modifications that Jacuzzi has done.</p> <p>3 So I'm not sure. So I can't --</p> <p>4 Q. Okay --</p> <p>5 A. I mean, I'm not going to say the expert is</p> <p>6 wrong. I'm just talking about the tub that I know that my</p> <p>7 mom -- I bought for my mom, yeah. That's not ADA</p> <p>8 compliant. I don't know about the ones that are --</p> <p>9 Q. And, again, are -- are you an ADA-compliance</p> <p>10 attorney?</p> <p>11 A. No. I'm a daughter of a woman who has to bathe</p> <p>12 her mom who would slide off that thing. And her -- and</p> <p>13 thank God that I shut down my law practice so I could take</p> <p>14 care of my mom, because she at least got to live. So</p> <p>15 yeah. And I feel sorry, once again, for the people that</p> <p>16 didn't.</p> <p>17 Q. Okay. But, again, your belief that this seat is</p> <p>18 not contoured in compliance with the ADA requirements is</p> <p>19 based upon our own opinions and your own beliefs based</p> <p>20 upon your own experience.</p> <p>21 A. Just like the -- yes. And just like the</p> <p>22 expert's opinion is only limited to those two tubs they</p> <p>23 looked at. Those people never looked at my mother's tub.</p> <p>24 So if you want me to comment on their tubs, I would need</p> <p>25 to see it.</p>	<p style="text-align: right;">Page 99</p> <p>1 But if they were to come and look at this tub, I</p> <p>2 believe they would say the same thing as me. You can't</p> <p>3 pin their expert opinion on tubs they haven't seen. This</p> <p>4 one, they haven't seen.</p> <p>5 Q. Well, just to let you know, their experts</p> <p>6 inspected the actual tub that's at issue in our case here,</p> <p>7 ran tests on the seat in the tub --</p> <p>8 A. Uh-huh.</p> <p>9 Q. -- measured the seat of the tub, and all came up</p> <p>10 with the opinion that it is ADA compliant.</p> <p>11 A. But that's still not this tub. I'm talking</p> <p>12 about this tub. So I don't know -- I don't know the facts</p> <p>13 of your case. I just want to make sure you know that. I</p> <p>14 don't know that.</p> <p>15 Q. And so as I'm clear, then, all of your testimony</p> <p>16 today only has to do with the tub that your mother</p> <p>17 actually bought --</p> <p>18 A. Which is the Jacuzzi, the model number that I</p> <p>19 already said before on this particular case.</p> <p>20 Q. Okay.</p> <p>21 MR. GOODHART: All right. I don't have any</p> <p>22 other questions. Thank you.</p> <p>23 THE VIDEOGRAPHER: Everybody done?</p> <p>24 MR. SCOFIELD: All done.</p> <p>25 THE VIDEOGRAPHER: Yeah. Do you have to do</p>
<p style="text-align: right;">Page 100</p> <p>1 read/waive on the record?</p> <p>2 MR. GOODHART: Yeah. In --</p> <p>3 THE WITNESS: I waive.</p> <p>4 MR. SCOFIELD: You waive? Okay.</p> <p>5 THE VIDEOGRAPHER: This concludes the</p> <p>6 deposition. We are now off the record. The time is</p> <p>7 11:05 a.m.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 101</p> <p style="text-align: center;">CERTIFICATE OF REPORTER</p> <p>STATE OF FLORIDA :</p> <p>COUNTY OF ORANGE :</p> <p>I, Linde R. Blosser, Court Reporter and Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing deposition; that a review of the transcript was not requested; and that the foregoing transcript, pages 4 through 90, is a true record of my stenographic notes.</p> <p>I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.</p> <p>Dated this 24th day of August 2019.</p>

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*CERTIFICATE OF OATH*

STATE OF FLORIDA :

COUNTY OF ORANGE :

I, Linde R. Blosser, Notary Public, State of Florida, certify that Patricia K. Herman personally appeared before me on August 9, 2019, and was duly sworn.

Witness my hand and official seal this 24th day of August 2019.



Notary Public, State of Florida  
My Commission FF 997332  
Expires 05/31/2020

Identification:

Produced identification: Yes

Type of ID produced: Personally known to me

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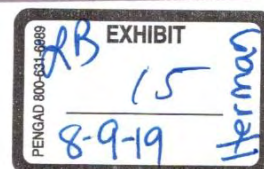
From: Eunice Aikins-Afful eaikins@hotmail.com  
Subject: Re: warranty issue  
Date: Jan 5, 2017 at 12:04:24 PM  
To: Patricia Herman saph2005@gmail.com

Proud of you - keep at it!

Don't quit Suffer now and live the rest of your life as a champion - Muhammad Ali

From: Patricia K. Herman, Esquire <lopkhpa@gmail.com>  
Sent: Thursday, January 5, 2017 4:28 PM  
To: Jerry Melvin  
Cc: Gordon Fairbanks  
Subject: Re: warranty issue

Attached please find the pictures you requested regarding the door. Also, I attached pictures of the faucet and handheld spray to show you that it has not been re  
the time to review my prior email and your notes. I can be reached at my home number today: (407)774-9129. Thank you!





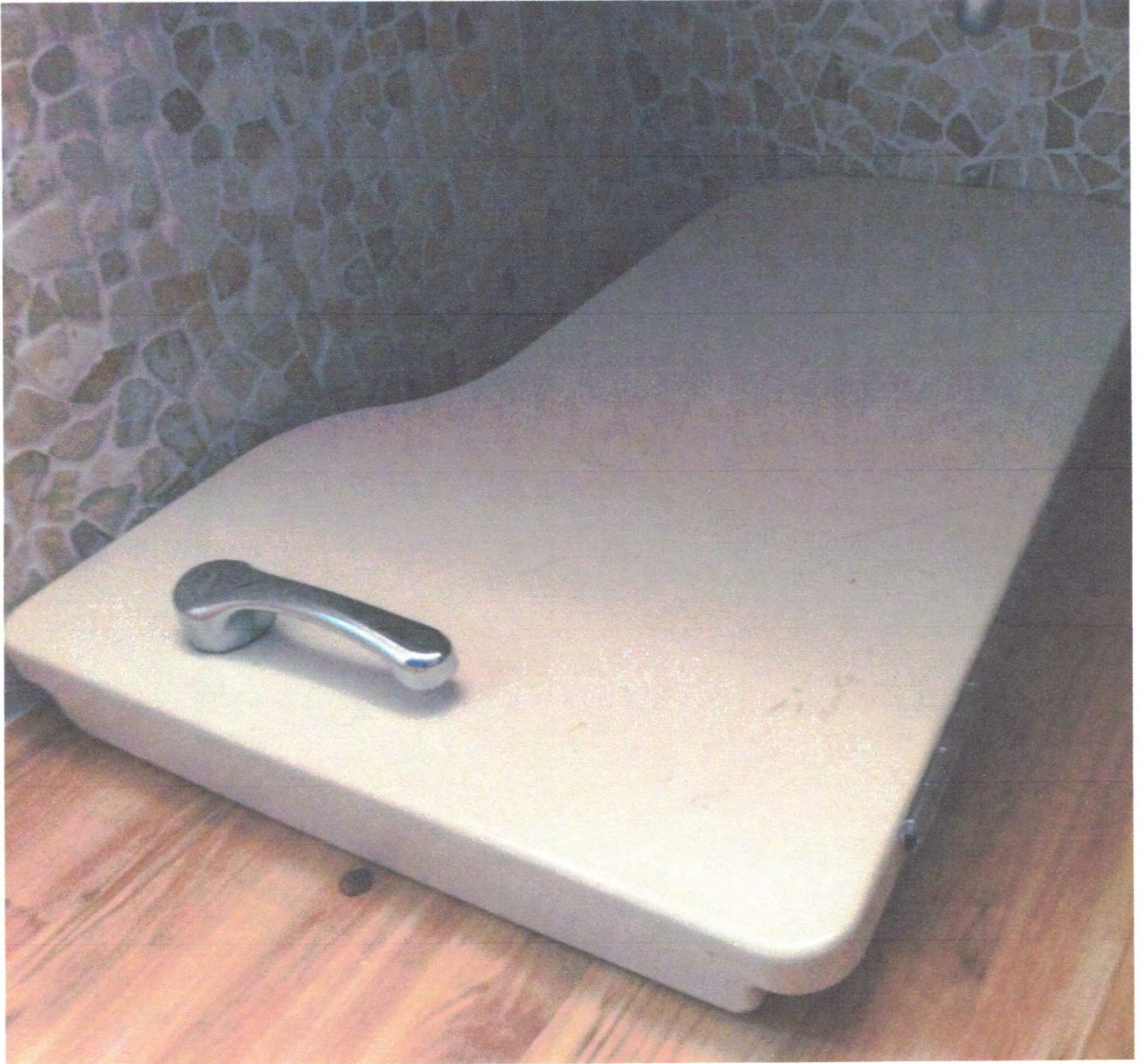


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~ Tricia ~

Sent from my iPad

On Jan 5, 2017, at 10 11 AM, Jerry Melvin <[jerry@fairbanksconstruction.com](mailto:jerry@fairbanksconstruction.com)> wrote:

My apologies then. If you could send me a picture of the door and the missing screws, I should be able to find what's needed. I'm not sure if we're talking about mechanism or for the latch. If you could do that, I will make sure we come with everything needed for repairs. Also I am curious as to who it was who "deattach" Thank you for your patience and whenever I receive pictures I will contact you to schedule

---

**From:** Patricia K. Herman, Esquire [<mailto:lopkhpa@gmail.com>]

**Sent:** Wednesday, January 04, 2017 4 20 PM

**To:** Jerry Melvin <[jerry@fairbanksconstruction.com](mailto:jerry@fairbanksconstruction.com)>

**Cc:** Gordon Fairbanks <[gordon@fairbanksconstruction.com](mailto:gordon@fairbanksconstruction.com)>

**Subject:** Re: warranty issue

Jerry

The faucet was never replaced. The last time the service manager came out he did not have the correct part for the faucet. He said he was unaware of a problem (and kept screws so no other unauthorized person could reattach) for the hoier lift installation, which was later declined by Fairbanks to install. The last email prior appointment. That was in May 2016, I believe. However, my Mom was in the hospital for the next several months, and I was unable to follow up on scheduled repair, and I am requesting the work be completed.

Thank you  
~ Tricia ~  
Sent from my iPad

On Jan 4, 2017, at 3:14 PM, Jerry Melvin <jerry@fairbanksconstruction.com> wrote:

Good afternoon Ms. Herman. Frankly I am quite confused by the email yesterday. On 5/9 of last year, you left a voice mail requesting our company to install a tub that we had not responded to your message. At that time, you also asked about permits. After extensive research of our files, I found no requests for warranty work during the time period between Gordon, Bob Rowan, myself, and you. In listening to the phone conversation between us on the 11<sup>th</sup>, I agreed to send a crew by to check the tub. In the email you can see that now, almost 8 months later, you want us to come by. In reviewing the service history of your tub, I find a request in October of 2016 of the same year, I sent a technician to change out. On 4/2 of the next year, I again sent another tech to change the whole kit, handles, diverter, spout, handheld, and I declined your request to replace the faucet again. I am giving you Jacuzzi's service number. Also am not sure what door needs to be reattached or what screw supervisor, was the last representative from our company to do any actual work at your home, and he has no recollection of any screws from any door missing in this matter and the number to Jacuzzi is 1 800 288 4002. If I can be of further assistance please feel free to contact me.

Jerry Melvin  
Operations Manager  
Fairbanks Construction  
352 732-8600

**From:** Patricia K. Herman, Esquire [mailto:lopkhpa@gmail.com]  
**Sent:** Tuesday, January 03, 2017 4:45 PM  
**To:** Jerry Melvin <jerry@fairbanksconstruction.com>  
**Subject:** Re: warranty issue

Good afternoon Jerry

I need repair work done to the tub. The faucet still needs to be replaced, and the door still needs to be reattached. Also, please ensure that they bring back the tub that was available for service? Thank you.

~ Tricia ~  
Sent from my iPad

On May 12, 2016, at 3:09 PM, Jerry Melvin <jerry@fairbanksconstruction.com> wrote:

Good afternoon Ms. Herman. I tried earlier to reach you via phone but was unsuccessful and your mailbox was full and could not leave a message. When you have our best crew coming through Orlando on Monday the 16<sup>th</sup> in the afternoon late and would like to schedule them to come by your home to fix the warranty issue that's ok too. Thank you.

Jerry Melvin  
Operations Manager  
Fairbanks Construction  
352 732-8600

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From: **Templer, Ron** Ron.Templer@jacuzzi.com  
 Subject: **RE: Follow-Up to Your Call**  
 Date: **May 11, 2016 at 8:22:17 PM**  
 To: **Patricia K. Herman, Esquire** lopkhpa@gmail.com  
 Cc: **gordon@fairbanksconstruction.com**

---

Ms. Herman,

I am somewhat confused by your email. I am not aware of any request for warranty repairs. If there is something wrong with the tub (aside from your request for a different seat shape), please send me the details.

To be clear and summarize what has transpired to date, the information our company has been provided is that approximately a year after your mother purchased her bathtub from an independent dealer, you informed the company that due to your mother's medical condition she was having difficulty sitting up in the tub. In an effort to accommodate your mother's condition, our company became involved and offered several options to increase the friction of the tub seat, and worked with you and Fairbanks Construction in that regard. First, our company approved application of Liquiguard GripCote on the tub seat. It is our understanding that after the GripCote was installed by Fairbanks, you asked that it be removed. Thereafter, at your request our company paid for a Kahuna Grip mat to be installed on the seat of the tub, again to address your mother's medical condition. Following installation of that mat, you advised that due to your mother's medical condition you wanted a tub with a "contoured" seat, and requested the Jacuzzi® tub be removed and replaced by a tub manufactured by one of our competitors. However, as we told you last year, that was not something our company would accommodate. As we have told you several times, we want your mother to be able to enjoy the use of the tub she purchased, but are not aware of anything about the subject tub that "failed" so there is nothing to fix, and our company will not replace the Jacuzzi® tub with a tub of one of our competitors.

After narrowing the issue to something to help your mother sit in the tub, in July 2015 you sent me a photo of a walk in tub seat from another manufacturer, and requested the Jacuzzi® tub be modified as depicted in the photo. As I told you at that time, following receipt of your email I did some research in regard to the product depicted in the photo you sent and as I had previously told you, your mother's Jacuzzi® bathtub is made from acrylic sheets formed on large molds. Once formed, the bathtub cannot be reconfigured, and the molds cannot be modified for individual applications. Aside from our company not being able to make the seat modification you requested (which would require cutting out and reconnecting by hinges a portion of the seat), it did not appear that even if the modification could be done that it would help your mother's ability to sit in a tub. The photograph you sent depicted a flat seat with a portion that is hinged. Based on what I located on the internet it appears that the seat depicted in the photo you sent swung up solely for ease of entry. The seat did not appear to have any design to help a person support their weight while in the tub.

Thereafter, on August 14, 2015, I received a voicemail message from you in which you stated a therapist had recommended you get a harness and track system for your mother to use for taking a bath. In the message you referred to an email that I never received. That same day I sent you an email advising that I had not received the email you mentioned, that I was not familiar with the harness and track system you mentioned, and suggested you contact Fairbanks Construction. Your email today is the first contact I have received from you since I sent the email in August 2015.

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Bottom line is that while we continue to want your mother to enjoy the tub she purchased, I am not sure what you are requesting from our company at this time. I have not been included in any contact you may have had with Fairbanks Construction since August 2015, and as such, assumed you resolved the issues with your mother being able to sit up in the tub. Since your mother did not purchase the tub from our company, and our company did not install the tub, we do not have any permits regarding the installation. Further, we have never been advised of any defect in the tub. If you have any information indicating the tub is defective or if there is something more you want to send me to review, please forward that to me.

**Ron Templer**  
Corporate Counsel



[www.jacuzzi.com](http://www.jacuzzi.com)  
13925 City Center Drive, Suite 200 / Chino Hills, CA 91709  
909.247.2073 (o)

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**From:** Patricia K. Herman, Esquire [<mailto:lopkhpa@gmail.com>]  
**Sent:** Wednesday, May 11, 2016 12:34 PM  
**To:** Templer, Ron  
**Cc:** [gordon@fairbanksconstruction.com](mailto:gordon@fairbanksconstruction.com)  
**Subject:** Re: Follow-Up to Your Call

Good afternoon,

It has been almost one year since you last corresponded with me regarding my Mothers Jacuzzi Walk in tub. Nothing has been done to the tub, not even the warranty repairs. I have contacted Fairbanks on numerous occasions, and have even spoken with Mr. Fairbanks, wherein I received a lot of promises, however absolutely no resolution. I have requested copies of the permits from Fairbanks in order to complete the inspection of the tub.

I am requesting the return of the monies that I have paid for this defective tub and a copy of the permits that I paid for and Fairbanks pulled within seven (7) business days.

Thank you.

Patricia Herman

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Sent from my iPad

Begin forwarded message:

From: lopkhpa herman <[lopkhpa@gmail.com](mailto:lopkhpa@gmail.com)>  
Date: March 25, 2015 at 4:51:01 PM EDT  
To: "Martinez, Audrey" <[audrey.martinez@jacuzzi.com](mailto:audrey.martinez@jacuzzi.com)>  
Cc: "[bob.rowan@jacuzzi.com](mailto:bob.rowan@jacuzzi.com)" <[bob.rowan@jacuzzi.com](mailto:bob.rowan@jacuzzi.com)>  
Subject: Re: Jacuzzi Walk In Tub ADA Contoured Seat Design and Grab Bars  
- Fairbanks Construction  
Audrey:

Attached are the two Jacuzzi publications regarding the "ADA-complaint" contoured seat design".

I forgot to attached under other email.

Thanks.

Patricia

On Wed, Mar 25, 2015 at 4:48 PM, lopkhpa herman  
<[lopkhpa@gmail.com](mailto:lopkhpa@gmail.com)> wrote:

Good afternoon Audrey:

I am scheduled to have Fairbanks come out tomorrow. They were to confirm delivery of the part and installation time, but, I have not heard anything as of yet. I have been thinking about the product that you were so kind to send. However, I do not believe this will solve the problem. It is not

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my intention to place a molded seat on top of the tubs existing seat. This will not be safe for my Mom. Her safety is my only priority.

I went back over the Jacuzzi literature that I was provided, and located yet another brochure, that was given to me at the time of my purchase of the tub, published by Jacuzzi specifying and identifying the existence of an ADA-compliant contoured seat design. I have attached the copy of Jacuzzi's brochure and another copy of the advertisement that you had stated was created by Fairbanks.

When I spoke with Bob, he informed me that he would rectify this situation to my satisfaction.

All I want is what I purchased, a cream/biscuit colored walk in jacuzzi tub with Air Therapy; Hydro Therapy; Aroma Therapy; Chroma Therapy; low entry way; wide door with knee cut out; non-skid floor; anti-scald water valves; inline heater; (2) grab bars; operational faucets in placed in the correct location; and all of the other amenities that were promised to me at the time of the purchase of your tub.

----- Message truncated -----

From: lopkha herman lopkha@gmail.com  
Subject: Re: Walk-in-Bathtub  
Date: Jul 16, 2015 at 2:44:16 PM  
To: Templer, Ron Ron.Templer@jacuzzi.com  
Bcc: Cheryl Herman crhrjp@yahoo.com, Eunice Aikins-Afful  
eaikins@hotmail.com

---

Good afternoon Ron:

My Mother's Physical Therapist will be out to the home on Monday. I will have him tell me what specifically needs to be done to the tub to accomodate my Mom. I do remember that Fairbanks was referring to a form of hoist that my Mom could sit in that would lower her into the tub. I was unsure of how to construct that, however, I will check with the Physical Therapist. The problem that I am having is that any accomodation would have to be made by modifying the tub, and I am concerned with potential leaks. That is why I would prefer Jacuzzi to handle this request.

Thank you for your assistance. I will be in touch after I speak with the Therapist.

Patricia

On Wed, Jul 15, 2015 at 9:08 PM, Templer, Ron  
<[Ron.Templer@jacuzzi.com](mailto:Ron.Templer@jacuzzi.com)> wrote:

Dear Ms. Herman,

Following receipt of your email I did some research in regard to the product depicted in the photo you sent. As I told you when we spoke a couple weeks ago, our bathtubs are made from acrylic sheets formed on large molds. Once formed, the bathtubs cannot be reconfigured, and the

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molds cannot be modified for individual applications.

Aside from our being unable to make the seat modification you requested (which would require cutting out reconnecting by hinges a portion of the seat), it does not appear that even if the modification could be done that it would help your mother's ability to sit in a tub. The photograph you sent depicts a flat seat with a portion that is hinged. While I do not have any specific knowledge regarding the tub depicted in the photographs, based on what I located on the internet it appears that the seat swings up solely for ease of entry. The seat does not appear to have any design to help a person support their weight while in the tub.

I spoke with Gordon Fairbanks after our call, and was told he previously suggested you have a physical therapist come to the home and assess what medical device(s) would help your mother in the tub. That proposal sounded like a good idea and we support that suggestion.

**Ron Templer**

Corporate Counsel



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---

**From:** Patricia K. Herman, Esquire [mailto:[lopkhpa@gmail.com](mailto:lopkhpa@gmail.com)]

**Sent:** Saturday, July 04, 2015 12:25 PM

**To:** Templer, Ron

**Subject:** Re: Walk-in-Bathtub

Good afternoon and happy Fourth of July !

Attached is the picture of a seat modification that I am requesting be done to the tub. I believe that this modification will resolve the slippage with finality. Please advise. Thank you.

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~ Tricia ~

Sent from my iPad

On Jun 22, 2015, at 3:37 PM, Patricia K. Herman, Esquire  
<[lopkhpa@gmail.com](mailto:lopkhpa@gmail.com)> wrote:

[407 774 9129](tel:4077749129) after 3pm EST .

Thank you .

~ Tricia ~

Sent from my iPad

On Jun 22, 2015, at 2:24 PM, Templer, Ron  
<[Ron.Templer@jacuzzi.com](mailto:Ron.Templer@jacuzzi.com)> wrote:

007609

Ms. Herman,

I did leave a message on the number you gave me for your cell phone on Friday.

I'm traveling today, but will call you tomorrow. What is the best number to reach you at tomorrow?

Sent from my iPhone

On Jun 22, 2015, at 1:25 PM, Patricia K. Herman, Esquire <[lopkhpa@gmail.com](mailto:lopkhpa@gmail.com)> wrote:

Good afternoon Mr. Templer:

I just left you a message at your office. I am in receipt of your email from Thursday. I did not receive a call from you on Friday, and was hoping to speak with you today. I am at home today. [407-774-9129](tel:407-774-9129). Thank you.

~ Tricia ~

Sent from my iPad

On Jun 18, 2015, at 2:20 PM, Templer, Ron

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[<Ron.Templer@jacuzzi.com>](mailto:Ron.Templer@jacuzzi.com) wrote:

Ms. Herman,

I received your voicemail message and am having emails and other information referenced in your message pulled so that I can review them before we speak. I hope to be able to call you tomorrow.

**Ron Templer**

Corporate Counsel

<image001.jpg>

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**From:** Patricia K. Herman, Esquire [<mailto:lopkhpa@gmail.com>]

007611

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Sent: Thursday, June 18, 2015 9:35 AM  
To: Templer, Ron  
Subject: Re: Walk-in-Bathtub

Good afternoon.

I just left you a voicemail. If you would be so kind as to call me at your earliest convenience. [407 731 5823](tel:4077315823) cell and [407 774 9129](tel:4077749129) home.

Thank you.

~ Tricia ~

Sent from my iPad

On May 20, 2015, at 8:53 PM, Templer, Ron  
<[Ron.Templer@jacuzzi.com](mailto:Ron.Templer@jacuzzi.com)> wrote:

Dear Ms. Herman,

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to your mother's medical condition you wanted a tub with a "contoured" seat, and requested the Jacuzzi® tub be removed and replaced by a tub manufactured by one of our competitors. However, as stated in Audrey's prior email to you, our company is unable to consider such a request.

Our company continues to want your mother to be able to enjoy the use of the tub she purchased, so please let us know what can be done to so that your mom can use her tub. However, please keep in mind that we are not aware of anything about the subject tub that "failed" so there is nothing to fix, and our company will not replace the tub with a tub of one of our competitors.

007613

**Ron Templer**

Corporate Counsel

<image001.jpg>

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--

*Patricia K. Herman, Esquire*

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407-630-8805 (Facsimile)

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General E-Mail: [lopkhpa@gmail.com](mailto:lopkhpa@gmail.com)

007614

007614

From: Patricia K. Herman, Esquire lopkhp@gmail.com  
Subject: Re: Follow up  
Date: Mar 12, 2015 at 7:27:20 PM  
To: Martinez, Audrey audrey.martinez@jacuzzi.com  
Bcc: lopkhp@gmail.com

---

Thank you Ms. Martinez. I am looking for a picture of the tub similar to the one I was shown. I will send it to you once I locate one. Thanks again!

~ Tricia ~

Sent from my iPad

On Mar 12, 2015, at 1:48 PM, Martinez, Audrey  
<[audrey.martinez@jacuzzi.com](mailto:audrey.martinez@jacuzzi.com)> wrote:

Hi my name is Audrey Martinez. Bob Rowan asked me to look for a solution for the seat of your walk in tub. I am actually on vacation this week but am working on this for you and will have more information early next week.

Please contact me with any questions you might have. I promise we'll make this right for you!

Audrey Martinez

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**Deposition of:**

Nancy Jones

**Case:**

Robert Ansara, et al. v. First Street for Boomers & Beyond, Inc., et al.  
A-16-731244-C

**Date:**

08/02/2019

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<p style="text-align: center;">DISTRICT COURT CLARK COUNTY, NEVADA</p> <p>ROBERT ANSARA, as Special Administrator of the Estate of ) SHERRY LYNN CUNNISON, Deceased; et al., ) Plaintiffs, ) vs. ) No. A-16-731244-C FIRST STREET FOR BOOMERS &amp; BEYOND, INC.; et al., ) Dept No. II Defendants. ) )</p> <hr/> <p style="text-align: center;">VIDEOTAPED DEPOSITION OF: NANCY JONES</p> <p style="text-align: center;">Tucson, Arizona August 2, 2019 9:13 a.m.</p> <p>PREPARED BY: Patricia Gerson, RMR Certified Court Reporter #50429</p>	<p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <th style="text-align: left;">Witness</th><th style="text-align: right;">Page</th></tr> <tr> <td>NANCY JONES</td><td></td></tr> <tr> <td>Examination by Mr. Estrada</td><td style="text-align: right;">6</td></tr> <tr> <td>Examination by Mr. Goodhart</td><td style="text-align: right;">63</td></tr> <tr> <td>Re-Examination by Mr. Estrada</td><td style="text-align: right;">74</td></tr> <tr> <td>Re-Examination by Mr. Goodhart</td><td style="text-align: right;">75</td></tr> </table> <p style="text-align: center;">EXHIBITS</p> <table border="0"> <tr> <th style="text-align: left;">NO. DESCRIPTION</th><th style="text-align: right;">PAGE</th></tr> <tr> <td>1 Photocopy of Jones' driver's license.</td><td style="text-align: right;">6</td></tr> <tr> <td>2 Three photos of a Jacuzzi tub no door.</td><td style="text-align: right;">23</td></tr> <tr> <td>3 Jacuzzi documents.</td><td style="text-align: right;">24</td></tr> <tr> <td>4 (Exhibit Four was not used.)</td><td></td></tr> <tr> <td>5 Photo of Jacuzzi tub with door on.</td><td style="text-align: right;">26</td></tr> <tr> <td>6 Photo of faucets on Jacuzzi tub.</td><td style="text-align: right;">28</td></tr> <tr> <td>7 Photo of grab bar.</td><td style="text-align: right;">31</td></tr> <tr> <td>8 Salesforce documents.</td><td style="text-align: right;">44</td></tr> <tr> <td>9 Jones deposition notice with handwritten notations.</td><td style="text-align: right;">47</td></tr> <tr> <td>10 Business cards and papers re purchase of Jacuzzi tub.</td><td style="text-align: right;">50</td></tr> <tr> <td>11 Pamphlet and brochures from Jones.</td><td style="text-align: right;">54</td></tr> </table>	Witness	Page	NANCY JONES		Examination by Mr. Estrada	6	Examination by Mr. Goodhart	63	Re-Examination by Mr. Estrada	74	Re-Examination by Mr. Goodhart	75	NO. DESCRIPTION	PAGE	1 Photocopy of Jones' driver's license.	6	2 Three photos of a Jacuzzi tub no door.	23	3 Jacuzzi documents.	24	4 (Exhibit Four was not used.)		5 Photo of Jacuzzi tub with door on.	26	6 Photo of faucets on Jacuzzi tub.	28	7 Photo of grab bar.	31	8 Salesforce documents.	44	9 Jones deposition notice with handwritten notations.	47	10 Business cards and papers re purchase of Jacuzzi tub.	50	11 Pamphlet and brochures from Jones.	54
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<p style="text-align: center;">A P P E A R A N C E S</p> <p>IAN ESTRADA, ESQ. RICHARD HARRIS LAW FIRM 801 South Fourth Street Las Vegas, Nevada 89101 Attorneys for Plaintiffs</p> <p>PHILIP GOODHART, ESQ. (Telephonically) THORNDAL ARMSTRONG DELK BALKENBUSH &amp; EISINGER 1100 East Bridger Avenue Las Vegas, Nevada 89101-5315 Attorneys for Defendant First Street</p> <p>JEREMY ALBERTS, ESQ. WEINBERG WHEELER HUDGINS GUNN &amp; DIAL 3685 South Rainbow Boulevard Suite 400 Las Vegas, Nevada 89118 Attorneys for Defendant Jacuzzi</p> <p>ALSO PRESENT: MR. BOBBY SOLTERO, Videographer</p> <p>BE IT REMEMBERED that pursuant to Notice of Taking Deposition in the above-styled and numbered cause, the deposition of NANCY JONES was taken upon oral examination at the Offices of Kathy Fink &amp; Associates, Court Reporters, 2819 East 22nd Street, in the City of Tucson, County of Pima, State of Arizona, before me, PATRICIA GERSON, a Certified Court Reporter in the State of Arizona, on the 2nd day of August 2019, beginning at the hour of 9:13 a.m. on said date.</p> <p style="text-align: center;">* * *</p>	<p>THE VIDEOGRAPHER: I am Bobby Soltero with Oasis Reporting Services. The court reporter is Pat Gerson, also with Oasis Reporting. This is job number 34968.</p> <p>This is the beginning of the videotaped deposition of Nancy Jones, in the case of Robert Ansara, et al., versus First Street For Boomers and Beyond, Inc., et al. Case number A-16-731244-C.</p> <p>Today's date, August 2nd, 2019.</p> <p>The time now is 9:13 a.m.</p> <p>Counsel, please introduce yourselves, then the court reporter will swear in the deponent.</p> <p>MR. ESTRADA: Ian Estrada, for the plaintiffs.</p> <p>MR. ALBERTS: Jeremy Alberts, for the Defendant Jacuzzi.</p> <p>MR. GOODHART: This is Philip Goodhart for First Street, AITHR, and Hale Benton.</p> <p>MR. ESTRADA: And before we get started, I think Phil wanted to put something on the record.</p> <p>MR. GOODHART: Yeah. Before we get going, this is Phil Goodhart on behalf of First Street, AITHR and Hale Benton. I am not present -- physically present for the deposition, as I did not receive confirmation that the deposition was actually going forward.</p> <p>On Wednesday, July 31st, two days ago, I had an e-mail exchange with Catherine Barnhill of plaintiff's</p>																																				

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<p>1 counsel office, inquiring as to both Nancy Jones'</p> <p>2 deposition and Community Builders' deposition. I was</p> <p>3 advised by Ms. Barnhill that both Nancy Jones and</p> <p>4 Community Builders had been served.</p> <p>5 I then inquired as to whether or not any contact</p> <p>6 had been made with those deponents, because in other</p> <p>7 situations, people have been served with subpoenas but</p> <p>8 have not appeared, or their depositions have been</p> <p>9 cancelled.</p> <p>10 Furthermore, I was not notified whether the</p> <p>11 deposition subpoena for Ms. Jones had actually been</p> <p>12 domesticated in the State of Arizona, which would be</p> <p>13 necessary to compel her attendance.</p> <p>14 Ms. Barnhill responded by advising me that she</p> <p>15 would let me know as soon as anybody had actually spoken</p> <p>16 to Ms. Jones to confirm whether or not the deposition was</p> <p>17 going forward.</p> <p>18 As this deposition would have required an expense</p> <p>19 of flying to Tucson, Arizona, as well as possibly staying</p> <p>20 overnight, depending upon the flight situation, I was</p> <p>21 awaiting to hear from Ms. Barnhill or anybody from</p> <p>22 plaintiff's counsel's office as to whether Ms. Jones had</p> <p>23 been contacted, and whether Ms. Jones had in fact</p> <p>24 confirmed she would be appearing for the deposition.</p> <p>25 Therefore, I object to the way that this is</p>	<p>1 THE WITNESS: Back and front.</p> <p>2 BY MR. ESTRADA:</p> <p>3 Q. Do you mind if I call you Nancy, or Ms. Jones, do</p> <p>4 you prefer --</p> <p>5 A. Nancy is fine, mm-hmm.</p> <p>6 Q. Nancy, have you ever been deposed before?</p> <p>7 A. No.</p> <p>8 Q. Okay. So I know this is kind of a weird</p> <p>9 situation.</p> <p>10 A. I've never received a subpoena, either. And that</p> <p>11 was pretty, you know, scary, in a way, because I live by</p> <p>12 myself.</p> <p>13 Q. I understand. So, since it's your first time</p> <p>14 going through one of these, what I'll do is kind of give</p> <p>15 you an outline of what's going to happen, so there's no</p> <p>16 surprises.</p> <p>17 I'll also go over some of the -- lawyers call</p> <p>18 them admonitions, but they're essentially just ground</p> <p>19 rules for a deposition. Okay?</p> <p>20 A. Mm-hmm.</p> <p>21 Q. Okay. So the first ground rule is that the oath</p> <p>22 that you gave is basically an obligation to tell the</p> <p>23 truth.</p> <p>24 So, do you understand that you are under oath and</p> <p>25 are subject to the penalty of perjury?</p>
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<p>1 taking place, and I am hopeful that this could be avoided</p> <p>2 in the future. Thank you.</p> <p>3</p> <p>4 NANCY JONES,</p> <p>5 having been duly sworn,</p> <p>6 was examined and testified as follows:</p> <p>7</p> <p>8 EXAMINATION</p> <p>9 BY MR. ESTRADA:</p> <p>10 Q. Ms. Jones, could you please state your name and</p> <p>11 spell it?</p> <p>12 A. Nancy, N-a-n-c-y, and my middle initial is M,</p> <p>13 Marie, Jones, J-o-n-e-s.</p> <p>14 Q. Okay. Thank you. My name is Ian Estrada, I</p> <p>15 represent the plaintiffs in this lawsuit.</p> <p>16 And, you know, actually, first thing I'll do is I</p> <p>17 have a copy here of your driver's license. Can I just</p> <p>18 show it to you?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. And can you just confirm that is indeed a copy of</p> <p>21 your driver's license?</p> <p>22 A. Yes, it is.</p> <p>23 MR. ESTRADA: Okay. So I'll mark that as</p> <p>24 Exhibit One.</p> <p>25 (Exhibit One marked for identification.)</p>	<p>1 A. Oh, yes, mm-hmm.</p> <p>2 Q. Okay. So basically that's the most important</p> <p>3 rule. We just ask that you tell the truth today.</p> <p>4 A. Mm-hmm.</p> <p>5 Q. Okay? The second rule is, as you see there's a</p> <p>6 nice reporter to your right, and she's writing down</p> <p>7 everything that we say, word for word.</p> <p>8 A. Mm-hmm.</p> <p>9 Q. In a couple weeks, everything that we say is</p> <p>10 going to be turned into a transcript. It will be like a</p> <p>11 movie script, with a booklet.</p> <p>12 Since she's writing down everything we say, word</p> <p>13 for word, it's hard for her to take things down if two</p> <p>14 people are talking at the same time.</p> <p>15 A. Mm-hmm.</p> <p>16 Q. So, normally, in everyday conversation, you might</p> <p>17 hear me saying a question, and halfway through you'll know</p> <p>18 what I'm saying, you'll know what I'm asking, and</p> <p>19 naturally people just jump in and say their answer. But</p> <p>20 that makes it harder for her.</p> <p>21 A. Mm-hmm.</p> <p>22 Q. So, the one thing I ask is that when I'm asking a</p> <p>23 question, please let me finish the entire question, so</p> <p>24 that she can write it down. And then I'll wait for you to</p> <p>25 give your entire answer, so that the transcript is clean</p>



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<p>1 a.m.</p> <p>2 MR. GOODHART: This is Phil Goodhart. I'd just</p> <p>3 like to interpose an objection to this whole line of</p> <p>4 questioning. Form, foundation. And it's all been leading</p> <p>5 up until now, with respect to this issue.</p> <p>6 MR. ALBERTS: I'll join.</p> <p>7 BY MR. ESTRADA:</p> <p>8 Q. Okay. Nancy, where we left off, I think you</p> <p>9 mentioned concerns with --</p> <p>10 A. The grab bar.</p> <p>11 Q. Correct.</p> <p>12 A. And the distance to it.</p> <p>13 And when I'm in the tub and I'm sitting, and I --</p> <p>14 this happened quite a while ago -- and I was on the seat</p> <p>15 and I reached for the grab bar, and the floor -- my feet</p> <p>16 would go up, like this, and I'm still reaching, and --</p> <p>17 Bring it a little bit closer. There.</p> <p>18 And I'm almost to it, but my feet are quite a</p> <p>19 ways up. And I think, I can't do this. And if I would</p> <p>20 have continued and tried to do it, and my feet are</p> <p>21 slipping, I would have fallen. They would have gone up, I</p> <p>22 would have gone back and hit my head on the seat.</p> <p>23 So, I just asked for another grab bar. Couple</p> <p>24 weeks ago. I asked -- I called several times. I called</p> <p>25 and Harry said, well, I'm on my way to Flagstaff, I'll be</p>	<p>1 THE VIDEOGRAPHER: Back on the record at 10:04.</p> <p>2 BY MR. ESTRADA:</p> <p>3 Q. Okay. Nancy, so now the camera is back on.</p> <p>4 Thank you for demonstrating that.</p> <p>5 Just so that I understand, so had you ever called</p> <p>6 anybody from Jacuzzi, or the salesman, or anybody about</p> <p>7 your concerns with the grab bar?</p> <p>8 A. Oh, yes.</p> <p>9 MR. GOODHART: Object to form.</p> <p>10 MR. ALBERTS: Join.</p> <p>11 THE WITNESS: That's when -- I told you I called</p> <p>12 the national number. I don't know where I saw that, in a</p> <p>13 magazine, an 800 number. And I said could you have</p> <p>14 someone in Tucson come see if a new -- another grab bar,</p> <p>15 closer, where I could stand up.</p> <p>16 And they said that there would be somebody from</p> <p>17 Phoenix or somebody -- and that's when, as I told you, I</p> <p>18 said I will never -- and I said be sure to put that all in</p> <p>19 capital letters, because I said I will never buy anything</p> <p>20 that doesn't have service in Tucson, Arizona.</p> <p>21 Because I had Alan's card, but I couldn't get</p> <p>22 hold of him. I guess he was probably busy. I left</p> <p>23 messages, and no one ever showed up.</p> <p>24 BY MR. ESTRADA:</p> <p>25 Q. How tall are you?</p>
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<p>1 down there next week, I'll get somebody down there. And</p> <p>2 nobody came.</p> <p>3 So I called again. And I called Alan, and I</p> <p>4 couldn't get hold of him. And so, I still have the</p> <p>5 slipperiness. And so now I have to stand. I can't use</p> <p>6 the grab bar.</p> <p>7 And I called the national company and I said, I</p> <p>8 need another grab bar that's closer. Some way that I can</p> <p>9 stand up if I'm sitting in that tub.</p> <p>10 And I -- they said, well, somebody from Phoenix</p> <p>11 -- and then I was really upset. I said, I will never --</p> <p>12 and I said put that all in capital letters -- I will never</p> <p>13 buy anything that doesn't have service in Tucson, Arizona.</p> <p>14 And I still -- never got fixed. Never did anything.</p> <p>15 They said they could put a grab bar outside to</p> <p>16 help me get out. I said that's not where I'm having</p> <p>17 trouble. I'm having trouble sitting and reaching for</p> <p>18 where your grab bar is. Never heard from anybody.</p> <p>19 MR. ESTRADA: Okay. Thank you, Nancy. We're</p> <p>20 going to go off the record again so we can put the camera</p> <p>21 back on the tripod. Then we'll pick back up.</p> <p>22 THE WITNESS: Did you understand what I was --</p> <p>23 MR. ESTRADA: Yes.</p> <p>24 THE VIDEOGRAPHER: Off the record at 10:02.</p> <p>25 (Discussion off the record.)</p>	<p>1 A. About -- I was, before surgery, five-four and a</p> <p>2 half. But I'm five-two and maybe a little bit more.</p> <p>3 But I'm, you know -- and I can reach the grab</p> <p>4 bar, but I'm leaning like this, which means that my feet</p> <p>5 start slipping.</p> <p>6 Now if my feet were solid on the floor, I don't</p> <p>7 think I -- I don't think I could reach it yet, even then.</p> <p>8 Q. Right.</p> <p>9 A. Because, you know -- and of course I had talked</p> <p>10 about the seat being pretty hard, and I've got a cushion.</p> <p>11 But you know, that was one of my biggest worries because I</p> <p>12 just can't reach it.</p> <p>13 Q. And so from your seated position, are you able to</p> <p>14 reach the faucet controls?</p> <p>15 MR. GOODHART: Objection, leading.</p> <p>16 THE WITNESS: Oh, not the faucet, no. I fill</p> <p>17 that up before I ever sit down. Of course, I don't sit</p> <p>18 anymore. I mean, I can't.</p> <p>19 BY MR. ESTRADA:</p> <p>20 Q. So when you have used the tub, and it's filled</p> <p>21 with water, and you want to finish using the tub, how do</p> <p>22 you -- what do you do to finish and get out of the tub?</p> <p>23 What's the process that you take?</p> <p>24 MR. ALBERTS: Form.</p> <p>25 MR. GOODHART: Object to form, leading.</p>

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<p>1 THE WITNESS: Well, I stand and then I pull the</p> <p>2 lever up and drain it, and then I get out.</p> <p>3 MR. ESTRADA: Okay.</p> <p>4 THE WITNESS: I haven't used the grab bar much at</p> <p>5 all, you know. I'm already standing and there I have the</p> <p>6 tub, you know, I mean.</p> <p>7 BY MR. ESTRADA:</p> <p>8 Q. So, currently, do you use it as a tub, with the</p> <p>9 water filled up all the way?</p> <p>10 A. Hardly ever. I use it more -- I can stand and</p> <p>11 fill it up to maybe, oh, near my waist or something. And</p> <p>12 then I'm more or less taking a sponge bath. You know, I</p> <p>13 mean, I've got a scrubber, whatever you want to call it,</p> <p>14 I've got that, and I -- that's how I use it lately.</p> <p>15 Q. And why is it that you don't use it?</p> <p>16 A. Well, I can't sit -- if I sit down, then I can't</p> <p>17 safely get up. So -- and if -- then when I'm standing, I</p> <p>18 do -- I will backtrack a minute -- I may use the grab bar</p> <p>19 a little bit, because I do a little marching in place.</p> <p>20 And sometimes the jets work and sometimes they don't. I</p> <p>21 have to push them maybe two or three times sometimes.</p> <p>22 Q. I think I know the answer, but can you tell me</p> <p>23 why you don't sit down in it?</p> <p>24 MR. GOODHART: Object to form, leading.</p> <p>25 THE WITNESS: Because I can't feel safe to get</p>	<p>1 me, he said, don't call them, they won't come.</p> <p>2 Q. Okay. So when is the last time that you used --</p> <p>3 that you sat down in the tub?</p> <p>4 MR. ALBERTS: Form.</p> <p>5 THE WITNESS: At least three months. By myself,</p> <p>6 you know, I'm not -- I just am really safe. I'm clean,</p> <p>7 but I'm safe.</p> <p>8 BY MR. ESTRADA:</p> <p>9 Q. Okay. When is the first time that you called</p> <p>10 anybody about your concern with the grab bar?</p> <p>11 A. Probably three months ago or something, yeah.</p> <p>12 I'm not really sure. That's one thing I wish I would have</p> <p>13 kept a diary of, how many times and the dates that I</p> <p>14 called. But I didn't.</p> <p>15 Q. Okay.</p> <p>16 A. Because I always believed when they said we'll be</p> <p>17 down next week, Wednesday, about 2:00 or something, that</p> <p>18 they'd be there. But I haven't heard.</p> <p>19 Q. Okay. Would you say that the tub that you</p> <p>20 purchased has performed according to your expectations?</p> <p>21 A. No.</p> <p>22 MR. ALBERTS: Form.</p> <p>23 MR. GOODHART: Objection, leading. Form.</p> <p>24 BY MR. ESTRADA:</p> <p>25 Q. In what way has it not performed up to your</p>
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<p>1 up. Safe -- the safety factor is, you know, what I'm</p> <p>2 concerned about. And I've called different times and --</p> <p>3 BY MR. ESTRADA:</p> <p>4 Q. And why do you not feel safe getting up?</p> <p>5 MR. ALBERTS: Form.</p> <p>6 THE WITNESS: Because it's slippery. The floor</p> <p>7 is.</p> <p>8 BY MR. ESTRADA:</p> <p>9 Q. The floor?</p> <p>10 A. It's not -- when I say it's slippery, even the</p> <p>11 little -- the floor, whatever, it still gets slippery.</p> <p>12 And I'm careful what I use.</p> <p>13 Q. Have you heard of something called Kahuna Grip?</p> <p>14 MR. ALBERTS: Form.</p> <p>15 THE WITNESS: What is it?</p> <p>16 BY MR. ESTRADA:</p> <p>17 Q. Have you ever heard of something called Kahuna</p> <p>18 Grip?</p> <p>19 A. No.</p> <p>20 Q. Did you put anything on the floor of your tub?</p> <p>21 A. No. Harry said they would come and put strips or</p> <p>22 something. But like I said, I haven't heard from anyone.</p> <p>23 And I got -- I literally, I got tired of calling.</p> <p>24 And when I called Alan, before he said -- when he</p> <p>25 gave me his card he said, here, take this, he said, call</p>	<p>1 expectations?</p> <p>2 MR. ALBERTS: Form.</p> <p>3 THE WITNESS: Well --</p> <p>4 MR. GOODHART: Objection.</p> <p>5 THE WITNESS: I explained that it's -- I don't</p> <p>6 feel quite as safe as I thought I would be. And the jets,</p> <p>7 sometimes they work, sometimes they don't.</p> <p>8 But expectations, I don't know -- I'm not sure</p> <p>9 how to answer your question, because time-wise, you know,</p> <p>10 I enjoyed it -- I always, always made sure that I had a</p> <p>11 phone with me. Because I -- you didn't ask about</p> <p>12 anything, but I had quite a scare the first night I used</p> <p>13 it.</p> <p>14 BY MR. ESTRADA:</p> <p>15 Q. Can you tell us about that first scare, please?</p> <p>16 A. It was -- yes, it was very scary. I took a phone</p> <p>17 with me, and I always lay the phone right up on this edge</p> <p>18 here. And I take my cell phone and a land line, in case</p> <p>19 somebody tries to reach me. And the reason --</p> <p>20 Q. Just for the record, Nancy's pointing on Exhibit</p> <p>21 Two, to the ledge where --</p> <p>22 A. Not where the door is, but that ledge that's</p> <p>23 build in around, I think.</p> <p>24 Q. The back ledge, where the flower pot is?</p> <p>25 A. Uh-huh. And I took a phone with me, only because</p>



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<p>1 that's what I wanted, a grab bar there, and I could pull</p> <p>2 myself up, stand there long enough and then, you know, I</p> <p>3 would be safe. But to --</p> <p>4 Q. Just so I could understand clearly, if it was up</p> <p>5 to you, where would you like the grab bar to be?</p> <p>6 MR. ALBERTS: Form.</p> <p>7 THE WITNESS: Right on the -- and that's what I</p> <p>8 called about, can you do it. And they said, well, we can</p> <p>9 put a grab bar on the outside, to help you get out. I</p> <p>10 said, that's not my problem. I can get out once I'm</p> <p>11 standing up and move a little bit, then I'm okay, you</p> <p>12 know.</p> <p>13 MR. ESTRADA: Yeah.</p> <p>14 THE WITNESS: Right now, of course, I'm much</p> <p>15 better than I was -- now it's 2019. That was 2016, and I</p> <p>16 was really in trouble.</p> <p>17 BY MR. ESTRADA:</p> <p>18 Q. Has anybody from -- has anybody sent you anything</p> <p>19 to place on either the floor or the seat?</p> <p>20 A. No.</p> <p>21 Q. Okay.</p> <p>22 A. And I couldn't -- see, I don't drive. And I have</p> <p>23 wonderful neighbors, I have wonderful friends. And I can</p> <p>24 get groceries and, you know, take -- go to church,</p> <p>25 whatever.</p>	<p>1 A. Probably a magazine or something with the Jacuzzi</p> <p>2 ad, 1-800.</p> <p>3 That's when I told them that, you know, the</p> <p>4 never -- because I don't know anyone in Tucson that</p> <p>5 repairs. I wanted somebody to come soon, not later, you</p> <p>6 know. Next Wednesday, it's okay. But next Wednesday,</p> <p>7 nobody showed up.</p> <p>8 Q. Would you recommend that any of your friends buy</p> <p>9 this tub?</p> <p>10 A. No, I would not recommend.</p> <p>11 Q. Knowing what you know now about the tub --</p> <p>12 A. Right.</p> <p>13 Q. -- would you --</p> <p>14 A. Uh-huh, no.</p> <p>15 Q. -- have made the purchase?</p> <p>16 A. I would not recommend it.</p> <p>17 And right now, hardly anyone knows that I'm not</p> <p>18 just totally happy with it. Because I'm actually a little</p> <p>19 embarrassed that I spent all that money. And in fact,</p> <p>20 it's been a little hard for me to tell my daughter-in-law.</p> <p>21 Because they weren't -- you know, after all, they're</p> <p>22 paying the -- they pay the taxes and, you know. I don't</p> <p>23 want -- I just didn't want them to know that I spent --</p> <p>24 even though it was my money, I just -- I have not told</p> <p>25 many, and very, very few people know that I've had any</p>
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<p>1 But not being able to drive, to say, well, just</p> <p>2 run-down to Bed Bath and Beyond and get some strips or</p> <p>3 something --</p> <p>4 Q. Has anybody from Jacuzzi suggested that you go</p> <p>5 buy something from --</p> <p>6 A. Well, yes. They suggested I go get some strips.</p> <p>7 Well, I don't know. Strips? You know.</p> <p>8 Q. Do you know who suggested that to you?</p> <p>9 A. Probably Harry, you know. All I ever talked to.</p> <p>10 Q. So when you did have a complaint about the tub,</p> <p>11 do you recall if you would call Harry or if you would call</p> <p>12 some other number?</p> <p>13 A. I mostly -- I called Harry. And if I tried -- I</p> <p>14 called Alan, I think I got a hold of him once. But with</p> <p>15 the other, the grab bar or anything, no, I couldn't get</p> <p>16 hold of Alan. Now whether he changed his number, didn't</p> <p>17 want to -- I don't know. But I haven't seen him.</p> <p>18 Q. Would you ever call like a national number?</p> <p>19 A. I did call the national number.</p> <p>20 Q. Do you know if that was the national number for</p> <p>21 Jacuzzi?</p> <p>22 MR. ALBERTS: Form.</p> <p>23 THE WITNESS: Yes, it was.</p> <p>24 BY MR. ESTRADA:</p> <p>25 Q. Where did you find that number that you called?</p>	<p>1 problems with it. Because I want them to think, oh, boy,</p> <p>2 Nancy's got a safe tub.</p> <p>3 Q. Okay. I know I'm going to jump back to something</p> <p>4 we talked about a little bit earlier. We discussed the</p> <p>5 grab bar. If you're in the tub and you're seated, do you</p> <p>6 feel safe reaching for the controls to turn the water on</p> <p>7 and off?</p> <p>8 MR. GOODHART: Object to form.</p> <p>9 THE WITNESS: No, I --</p> <p>10 MR. ALBERTS: Join.</p> <p>11 THE WITNESS: -- fill the tub when I get in, I</p> <p>12 stand, and turn the water on. And for the last three</p> <p>13 months or so, I haven't sat down.</p> <p>14 Because, number one, if I sit very long, I don't</p> <p>15 have a whole lot of padding, and it hurts, you know. I</p> <p>16 can't sit there like I thought I could.</p> <p>17 It's -- it looks -- sounds wonderful, and you see</p> <p>18 these people on TV and on the advertisements, they all</p> <p>19 look, oh, a luxury. And I was looking for help with my</p> <p>20 physical being. But it sure looked nice.</p> <p>21 MR. ESTRADA: Yeah.</p> <p>22 THE WITNESS: And I just can't do it.</p> <p>23 BY MR. ESTRADA:</p> <p>24 Q. So, looking back at Exhibit Number Two, if you're</p> <p>25 seated in the tub and you reach for -- can you tell me</p>

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<p>1 THE WITNESS: Oh, it was you.</p> <p>2 BY MR. GOODHART:</p> <p>3 Q. I think it was Ian, who's there with you.</p> <p>4 A. Yeah.</p> <p>5 Q. Prior to yesterday, did you talk to any lawyers</p> <p>6 from Las Vegas --</p> <p>7 A. No, no.</p> <p>8 Q. -- or anybody from Ian's office?</p> <p>9 A. No. I called the Las Vegas number, because I</p> <p>10 didn't know what all of this was about.</p> <p>11 Q. Okay. When did you call the Las Vegas number?</p> <p>12 A. When I got the deposition, the next day I</p> <p>13 thought, I don't know what I -- what am I doing, you know.</p> <p>14 Q. So you called the Las Vegas lawyer's office the</p> <p>15 day after you received --</p> <p>16 A. Yes, but there was no answer. I called the</p> <p>17 number I think where I am today, and she said she didn't</p> <p>18 know, that they only do the videotaping. And so I really</p> <p>19 did not know what it was all about.</p> <p>20 Q. Okay. When you received the papers telling you</p> <p>21 to be here today, did you call the plaintiff -- the</p> <p>22 lawyer's office?</p> <p>23 A. Yes. But I did not get an answer.</p> <p>24 Q. Okay. How many times did you call the lawyer's</p> <p>25 office, after you received the papers telling you to be</p>	<p>1 deposition subpoena, you would have told them then that</p> <p>2 you were going to be here today; right?</p> <p>3 A. Exactly, yes.</p> <p>4 Q. Okay. And how long did you talk to this lawyer</p> <p>5 yesterday?</p> <p>6 A. Oh, five minutes, maybe.</p> <p>7 Q. Okay.</p> <p>8 A. Not very long.</p> <p>9 Q. Okay. Did the lawyer tell you anything about</p> <p>10 this case?</p> <p>11 A. Somewhat, yes.</p> <p>12 Q. What did the lawyer tell you about this case?</p> <p>13 MR. ESTRADA: I'm not allowed to answer. I let</p> <p>14 you.</p> <p>15 THE WITNESS: Okay. He told me that, I guess,</p> <p>16 someone had died or something. But he didn't tell me much</p> <p>17 about it at all.</p> <p>18 BY MR. GOODHART:</p> <p>19 Q. Did he explain to you how he thought the person</p> <p>20 had died?</p> <p>21 A. No, uh-uh.</p> <p>22 MR. GOODHART: All right. Okay. Ms. Jones, I</p> <p>23 want to thank you very much for coming here today. I</p> <p>24 apologize I could not be there in person to meet you and</p> <p>25 chat with you. But thank you for your time. I appreciate</p>
Page 78	Page 80
<p>1 here today?</p> <p>2 A. Probably twice, that's all. I mean, you know,</p> <p>3 you don't call if you don't get an answer, you know. I</p> <p>4 just didn't bother.</p> <p>5 Q. And then the first time the lawyer called you</p> <p>6 back was yesterday; right?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know what time the lawyer called you back</p> <p>9 yesterday?</p> <p>10 A. Must have been -- I had been to groceries --</p> <p>11 probably around 4:00-ish, something.</p> <p>12 Q. And was that 4:00 p.m. your time?</p> <p>13 A. Yes, yes.</p> <p>14 Q. Okay. And what did you talk to that lawyer</p> <p>15 about?</p> <p>16 A. I guess today or something. I don't know. About</p> <p>17 the tub. And he was -- he thanked me for my accepting the</p> <p>18 subpoena and that I would be here. He thanked me for</p> <p>19 doing this.</p> <p>20 Q. Okay. So, you were -- when you were talking to</p> <p>21 the lawyer last night, around 4:00 in the afternoon, you</p> <p>22 told the lawyer you were going to be here today; right?</p> <p>23 A. Yes.</p> <p>24 Q. And if they had called you back after you called</p> <p>25 them, the one or two times after you were served with the</p>	<p>1 it.</p> <p>2 THE WITNESS: You're welcome. I was happy to do</p> <p>3 it, thank you. It was a little unnerving, but it did --</p> <p>4 I did it, so --</p> <p>5 MR. GOODHART: Honestly, Ms. Jones, I think you</p> <p>6 did a fantastic job.</p> <p>7 THE WITNESS: Thank you.</p> <p>8 MR. ESTRADA: I agree.</p> <p>9 MR. ALBERTS: I don't have any additional</p> <p>10 questions.</p> <p>11 THE VIDEOGRAPHER: That concludes the deposition.</p> <p>12 The time is 11:10.</p> <p>13</p> <p>14 (Deposition concluded at 11:10 a.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1 STATE OF ARIZONA     )

2                     ) ss.

3 COUNTY OF PIMA     )

4

5       BE IT KNOWN that the foregoing deposition was taken  
6 before me, PATRICIA GERSON, RMR, a Certified Reporter for  
7 the State of Arizona; that the witness before testifying  
8 was duly sworn by me to testify to the whole truth; that  
9 the questions propounded to the witness and the answers of  
10 the witness thereto were taken down by me in shorthand and  
11 thereafter reduced to typewriting under my direction; that  
12 the foregoing pages are a true and correct transcript of  
13 all proceedings had upon the taking of said deposition,  
14 all done to the best of my skill and ability.

15       ( ) Pursuant to request, notification was provided  
16 that the deposition is available for review and signature.

17       (X) Review and signature was not requested.

18       I FURTHER CERTIFY that I am in no way related to  
19 any of the parties hereto nor am I in any way interested  
20 in the outcome hereof.

21       DATED at Tucson, Arizona, this 12th day of  
22 August, 2019.

23

24

25

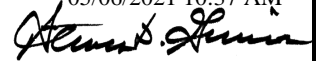
PATRICIA GERSON, RMR  
Certified Court Reporter

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CLERK OF THE COURT

ARJT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ROBERT ANSARA,

Plaintiff(s),

vs.

FIRST STREET FOR BOOMERS AND  
BEYOND INC., et al.,

Defendant(s).

Case No.: A-16-731244-C

Dept. No.: 19

**AMENDED ORDER SETTING FIRM  
CIVIL JURY TRIAL, PRE-TRIAL  
CONFERENCE and CALENDAR  
CALL**

**IT IS HEREBY FURTHER ORDERED THAT:**

A. The above entitled case is set to be tried before a jury on a **Five week stack** to begin November 15, 2021 at 10:00 a.m. with a FIRM trial setting of **November 29, 2021** at 10:00 a.m.

B. Pursuant to EDCR 2.68, a Pre-Trial Conference with the designated trial attorney and/or parties in proper person will be held on **October 25, 2021 at 8:45 a.m.**

C. **Prior to the 9:00 a.m. law and motion calendar, the calendar call will be held on November 1, 2021 at 8:45 a.m. You must be punctual or sanctions may be imposed including the loss of your slot on the stack, loss of the trial date, and/or any other appropriate sanction as set forth below.** The Parties must bring to calendar call all items listed in EDCR 2.69. At the time of the calendar call, counsel will set an appointment with the Court Clerk. The appointment must be at least two days before the first day of trial.

D. The Pre-Trial Memorandum must be filed no later than **November 1, 2021** with a courtesy copy delivered to Department 19. All parties, (Attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include the Memorandum an identification of orders on all motions in limine

1 or motions for partial summary judgment previously made, a summary of any anticipated legal  
2 issues remaining, a brief summary of the opinions to be offered by any witness to be called to  
3 offer opinion testimony as well as any objections to the opinion testimony.

4 E. All motions in limine to exclude or admit evidence must be in writing and filed no  
5 later than **September 20, 2021. Orders shortening time will not be signed except in**  
6 **extreme emergencies.**

7 F. All original depositions anticipated to be used in any manner during the trial must  
8 be delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is  
9 anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the  
10 portions of the testimony to be offered must be filed and served by email or hand, three (3)  
11 judicial days prior to the final Calendar Call. Any objections or counterdesignations (by  
12 page/line citation) of testimony must be filed and served by facsimile or hand, two (2) judicial  
13 days prior to the commencement of Calendar Call. Counsel shall advise the clerk prior to  
14 publication.

15 G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits.  
16 All exhibits must comply with EDCR 2.27. Three (3) sets must be three-hole punched placed  
17 in three ring binders, exhibit tabs, and an exhibit list. The sets must be delivered to the clerk  
18 prior to the Calendar Call. Any demonstrative exhibits including exemplars anticipated to be  
19 used must be disclosed prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-  
20 Trial Conference, counsel shall be prepared to stipulate or make specific objections to  
21 individual proposed exhibits. Unless otherwise agreed to by the parties, demonstrative  
22 exhibits are marked for identification but not admitted into evidence.

23 H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to  
24 be included in the Jury Notebook. Pursuant to EDCR 2.68, counsel shall be prepared to  
25 stipulate or make specific objections to items to be included in the Jury Notebook.

26 I. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions to  
27 the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side  
28 shall provide the Court, two (2) judicial days prior to the firm trial date given at Calendar Call,

1 an agreed set of jury instructions and proposed form of verdict along with any additional  
2 proposed jury instructions with an electronic copy in Word format.

3 J. Counsel shall email to [dept19lc@clarkcountycourts.us](mailto:dept19lc@clarkcountycourts.us), in accordance with  
4 EDCR 7.70, two (2) judicial days prior to the firm trial date given at Calendar Call, voir dire  
5 proposed to be conducted pursuant to conducted pursuant to EDCR 2.68.

6 **Failure of the designated trial attorney or any party appearing in proper person**  
7 **to appear for any court appearances or to comply with this Order shall result in any of**  
8 **the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions;**  
9 **(4) vacation of trial date; and/or any other appropriate remedy or sanction.**

10 Counsel is required to advise the Court immediately when the case settles or is  
11 otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also  
12 indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of  
13 that trial. A copy should be given to Chambers.

14 IT IS SO ORDERED.

15  
16 Dated this 6th day of May, 2021

17   
18

19 F7A B1B 8426 B27D  
20 Crystal Eller  
21 District Court Judge  
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1 **CSERV**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 Robert Ansara, Plaintiff(s)

CASE NO: A-16-731244-C

7 vs.

DEPT. NO. Department 19

8 First Street for Boomers &  
9 Beyond Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Amended Order Setting Jury Trial was served via the court's electronic  
14 eFile system to all recipients registered for e-Service on the above entitled case as listed  
15 below:

Service Date: 5/6/2021

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 5/7/2021

15	Benjamin Cloward	Richard Harris Law Firm
16		Attn: Benjamin P. Cloward
17		801 South Fourth Street
18		Las Vegas, NV, 89101
19	Michael Stoberski	Olson Cannon Gormley & Stoberski
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A-16-731244-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Product Liability**

**COURT MINUTES**

**May 06, 2021**

---

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

---

**May 06, 2021      3:00 AM      Minute Order**

**HEARD BY:** Eller, Crystal      **COURTROOM:** Chambers

**COURT CLERK:** Cynthia Moleres

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- PLEASE TAKE NOTICE: In efforts of Judicial Economy, and in accordance with this Court's Standing Orders, Plaintiff's Motion to Reconsider et al has been moved. The new date is Monday, June 7, 2021 in chambers. There will be no appearances on this matter, and the Court shall issue a Minute Order ruling for the papers and pleadings submitted.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. clm 05/06/21

PRINT DATE: 05/06/2021

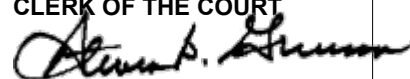
Page 1 of 1

Minutes Date: May 06, 2021

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**OPPM**

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Jacuzzi Inc. doing business as  
Jacuzzi Luxury Bath*

*Attorneys for Defendant  
Jacuzzi Inc. doing business as  
Jacuzzi Luxury Bath*

**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.

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

Defendants.

Case No.: A-16-731244-C  
Dept. No.: XIX

**DEFENDANT JACUZZI INC. DBA  
JACUZZI LUXURY BATH'S  
OPPOSITION TO PLAINTIFFS'  
MOTION TO RECONSIDER THE  
COURT'S ORDER GRANTING IN PART,  
AND DENYING IN PART, DEFENDANT  
JACUZZI'S MOTION TO RECONSIDER  
THE COURT'S ORDER DENYING  
DEFENDANT'S MOTIONS IN LIMINE  
NOS. 1, 4, 13, AND 21**

**AND**

**COUNTERMOTION TO CLARIFY  
ISSUES THAT THE JURY MUST  
DETERMINE, APPLICABLE BURDENS  
OF PROOF, AND PHASES OF TRIAL**

**Hearing Date: June 7, 2021  
Hearing Tim: In Chambers**

189700  
WEINBERG WHEELER  
HUDGINS GUNN & DIAL



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COMES NOW, **JACUZZI INC., doing business as JACUZZI LUXURY BATH** (“Defendant Jacuzzi”), by and through its attorneys, WEINBERG, WHEELER, HUDGINS, GUNN AND DIAL, LLC, and hereby files its Opposition to Plaintiffs’ Motion to Reconsider the Court’s Order Granting in Part, and Denying in Part, Defendant Jacuzzi’s Motion to Reconsider the Court’s Order Denying Defendant’s Motions in Limine Nos. 1, 4, 13, and 21, and Countermotion to Clarify Issues that the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial.

Jacuzzi’s Opposition and Countermotion are based upon the attached Memorandum of Points and Authorities, the attached exhibits, the pleadings and papers on file herein and any oral argument allowed by the Court at the time of the hearing on this Motion.

Dated this 13<sup>th</sup> day of May, 2021.

WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

/s/ Brittany M. Llewellyn  
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*Attorneys for Defendant  
Jacuzzi Inc. doing business as  
Jacuzzi Luxury Bath*



1        **DEFENDANT JACUZZI INC. DBA JACUZZI LUXURY BATH'S OPPOSITION TO**  
2        **PLAINTIFFS' MOTION TO RECONSIDER THE COURT'S ORDER GRANTING IN**  
3        **PART, AND DENYING IN PART, DEFENDANT JACUZZI'S MOTION TO**  
4        **RECONSIDER THE COURT'S ORDER DENYING DEFENDANT'S MOTIONS IN**  
5        **LIMINE NOS. 1, 4, 13, AND 21**

6  
7        **MEMORANDUM OF POINTS AND AUTHORITIES**

8        **INTRODUCTION**

9        Plaintiffs' Motion for Reconsideration offers nothing new for the Court to consider. This  
10       Court has already taken the time to evaluate the facts of each individual complaint and incident,  
11       and in doing so has reached its conclusion reversing a portion of the prior court's order: at least  
12       some of the incidents and complaints that Plaintiffs sought to present to the trier of fact are not  
13       "substantially similar" to those at issue in this action.<sup>1</sup> The prior Court's Order admitting this  
14       evidence was clearly erroneous such that it amounted to an abuse of discretion. This Court has  
15       already conducted an assessment of the evidence, and Plaintiffs' Motion should be denied.

16       Under Nevada law, and as this Court has made clear, it is Plaintiffs' "burden to prove that  
17       Defendant deliberately ignored [an] unjustified risk of harm that its tub's alleged defect posed to  
18       consumers. Such an endeavor can only be born out by way of prior notice through similar  
19       incidents, complaints, and lawsuits." Order at 8:24–27. While Plaintiffs lament the "significant  
20       burden" of having to "prove the Defendants' mindset and intentions," (Motion at 1:10) this does  
21       not impact the Court's analysis or justify the introduction of improper and irrelevant evidence.  
22       When determining whether the trier of fact may be allowed to consider prior incidents in its  
23       analysis of Plaintiffs' alleged defect, Nevada law makes clear that the "substantial similarity" test  
24       *must* be utilized in determining the admissibility of individual incidents. The "incidents" at issue  
25       do not satisfy this threshold requirement.

26  
27       <sup>1</sup> To the extent the Court has, by its Order, deemed that the Pullen and Wharff incidents *are* substantially  
28       similar to the incident at issue in this litigation, Jacuzzi does not agree with that characterization, but  
     nevertheless does not address those issues in this Opposition brief.







1 Additionally, to the extent that Plaintiffs' Motion tries to coerce this Court by painting  
2 Jacuzzi in a bad light, these transparent efforts should be disregarded. The allegations of  
3 Plaintiffs' Complaint do nothing to alter the legal standard mandating an evaluation for  
4 substantial similarity.

5 The Order at issue reflects that this Court has considered the evidence at issue, and has  
6 deemed it inadmissible. There is no clear error. This exact motion has already been ruled on and  
7 modified after reconsideration. Plaintiffs have been fully heard—twice. At some point seriati  
8 motions for reconsideration of the same issues should not be entertained, especially when the  
9 Plaintiffs simply repeat prior arguments. As the court stated in *Cummings v. Bahr*, 295 N.J.  
10 Super. 374 (App. Div. 1996), "... motion practice must come to an end at some point, and if  
11 repetitive bites at the apple are allowed, the core will swiftly sour. Thus, the Court must be  
12 sensitive and scrupulous in its analysis of the issues in a motion for reconsideration."

13 Plaintiffs' Motion for Reconsideration should be denied.

#### 14 LEGAL DISCUSSION

#### 15 I. The Court Should Deny Plaintiffs' Motion for Reconsideration, as the Court's 16 Order Correctly Requires a Showing of Substantial Similarity

17 This is a product liability action involving Plaintiffs' claims that a Jacuzzi® 5229 Walk-  
18 In Tub (the "Tub") was defectively designed. Plaintiffs have made clear that they intend to  
19 present their case by creating the illusion that there were scores of prior "incidents" similar to  
20 Ms. Cunnison's. Plaintiffs have but one singular motivation for seeking reconsideration of the  
21 Court's Order; they seek to appeal to the jury's passions and prejudices rather than allowing for  
22 the rational evaluation of the merits of the Plaintiffs' claims.

23 Plaintiffs argue in their Motion that "Jacuzzi myopically and incorrectly characterized the  
24 cause of Plaintiffs' harm." Motion at 1:21–22. But by Plaintiffs' own allegations, they have  
25 made clear that they intend to present the narrative that, in late February of 2014, Ms. Cunnison  
26 was using the tub, "reached for the Tub controls located at the front of the Tub, and her bottom  
27 slipped off the front of the Tub seat; [and] then slipped down into the footwell of the Tub."  
28 Motion at 2:10–12. This Court was well aware of the Plaintiffs' view of causation at the time it



1 issued the Order at hand, as is evinced by the thoroughly detailed review and comparison of the  
2 incidents and complaints in the Order. Plaintiffs' argument here is misplaced.

3 Despite their insistence to the contrary,<sup>2</sup> Nevada law in unequivocal in its dictate that  
4 "[w]hether the jury may be allowed to draw an inference as to the defectiveness of a product  
5 from prior failures depends on whether the factors which produced the prior failures were  
6 substantially similar to the factors which produced the present failure." *Andrews v. Harley*  
7 *Davidson, Inc.*, 106 Nev. 533, 538, 796 P.2d 1092, 1096 (1990). This evidence *may* be  
8 admissible—subject, still, to NRS 48.035—to demonstrate that, because the alleged failure  
9 occurred in the past, it is somewhat more likely that the incident was foreseeable. But as the  
10 *Andrews* Court made clear, and as this Court acknowledges in its Order: only "trivial"  
11 differences may be afforded discretion for the purpose of admissibility. *Id.*; Order at 4:14–16.  
12 Following an independent review of each of the separate issues, the Court came to conclude that  
13 the incidents at issue in Plaintiffs' Motion are not "trivial" in their differences, they are wholly  
14 distinct even from Plaintiffs' frequently changing portrayal of the incident.

15 **A. This Court should uphold its Order finding that the other "incidents" and**  
16 **complaints at issue in Plaintiffs' Motion are not substantially similar**

17 Plaintiffs' Motion concedes that the testimony of Shirli Billings and Leonard Baize is  
18 appropriately excluded, and seeks reconsideration of this Court's Order only with respect to Ruth  
19 Curnutte, Patricia Herman, Jerre Chopper, and Nancy Jones. Plaintiffs do not present any new  
20 evidence or law in their briefing. They simply reiterate the witnesses' testimony, and argue that  
21 this "Court's Order reversing Judge Scotti's ruling as to the above listed witnesses was clear  
22 error." Motion at 14:7–8. This is insufficient to show clear error, and the Court's Order should  
23 stand.

24 ///

25 \_\_\_\_\_  
26 <sup>2</sup> Plaintiffs cite to *Four Corners Helicopters, Inc. v. Turbomeca, S.A.*, a 1992 Tenth Circuit case, in an  
27 attempt to narrow the requirement for substantial similarity. *Four Corners Helicopters, Inc. v.*  
28 *Turbomeca, S.A.*, 979 F.2d 1434, 1439 (10th Cir. 1992). But Nevada has not evinced any intent to do  
away with the requirement for substantial similarity, and this case should not be considered here. The  
requirement for "substantial similarity" is not a guideline; it is a necessary predicate for the introduction  
of such evidence.



**1. The Court should not reconsider its Order excluding the testimony of Ruth Curnutte**

This Court has entered an Order finding that “Ms. Curnutte’s incident is not substantially similar to Plaintiff’s” as “[her] incident was not any inherent slipperiness of the tub’s seat, but the force of the jets being activated.” Order at 5:17–21. Indeed, Ms. Curnutte testified that she had been using the tub without issue until she activated the adjustable tub jets. *See* Curnutte customer complaint, attached hereto as **Exhibit 1**. Ms. Curnutte did not have any issues extricating herself from the tub, and did not receive treatment for any injuries:

Q. Okay. So after the tub drained and you're holding on, you're able to open the door and get out of the tub?

A. After it was drained, yes.

Q. After it was drained?

A. Yes.

Q. Okay. So no one had to help you out? You were able to get out of the tub?

A. No. I live alone.

Q. Okay.

A. Yeah.

Q. I understand. Okay. So you didn't have any problems opening the door of the tub?

A. No.

Deposition of Ruth Curnutte, **Exhibit 2**, at 81:11–25. To the contrary, there is absolutely no evidence that the jets of Ms. Cunnison’s tub played any role in her incident. Pursuant to these facts, Jacuzzi respectfully requests that this Court uphold its Order concluding that “[t]he testimony of Ms. Curnutte does not contain the same or similar conditions as Plaintiff. Nor are the differences trivial. Thus, the Court’s prior ruling was clearly erroneous and admission of this testimony would be an abuse of discretion.” Order at 5:23–25.

**2. The Court should not reconsider its Order excluding the as to the testimony of Patricia Herman**

This Court has entered an Order finding that “Ms. Herman’s incident, like Ms. Curnutte, is not substantially similar to Plaintiff’s.” Order at 6:2–3. Specifically, this Court has acknowledged that:

Ms. Herman does not testify that her mother became stuck in the tub, unable to extricate herself; does not make any mention of an inward swinging door; nor

1 does she testify to any injuries. The testimony of Ms. Herman does not contain the  
2 same or similar conditions as Plaintiff. Nor are the differences trivial.

3 Order at 6:5–8. In fact, Ms. Herman testified that her mother utilized her tub twice a day, from  
4 2013 through 2016, and never slid off of the seat again. Deposition of Patricia Herman, **Exhibit**  
5 **3**, at 59:11–25, 57:10–15. While Plaintiffs brazenly attempt to rewrite the circumstances of the  
6 Herman incident in their Motion, they do so without citation to any testimony to support their  
7 theory. Jacuzzi respectfully requests that this Court reject this mischaracterization, and uphold its  
8 Order concluding that “[t]he testimony of Ms. Herman does not contain the same or similar  
9 conditions as Plaintiff. Nor are the differences trivial. Thus, the Court’s prior ruling was clearly  
10 erroneous and admission of this testimony would be an abuse of discretion.” Order at 6:7–9.

11 **3. The Court should not reconsider its Order excluding the testimony of Jerre**  
12 **Chopper**

13 This Court did not err where it determined that “Plaintiff has made no arguments in  
14 support of using Ms. Chopper’s testimony under the substantially similar doctrine.” Order at  
15 7:26–27. As to Ms. Chopper, Plaintiffs are attempting to introduce lay testimony of a witness  
16 who never had an “incident” in the tub, and who was never injured by the tub. Certainly, there  
17 can be no evaluation of substantial similarity where an incident never occurred. Accordingly,  
18 Jacuzzi respectfully requests that the Court uphold its Order finding “that admission of Ms.  
19 Chopper’s testimony under the substantially similar doctrine was clear error and an abuse of  
20 discretion,” and deny reconsideration. Order at 8:1–3.

21 **4. The Court should not reconsider its Order excluding the testimony of Nancy**  
22 **Jones**

23 As this Court has acknowledged, and like Ms. Chopper, Nancy Jones is another witness  
24 who “had fears of slipping and falling, but never actually fell”; “[t]here is no testimony of  
25 becoming stuck in the tub; issues with an inward swinging door; or any injuries sustained.”  
26 Order at 8:9–11. Ms. Jones has never had problems getting in and out of the tub, and still uses  
27 the tub to this day because she cannot get in and out of a regular bathtub. Jacuzzi respectfully  
28 requests that this Court reject this mischaracterization, and uphold its Order concluding that “Ms.  
Jones’ testimony is not of an incident substantially similar to Plaintiff’s, and the differences are



not trivial, admission of the testimony was clear error and an abuse of discretion.” Order at 8:13–15.

**II. The Court Should Deny Plaintiffs’ Motion for Reconsideration, as this Court correctly applied Nevada law to the issue of Punitive Damages**

Plaintiffs argue in their Motion that “the substantially-similar doctrine is wholly separate from the punitive damage analysis and has no place in interpreting the punitive damage issues.” Motion at 1:23–24. Not true. Punitive damages are only allowable upon clear and convincing evidence of fraud, oppression or malice, express or implied. Malice is defined by statute as:

“Malice, express or implied” means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others.

See NRS 42.001(3). Meanwhile, conscious disregard is defined as follows:

“Conscious disregard” means the knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate **failure to act** to avoid those consequences.

See NRS 42.001(1) (emphasis added). The definition of malice denotes a culpable state of mind, and the evidence to support a finding of malice requires a defendant’s state of mind to exceed “mere recklessness or gross negligence.” See *Thitchener*, 124 Nev. at 743, 192 P.3d at 254–55.

To prove conscious disregard under Nevada law, the defendant must first have *actual knowledge* of a probable harm. *Id. Countrywide v. Thitchener* clarified that actual knowledge can include—at its *lowest* threshold—a willful and deliberate refusal to avoid probable harmful consequences where the defendant egregiously and intentionally ignores the obvious. *Id.* Here, the incidents and complaints at issue can only be relevant if they show notice of probable harm (because Jacuzzi cannot be punished in this case for harm caused to others, especially those allegedly injured in other states). As the case law clearly establishes, prior incidents can only show notice if they are substantially similar. There is no reason to abandon this rule where punitive damages are at issue.

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1                   **III.    To Be Clear, this Evidence of Other Incidences Would Be Admissible**  
 2                   **Only During the Punitive Phase(s) of Trial**

3                   The admissibility of the evidence at issue here is only considered for the purpose of the  
 4                   punitive phases. In the Order striking Jacuzzi's Answer as to liability, Judge Scotti ordered that:

5                   The only remaining issue to be tried as to Jacuzzi is the nature and  
 6                   quantum of damages for which Jacuzzi is liable. Jacuzzi is  
 7                   precluded from presenting any evidence to show that it is not liable  
 8                   for Plaintiffs' harms as to any of Plaintiffs' causes of action against  
 9                   Jacuzzi.<sup>3</sup>

10                  The burden of proof in the punitive phases will be clear and convincing evidence and, as this  
 11                  Court has acknowledged, it would be clear error and a violation of Jacuzzi's due process rights to  
 12                  allow into evidence otherwise inadmissible evidence in a punitive phase as part of a sanction  
 13                  finding made under a preponderance standard. Despite Plaintiffs' protestations, the Court  
 14                  correctly considered the admissibility of this evidence separate and apart from the prior Court's  
 15                  discovery sanction.

16                  **DEFENDANT JACUZZI INC. DBA JACUZZI LUXURY BATH'S COUNTERMOTION**  
 17                  **TO CLARIFY ISSUES THAT JURY MUST DETERMINE, APPLICABLE BURDENS**  
 18                  **OF PROOF, AND PHASES OF TRIAL**

19                  Underlying Plaintiffs' motion are broad assumptions about how this Court will apply the  
 20                  order striking Jacuzzi's answer as to liability only. With Plaintiffs' motion putting that question  
 21                  at issue, Jacuzzi countermoves the Court to clarify now which issues will be left for the jury to  
 22                  determine, what the applicable burdens of proof will be, and the phasing of trial in which the  
 23                  issues will be determined. *See* EDCR 2.20(f) ("An opposition to a motion that contains a motion  
 24                  related to the same subject matter will be considered as a countermotion.")

25                  Plaintiffs appear to assume, for instance, that the district court's imposition of liability *for*  
 26                  *compensatory damages* will establish a particular dangerousness about this product that is  
 27                  causally related to Ms. Cunnison's death for purposes of punitive damages, as well. This Court  
 28                  has not gone that far, and it should not now. To impose punitive damages, all aspects of

<sup>3</sup> See Order Striking Defendant Jacuzzi Inc. d/b/a/ Jacuzzi Luxury Bath's Answer as to Liability Only,  
 Filed 11/18/2020, at p.



1 Plaintiffs' claims must be established by clear and convincing evidence, including the alleged  
2 defect and causation. The establishment of a defect and causation sufficient to support an award  
3 of punitive damages cannot rest on the sanction that the district court based (erroneously) on a  
4 mere preponderance of the evidence.<sup>4</sup>

5 Plaintiffs also appear to assume that the jury should decide liability for punitive damages  
6 (*i.e.*, whether defendants acted with malice) in the first phase of trial during which the jury is  
7 determining the amount of compensatory damages. While that is the case in typical civil trials  
8 under NRS 42.005(3), it is not where a court has stricken a liability defense. As was done in the  
9 seminal case of *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 249, 235 P.3d 592, 596  
10 (2010)—which seemingly popularized the “non-case concluding sanction” of striking liability  
11 defenses—this court’s sanction imposes liability only for compensatory damages and leaves  
12 defendants unrestrained in their ability to contest the entirety of plaintiff’s case for purposes of  
13 punitive damages. And that entails a trial of three phases: (1) a phase for compensatory damages  
14 without regard to the nature of the alleged defect because it is irrelevant; (2) a phase to determine  
15 liability for punitive damages in which all aspects of liability, causation and malice must be  
16 proved by clear and convincing evidence; and, if necessary, (3) a phase to determine an amount  
17 of punitive damages.

18 **A. Any Evidence of Other Incidences of Would Be Admissible Only After**  
19 **the First Phase Regarding Compensatory Damages**

20 In their Motion, Plaintiffs set out a simplistic image of the trial to come:

21 ...Jacuzzi, firstSTREET, and AITHR are all “precluded from presenting any  
22 evidence to show that it is not liable for Plaintiffs’ harms as to any of Plaintiffs’  
23 causes of action.” [Citing to the order striking Jacuzzi’s answer.] The only issues  
24 to be determined at trial are the quantum of damages and whether punitive  
25 damages should be awarded. The jury will not determine whether the Defendants  
have acted with malice, express or implied. Essentially, Plaintiffs must prove the  
Defendants’ mindset and intentions...

26 (Mot. at 1:4–10). That is not true, at least not yet under the Court’s rulings to date. And it would

27 <sup>4</sup> See “Order Striking Defendant Jacuzzi Inc. d/b/a Jacuzzi Luxury Bath’s Answer as to Liability  
28 Only,” entered November 24, 2020, at 3:5–7.



1 be clear error for this Court to determine that Jacuzzi would be so limited over the course of trial.  
2 Jacuzzi, therefore, cannot let plaintiff's assertion go un rebutted.

3 ***1. During the Punitive Phase(s) of Trial, Jacuzzi Must Be Permitted***  
4 ***to Hold Plaintiff's to their Clear-and-Convincing Burden of***  
5 ***Proof***

6 For Jacuzzi to have a fair trial on punitive damages, which Plaintiffs agree Jacuzzi should  
7 have, Plaintiffs must prove all of the facts necessary to support any award of punitive damages,  
8 including the allegedly tortious conduct on which it is predicated, and proof that the tortious  
9 conduct caused damage to Plaintiffs,<sup>5</sup> by clear and convincing evidence. See NRS 42.005(1).<sup>6</sup>  
10 "Malice, express or implied" means conduct which is intended to injure a person or despicable  
11 conduct which is engaged in with a conscious disregard of the rights or safety of others." See  
12 NRS 42.001(3); *see also Countrywide*, 192 P.3d at 254-55. That includes all aspects of the claim

13 <sup>5</sup> The documents and other evidence that the Court found Jacuzzi should have produced earlier in the  
14 litigation relates only to whether there is a defect in the product and whether Jacuzzi had notice of it. This  
15 is presumably why the Court has found liability as a sanction. None of the evidence at issue, however,  
16 tends to make causation more likely than not. Plaintiffs have been in possession of that evidence since the  
17 inception of the case and a sanction on causation would bear no rational relationship to the sanctionable  
18 conduct as found by the Court. Plaintiffs should not be relieved of causation in the compensatory phase,  
19 and they certainly should not be relieved of their even higher burden in the punitive phase.

20 <sup>6</sup> *Even Unconscionably Irresponsible Conduct Does Not Justify Punitive Damages*: Leading up to the  
21 enactment of NRS 42.001, the Court was split over whether there could be "implied malice" in the sense  
22 of conduct that deliberately disregarded a probability of harm even without a specific intent to cause, or  
23 whether "implied malice" simply referred to a method of proving a defendant's actual intent to cause  
24 harm by circumstantial evidence. *Craig v. Circus-Circus Enterprises, Inc.*, 106 Nev. 1, 21, 786 P.2d 22,  
25 35 (1990). There was no dispute, however, that an "implied malice" standard would at least require an  
26 actual awareness of the harm that would result by acting or failing to act. By any measure, an  
27 unconscionable but unconscious disregard for the plaintiff's safety would not subject a defendant to  
28 punitive damages. *See, e.g., First Interstate Bank of Nevada v. Jafros Auto Body, Inc.*, 106 Nev. 54, 57,  
787 P.2d 765, 767 (1990).

Although *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 747, 192 P.3d 243, 257 (2008),  
suggested that the Legislature in enacting the NRS 42.001 definitions had rejected the idea that  
"unconscionable irresponsibility" was immune from punitive damages, the legislative history refutes  
*Countrywide's* analysis. *Countrywide* read NRS 42.001 to supersede Justice Springer's concurrence in  
*Craig v. Circus-Circus Enterprises, Inc.*, that a manager's "unconscionable irresponsibility" was not an  
adequate basis for punitive damages. *Countrywide*, 124 Nev. at 741-42, 192 P.3d at 254 (citing *Craig*,  
106 Nev. 1, 21, 786 P.2d 22, 35 (1990) (Springer, J., con-curring)). But the sponsors of the new NRS  
42.001 definitions were clear that "[b]y adopting the California statutory standards, the bill effectively  
adopts the standards advocated in both the plurality and concurring opinions in *Craig*." (Leg. Hist., at  
64.) The statute explicitly intended that "[b]ad judgment, even unconscionably irresponsible conduct . . .  
does not reflect the evil mind or motive" necessary for an award of punitive damages. (Leg. Hist., at 65.)  
And that is in fact how NRS 42.001 was interpreted after its enactment. *See Maduike v. Agency Rent-A-  
Car*, 114 Nev. 1, 953 P.2d 24 (1998).





including the particular defect, foreknowledge of that particular defect, and a causal nexus of that defect with causation. “Conscious disregard” is defined as [1] “the knowledge of the probable harmful *consequences* of a wrongful act and [2] a willful and deliberate failure to act to avoid *those consequences*.” NRS 42.001(1) (emphasis added). In other words, not only must there be intention to cause harm, the particular, blameworthy conduct must be proven to causally relate to the injury. *See e.g., Southern Pacific Co.*, 80 Nev. 426, 433-34, 395 P.2d 767, 770-71 (1964) (reversible error to admit evidence of prior knowledge of dangerous conditions that were not established to be a cause of the injurious incident). One cannot simply point to embarrassing or even suspicious material indiscriminately. Thus, Plaintiffs’ proposal of a relaxed standard for proving substantial similarity in the context of punitive damages—contending the other events need only relate to amorphous notions of “thought process” and “mindset”—is backwards. Plaintiffs will need to prove more during the punitive damages phases, not less.

**2. No Evidence of Other Incidences May Be Introduced During the First Phase, when the Jury is Determining Compensatory Damages**

Based on the Court’s sanction of imposing liability for compensatory damages, Court appears to have followed the approach condoned by the Nevada Supreme Court in *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 612-12, 245 P. 3d 1182, 1186 (2010). That entails not hindering Jacuzzi’s ability to contest liability for punitive damages and implementing the same protections against jury passion and prejudice as Judge Loehrer did in *Bahena*. In that case, the Nevada Supreme Court upheld an order striking a defendant’s liability defenses because the defendant received a full jury trial on compensatory and punitive damages. *Bahena*, 126 Nev. at 612-12, 245 P. 3d at 1186, *citing Sims v. Fitzpatrick*, 288 S.W.3d 93 (Tex. Ct. App. 2009). In *Bahena*, the district court trifurcated the trial, to ensure at every stage that inflammatory material never infected the jury’s discrete determinations<sup>7</sup>

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<sup>7</sup> See “Findings of Fact, Conclusions of Law and Order,” attached as Exhibit “4,” at 9, App. 9; “Liability Default Judgment Against Defendant Goodyear Tire and Rubber Company,” attached as Exhibit “5,” at 6, App. 12; Goodyear 1/23/07 Trans., attached as Exhibit “6,” at 3-5, App. 15.



**Phase 1:** The first phase was limited to evidence and argument concerning compensatory damages, at the beginning of which the court informed the jury: “Very briefly, ladies and gentlemen, this portion of the trial is going to involve damages. Liability was been determined already in this case. There are a number of people who were involved . . .” (Goodyear 1/29/07 Trans., attached as Exhibit “7,” at 36, App. 36.) The phase I jury instructions (Exhibit “8,” App. 47) and Phase I opening statements (1/29/07 Tr. at 98-157, Ex. 7, App. 38-46) corroborate that limited scope. *All evidence of prior incidents, accidents, etc., was excluded* from the compensatory damages phase of trial because it was relevant only to liability for punitive damages and allowing discussion of that evidence—while hindering defendant from rebutting and contextualizing it—would serve only to inflame passion and prejudice when assessing compensatory damages. (See Goodyear 1/23/07 Trans. at 27-29, Exhibit 6, App. 21.) Goodyear was also permitted to cross-examine plaintiff’s witnesses on damages and present its own. *Bahena*, 126 Nev. at 612-12, 245 P.3d at 1186.

**Phase 2:** After rendering its verdict on compensatory damages, the jury returned to hear evidence and argument from both parties relevant to punitive damages, including evidence of prior incidents, accidents, etc. (Goodyear 1/23/07 Trans. at 27-29, Ex. 6, App. 21.) As the judge explained to the jury at the commencement of the second phase:

This is the second phase of the trial. In the first phase of trial, you determined compensatory damages. In the second phase, you will determine whether to assess punitive damages against Defendant Goodyear.

While compensatory damages are intended to compensate a wronged party, punitive damages are designed solely for the sake of example and by way of punishing the defendant.

If you find that punitive damages will be assessed, there will be a third phase . . .<sup>8</sup>

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<sup>8</sup> Goodyear 2/6/07 Trans., attached as Exhibit “10” at 13, App. 115.

1 Goodyear was given unfettered ability to present evidence and argument justifying its  
2 manufacturing decisions, to distinguish prior accidents and incidents and to contest that the  
3 alleged defect even caused the subject accident. (*See id.*; Goodyear Phase II jury  
4 instructions, attached as Exhibit “9,” App. 84; and Goodyear 2/6/07 Trans., attached as  
5 Exhibit “10,” at 35, App. 121.)

6 **Phase 3:** The jury returned from Phase 2 with a verdict in favor of Goodyear.  
7 Had the jury instead determined that Goodyear acted with malice, they would have returned  
8 for a third phase in which to assess the amount of punitive damages. That never occurred,  
9 however, because “Goodyear prevailed upon Bahena’s claim for punitive damages.” *Bahena*,  
10 126 Nev. at 612-12, 245 P. 3d at 1186.

11 Now that the Court has decided to sanction Jacuzzi along the lines of *Bahena*, the Court  
12 should implement the same safeguards to ensure that the “limited” sanction of striking only  
13 liability defenses will not spill over to inflame the jury’s passions or to hinder Jacuzzi’s rights to  
14 defend in all other respects. Whether an allegedly dangerous condition existed in the tub,  
15 whether it caused Ms. Cunnison’s death, and whether Jacuzzi had sufficient notice of that  
16 condition to have acted with conscious disregard, will all be question for the jury during the  
17 second phase of trial. And Plaintiffs will have to prove those elements by clear and convincing  
18 evidence. (See above.)

19 **B. If Ever, Evidence of Subsequent Incidents Could Be Admissible Only**  
20 **in a Third Phase**

21 Plaintiffs claim that “[t]he punitive damage evidence is not solely limited to incidents  
22 occurring before the subject incident but rather can include incidents occurring after the subject  
23 incident also, so long as it bears a nexus to the Plaintiffs’ harm.” (Mot. 2:26). The question of  
24 admitting of subsequent incidents is more complicated than that. But Plaintiffs’ reference to  
25 *State Farm Mut. Automobile Ins. Co. v. Campbell*, 538 US 408 (2003) highlights the necessity of  
26 phasing the trial on punitive damages to address (first) liability for punitive damages and then (if  
27 necessary) the amount of any punitive award. *Campbell* dealt with the consideration of  
28 subsequent incidents only in the context of determining the so-called degree of “reprehensibility”

1 relevant to the *amount* of punitive damages, which may be addressed only in a phase of trial after  
2 *liability* for punitive damages has been determined. NRS 42.005. Subsequent incidences are  
3 always irrelevant and *prejudicial* to the question of whether a defendant acted with *conscious*  
4 disregard when making its decisions leading up to a plaintiff's injury.

#### 5 CONCLUSION

6 For the foregoing reasons, Jacuzzi respectfully requests that the Court deny Plaintiffs'  
7 Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant  
8 Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos.  
9 1, 4, 13, and 21. Further, Jacuzzi respectfully requests that the Court grant its Countermotion to  
10 clarify issues that the jury must determine, applicable burdens of proof, and phases of trial.

11 Dated this 13th day of May, 2021.

12  
13 WEINBERG, WHEELER, HUDGINS,  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of May, 2021, a true and correct copy of the foregoing **DEFENDANT JACUZZI INC. DBA JACUZZI LUXURY BATH'S OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER THE COURT'S ORDER GRANTING IN PART, AND DENYING IN PART, DEFENDANT JACUZZI'S MOTION TO RECONSIDER THE COURT'S ORDER DENYING DEFENDANT'S MOTIONS IN LIMINE NOS. 1, 4, 13, AND 21 AND COUNTERMOTION TO CLARIFY ISSUES THAT THE JURY MUST DETERMINE, APPLICABLE BURDENS OF PROOF, AND PHASES OF TRIAL** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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 and Aithr Dealer, Inc.*

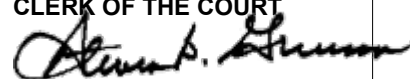
/s/ Kelly L. Pierce

An employee of WEINBERG, WHEELER,  
 HUDGINS, GUNN & DIAL, LLC



84

84



1 **APEN**

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18 *Jacuzzi Inc. doing business as*

19 *Jacuzzi Luxury Bath*

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## DISTRICT COURT

### CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS &  
BEYOND, INC.; AITHR DEALER, INC.;  
HALE BENTON, individually; HOMECCLICK,  
LLC; JACUZZI INC., doing business as  
JACUZZI LUXURY BATH; BESTWAY  
BUILDING & REMODELING, INC.;  
WILLIAM BUDD, individually and as  
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.

CASE NO.: A-16-731244-C

DEPT. NO.: XIX

### APPENDIX OF EXHIBITS IN SUPPORT OF DEFENDANT JACUZZI INC. DBA JACUZZI LUXURY BATH'S OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER THE COURT'S ORDER GRANTING IN PART, AND DENYING IN PART, DEFENDANT JACUZZI'S MOTION TO RECONSIDER THE COURT'S ORDER DENYING DEFENDANT'S MOTIONS IN LIMINE NOS. 1, 4, 13, AND 21

**Hearing Date: June 7, 2021**

**Hearing Time: In Chambers**



Defendant Jacuzzi, Inc. dba Jacuzzi Luxury Bath (“Jacuzzi”) by and through their attorneys of record, WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, hereby submits this Appendix of Exhibits in Support of Defendant Jacuzzi Inc. Db a Jacuzzi Luxury Bath’s Opposition To Plaintiffs’ Motion To Reconsider The Court’s Order Granting In Part, And Denying In Part, Defendant Jacuzzi’s Motion To Reconsider The Court’s Order Denying Defendant’s Motions In Limine Nos. 1, 4, 13, And 21.

Exhibit	Description
1.	Curnette Customer Complaint
2.	Selected pages from Deposition of Ruth Curnette
3.	Selected pages from Deposition of Patricia Herman
4.	Findings of Fact, Conclusions of Law and Order, filed in <i>Bahena, et al. v. Goodyear Tire and Rubber Company</i> , Case No. A503395
5.	Liability Default Judgment Against Defendant Goodyear Tire and Rubber Company, filed in <i>Bahena, et al. v. Goodyear Tire and Rubber Company</i> , Case No. A50339
6.	Reporter’s Transcript of Motions in Limine, filed in <i>Bahena, et al. v. Goodyear Tire and Rubber Company</i> , Case No. A503395
7.	Reporter’s Transcript of Jury Trial, filed in <i>Bahena, et al. v. Goodyear Tire and Rubber Company</i> , Case No. A503395
8.	Phase I Jury Instructions, filed in <i>Bahena, et al. v. Goodyear Tire and Rubber Company</i> , Case No. A503395
9.	Phase II Jury Instructions, filed in <i>Bahena, et al. v. Goodyear Tire and Rubber Company</i> , Case No. A503395

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10.

Reporter's Transcript of Jury Trial, filed in *Bahena, et al. v. Goodyear Tire and Rubber Company*, Case No. A503395

Dated this 13<sup>th</sup> day of May, 2021.

WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

/s/ Brittany M. Llewellyn

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Jacuzzi Inc. doing business as  
Jacuzzi Luxury Bath*

WEINBERG WHEELER  
HUDGINS GUNN & DIAL  
007649



007649



# CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2021, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF DEFENDANT JACUZZI INC. DBA JACUZZI LUXURY BATH'S OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER THE COURT'S ORDER GRANTING IN PART, AND DENYING IN PART, DEFENDANT JACUZZI'S MOTION TO RECONSIDER THE COURT'S ORDER DENYING DEFENDANT'S MOTIONS IN LIMINE NOS. 1, 4, 13, AND 21** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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Ian Estrada, Esq.  
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/s/ Kelly L. Pierce

An employee of WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC

# EXHIBIT 1

007651

007651

# EXHIBIT 1

**Report #20160824-98A64-1589899**Report Details

Report No.

20160824-98A64-1589899

Report Date

8/24/2016

Sent to Manufacturer / Importer / Private Labeler

9/16/2016

Category of Submitter

Consumer

Product Details

Product Description

Jacuzzi Walk-In Tub

Product Category

Home Maintenance and Structures

Product Type

Plumbing &amp; Bath

Product Code

Hot Tubs or Home Spas

Manufacturer / Importer / Private Labeler Name

JACUZZI BRANDS CORP.

Manufacturer / Importer / Private Labeler Address

13925 City Center Drive, Suite 200, Chino Hills, California, 91710, United States

Brand Name

Model Name or Number

LW45

Serial Number

BDPK7

UPC Code

Date Manufactured

Manufacturer Date Code

Retailer

Retailer State

Purchase Date

4/3/2016 This date is an estimate

Incident Details

Incident Description

Dear Gentlemen,

Ser # BDPK7, model: LW45, Job: 16198

Subj: DeathTrap - Jacuzzi Walk-In Tub.

On April 3, 2016, I signed a contract for installation of a Walk-In Tub. The agent was [REDACTED]. The Fairbanks construction Co. of Ocala FL, installed the unit 4-1-2016. I was advised never to use the tub without the 911 alert system in reach.

On July 18, 2016, after finally receiving the 911 alert, I decided to try the Walk-In Tub.

After 30 minutes the tub filled with 50 gal. of water. I opened the air jets at my back. At that moment, I was thrusted forward, landed on my knees and my head was underwater. I was in panic and tried frantically to get a hold of the bar to pull myself up. I could have drowned. The Alert 911 would have been totally useless out of reach. The Walk-In Tub is a death trap.

The tape demonstration and brochures given by the agent [REDACTED] do not compare to the tub installed. The Tub is an old model. The new models (copies encl.) require 30 gal of water and are half the size which was actually installed.

It takes 30 min. to fill the tub with 50 gallons. The shower head is barely in trickle mode and does not work properly. Numerous calls to the agent, the Fairbanks Construction Co., and [REDACTED], installation supervisor, [REDACTED]; were not returned. [REDACTED] of the Fairbanks Co. was rude, who returned the phone call stated "you got what you ordered, you do not get another tub!"

The agent [REDACTED], did not return any of my calls. Details re: water capacity was not disclosed and the publications were misrepresented.

I am a senior citizen, 85 yrs. + and a victim of exploitation of the elderly. I live on fixed income and invested \$15,500.- of my savings for health reasons, because my net worth does not qualify me for a senior establishment.

I live alone and after my experience of almost drowning, I have not used the tub since. I cannot afford the loss of \$15,500.-.

I would appreciate your help desperately. I have enclosed copies and documents for your review.

I look forward to your reply and a resolution of an exchange to my problem within the next 2 weeks.

Please contact me at your earliest at above address or by phone at [REDACTED]. Please, please help!

Sincerely,

[REDACTED]

Incident Date

7/18/2016

Incident Location

Unspecified

Victims Involved

Injury Information

Injury—Injury, Level of care not known

My Relationship to the Victim

Unspecified



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Gender

Unknown

Victim's Age When Incident Occurred

Unspecified

Additional Details

Submitter has product?

N/A

Product was damaged before incident?

N/A

Product was modified before incident?

N/A

If yes to any, explanation

Have you contacted the manufacturer?

N/A

If Not, Do You Plan To?

N/A

Associated Recall Details

Associated Recall

Submitter Details

First Name

Ruth R.

Last Name

Cumutte

Address

17498 SE 110th Court, Summerfield, Florida, 34491, United States

Phone

352-307-0103

E-mail

Manufacturers and private labelers must not use or disseminate submitter or victim contact information to any other party for any other purpose other than verification of the information in a Report.

Verification of a Report can include information such as:

- Identity of the submitter;
- Victim details such as location, age, and gender;
- Consumer product, including model, serial number, date code, color, and size;
- Harm or risk of harm;
- Description of the incident;
- Incident date or approximate date;
- Category of submitter.

Verification must not include activities such as sales, promotion, marketing, warranty, or any other commercial purpose.

# Report #20160824-98A64-1589899

## Report Details

### Report No.

20160824-98A64-1589899

### Report Date

8/24/2016

### Sent to Manufacturer / Importer / Private Labeler

9/16/2016

### Category of Submitter

Consumer

## Product Details

### Product Description

Jacuzzi Walk-In Tub

### Product Category

Home Maintenance and Structures

### Product Type

Plumbing &amp; Bath

### Product Code

Hot Tubs or Home Spas

### Manufacturer / Importer / Private Labeler Name

JACUZZI BRANDS CORP.

### Manufacturer / Importer / Private Labeler Address

13925 City Center Drive, Suite 200, Chino Hills, California, 91710, United States

### Brand Name

### Model Name or Number

LW45

### Serial Number

BDPK7

### UPC Code

### Date Manufactured

### Manufacturer Date Code

### Retailer

### Retailer State

### Purchase Date

4/3/2016 This date is an estimate

## Incident Details

### Incident Description

Dear Gentlemen,

Ser # BDPK7, model: LW45, Job: 16198

Subj: DeathTrap - Jacuzzi Walk-In Tub.

On April 3, 2016, I signed a contract for installation of a Walk-In Tub. The agent was [REDACTED]. The Fairbanks construction Co. of Ocala Fl., installed the unit 4-1-2016. I was advised never to use the tub without the 911 alert system in reach.

On July 18, 2016, after finally receiving the 911 alert, I decided to try the Walk-In Tub.

After 30 minutes the tub filled with 50 gal. of water. I opened the air jets at my back. At that moment, I was thrusted forward, landed on my knees and my head was underwater. I was in panic and tried frantically to get a hold of the bar to pull myself up. I could have drowned. The Alert 911 would have been totally useless out of reach. The Walk-In Tub is a death trap.

The tape demonstration and brochures given by the agent [REDACTED] do not compare to the tub installed. The Tub is an old model. The new models (copies encl.) require 30 gal of water and are half the size which was actually installed.

It takes 30 min. to fill the tub with 50 gallons. The shower head is barely in trickle mode and does not work properly. Numerous calls to the agent, the Fairbanks Construction Co., and [REDACTED], installation supervisor, [REDACTED], were not returned. [REDACTED] of the Fairbanks Co. was rude, who returned the phone call stated "you got what you ordered, you do not get another tub!"

The agent [REDACTED], did not return any of my calls. Details re: water capacity was not disclosed and the publications were misrepresented.

I am a senior citizen, 85 yrs. + and a victim of exploitation of the elderly. I live on fixed income and invested \$15,500.- of my savings for health reasons, because my net worth does not qualify me for a senior establishment.

I live alone and after my experience of almost drowning, I have not used the tub since. I cannot afford the loss of \$15,500.-.

I would appreciate your help desperately. I have enclosed copies and documents for your review.

I look forward to your reply and a resolution of an exchange to my problem within the next 2 weeks.

Please contact me at your earliest at above address or by phone at [REDACTED]. Please, please help!

Sincerely,

[REDACTED]

### Incident Date

7/18/2016

### Incident Location

Unspecified

## Persons Involved

### Injury Information

Injury→Injury. Level of care not known

### My Relationship to the Victim

Unspecified

Gender

Unknown

Victim's Age When Incident Occurred

Unspecified

Additional Details

Submitter has product?

N/A

Product was damaged before incident?

N/A

Product was modified before incident?

N/A

If yes to any, explanation

Have you contacted the manufacturer?

N/A

If Not, Do You Plan To?

N/A

Associated Recall Details

Associated Recall

Submitter Details

First Name

Ruth R.

Last Name

Cumutte

Address

17498 SE 110th Court, Summerfield, Florida, 34491, United States

Phone

352-307-0103

E-mail

Manufacturers and private labelers must not use or disseminate submitter or victim contact information to any other party for any other purpose other than verification of the information in a Report.

Verification of a Report can include information such as:

- Identity of the submitter;
- Victim details such as location, age, and gender;
- Consumer product, including model, serial number, date code, color, and size;
- Harm or risk of harm;
- Description of the incident;
- Incident date or approximate date;
- Category of submitter.

Verification must not include activities such as sales, promotion, marketing, warranty, or any other commercial purpose.





Ref: Ser# BDPK 7, model: LW45, Job: 16198  
 Subj: Death Trap - Jacuzzi Walk-In Tub.

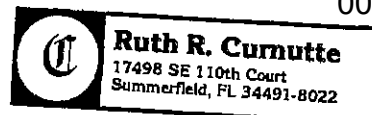
On April 3, 2016, I signed a contract for installation of a Walk-In Tub. The agent was Kevin Lewis. The Fairbanks Construction Co. of Ocala, FL, installed the unit 4-1-2016. I was advised never to use the tub without the 911 Alert system in reach.

On July 18, 2016, after finally receiving the 911 Alert, I decided to try the Walk-In Tub.

After 30 minutes the tub filled with 50 gal. of water. I opened the air jets at my back. At that moment, I was thrusted forward, landed on my knees and my head was under water. I was in panic and tried frantically to get a hold of the bar to pull myself up. I could have drowned. The alert 911 would have been totally useless out of reach. The Walk-In Tub is a death trap.

The tape demonstration and brochures given by the agent Kevin Lewis do not compare to the tub installed. The tub is an old model. The new models (copies encl.) require 30 gal of water and are half the size which was actually installed.





P. 2

It takes 30 min. to fill the tub with 50 gallons. The shower head is barely in tricked mode and does not work proper. Numerous calls to the agent, The Fairbanks Construction Co., and Rick Regal, installation supervisor, Mr. Fairbanks were not returned. Mr. Maller, of The Fairbanks Co., was rude, who returned the phone call, stated "you got what you ordered, you do not get another tub!"

The agent Kevin Lewis did not return any of my calls. Details re: water capacity was not disclosed and the publications were misrepresented.

I am a senior citizen, 85 yrs. old and a victim of exploitation of the elderly. I live on a fixed income and invested \$15,500.- of my savings for health reasons, because my net worth does not qualify me for a senior establishment.

I live alone and after my experience of almost drowning, I have not used the tub since. I cannot afford the loss of \$15,500.-.

I would appreciate your help desperately. I have enclosed copies and documents for your review.

I look forward to your reply and a resolution of an exchange to my problem within the next 2 weeks.

Please contact me at your earliest at above address or by phone at (352) 307-0103. Please, please help!

Sincerely,  
Ruth Curnutte

Encl.:

## EXHIBIT 2

007658

007658

## EXHIBIT 2

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

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.

FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HALE BENTON, Individually; HOMECCLICK, LLC; JACUZZI INC., doing business as JACUZZI LUXURY BATH; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING; DOES 1 through 20; 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,

Defendants.

VIDEO DEPOSITION OF: RUTH R. CURNETTE  
TAKEN BY: PLAINTIFFS  
DATE: WEDNESDAY, AUGUST 7, 2019  
TIME: 9:05 A.M. - 12:13 P.M.  
LOCATION: 17498 SE 110th COURT  
SUMMERFIELD, FLORIDA 34491-8022  
REPORTED BY: Courtney L. Wear, RMR, CRR  
Stenographic Court Reporter  
Notary Public, State of Florida

OWEN & ASSOCIATES COURT REPORTERS  
P.O. BOX 157, OCALA, FLORIDA 34478  
352.624.2258 owenassocs@aol.com

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APPEARING ON BEHALF OF PLAINTIFFS

**PHILIP GOODHART, Esquire**

THORNDAL ARMSTRONG DELK BALKENBUSH &amp; EISINGER

1100 East Bridger Avenue

Las Vegas, Nevada 89215

E-mail: png@thorndal.com

APPEARING ON BEHALF OF DEFENDANTS FIRST STREET  
FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC.,  
and HALE BENTON**BRITTANY M. LLEWELLYN, Esquire**

WEINBERG WHEELER HUDGINS GUNN &amp; DIAL

6385 South Rainbow Boulevard, Suite 400

Las Vegas, Nevada 89118

E-mail: bllewellyn@wwhgd.com

APPEARING ON BEHALF OF DEFENDANT JACUZZI, INC.

## ALSO PRESENT:

Greg Waugh, Videographer

Sara Niland, Caregiver

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007660

1 here living with me. So I was left to my own self to  
2 save myself.

3 Q. Okay. So after that happened and you're  
4 holding the shower head, did you drain the tub and get  
5 out?

6 A. You bet. Yes. I drained -- I was hanging on  
7 while the tub was draining because, as I said,  
8 slippery -- the ground -- the footwell was still  
9 slippery before they installed the mats, the  
10 slip-resistant mats.

11 Q. Okay. So after the tub drained and you're  
12 holding on, you're able to open the door and get out of  
13 the tub?

14 A. After it was drained, yes.

15 Q. After it was drained?

16 A. Yes.

17 Q. Okay. So no one had to help you out? You  
18 were able to get out of the tub?

19 A. No. I live alone.

20 Q. Okay.

21 A. Yeah.

22 Q. I understand.

23 Okay. So you didn't have any problems  
24 opening the door of the tub?

25 A. No.

199700

007661

## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF FLORIDA }

4 COUNTY OF MARION }

5 I, COURTNEY L. WEAR, RMR, CRR, do hereby  
6 certify that I was authorized to and did  
7 stenographically report the foregoing video deposition  
8 of RUTH R. CURNETTE; that a review of the transcript  
9 was not requested; and that the foregoing transcript,  
10 pages 7 through 98, is a true record of my stenographic  
11 notes.

12 I FURTHER CERTIFY that I am not a relative,  
13 employee, attorney or counsel of any of the parties',  
14 nor am I a relative or employee of any of the parties'  
15 attorneys or counsel with the action, nor am I  
16 financially interested in the action.

17 Signed this day of 8-12-2019, Marion County,  
18 Florida.

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22  
23 /s/ Courtney L. Wear  
24 COURTNEY L. WEAR, RMR, CRR  
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CERTIFICATE OF OATH

STATE OF FLORIDA}

COUNTY OF MARION}

I, COURTNEY L. WEAR, Registered Merit  
Reporter, Certified Realtime Reporter, a Notary Public  
for the State of Florida, and Court Reporter, certify  
that the witness, RUTH R. CURNETTE, personally appeared  
before me this day of 8-7-2019 and was duly sworn.

WITNESS my hand and official seal this day  
of 8-12-2019.

Identification: FL Driver's License

/s/ Courtney L. Wear  
\_\_\_\_\_  
COURTNEY L. WEAR  
Notary Public-State of Florida  
Comm No: GG 260936

Comm. Expires: December 12, 2022

007663

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# EXHIBIT 3

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# EXHIBIT 3



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,

CASE NO: A-16-731244-C  
DEPT NO: 11

vs.

FIRST STREET FOR BOOMERS & BEYOND,  
INC., AIHR DEALER, INC.; HALE  
BENTON, Individually, HOMECCLICK, LLC;  
JACUZZI INC., doing business as JACUZZI  
LUXURY BATH; BESTWAY BUILDING &  
REMODELING, INC.; WILLIAM BUDD,  
Individually and as BUDDS PLUMBING;  
DOES 1 through 20; 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.

AND ALL RELATED MATTERS

The Video Deposition of:

PATRICIA K. HERMAN

Reported by Linde R. Blosser  
On Friday, August 9, 2019  
At 900 Fox Valley Drive  
Longwood, Florida  
On Behalf of the Plaintiffs  
Commencing at 9:56 a.m.

## APPEARANCES:

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Attorney for Sherry Lynn Cunnison

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Thorndal Armstrong Delk Balkenbush & Eisinger  
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Png@thorndal.com  
Attorney for First Street Boomers & Beyond,  
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Suite 400  
Las Vegas Nevada 89118  
bllewellyn@wwhgd.com  
Attorney for HomeClick, LLC, Jacuzzi, Inc.,  
Jacuzzi Luxury Bath

VIDEOGRAPHER: Gary Markman

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1 we used this tub and I had my mom sitting there and I'm  
2 giving her her normal bath without that little thing on  
3 there, she didn't slide.

4 So that's why I would just assume that it's at  
5 90 degrees, because I would have to keep my leg in between  
6 her. She could actually sit there with no water in the  
7 tub --

8 Q. Okay.

9 A. -- without that NASA piece.

10 Q. Did she ever slide off of the seat with just  
11 water in the tub but no jets on?

12 A. With just water in the tub?

13 Q. Yeah. In other words, she was just sitting  
14 there in water but you had not --

15 A. Oh. That never happened.

16 Q. -- turned the jets on.

17 A. No. I would never put my mother in the tub with  
18 water in it. After that -- that time when she got pushed  
19 off, no.

20 Q. Even the one time when she did get pushed off,  
21 was she okay sitting there until you turned the jets on,  
22 and then the jets, when it shot out water onto her back,  
23 propelled her forward?

24 A. Correct.

25 Q. Okay.

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1 Q. Does she slide forward?

2 A. Nope.

3 Q. Okay.

4 A. The only time she slid forward was with that  
5 NASA thing.

6 Q. Okay.

7 A. That little NASA thing.

8 Q. Whatever it was they put on.

9 Did you have that removed?

10 A. Yes.

11 Q. Okay. So once you had that fixture or that NASA  
12 thing removed, you then continued to use the tub as a -- I  
13 guess a sit-down shower for your mother.

14 A. Correct.

15 Q. And how often did you use the tub as a sit-down  
16 shower?

17 A. Morning and night.

18 Q. So twice a day?

19 A. Yes.

20 Q. Every day?

21 A. Yes.

22 Q. Okay. And for how many years?

23 A. From 2013 -- I think I want to say -- her brain  
24 mets were discovered in 2013, November. So from 2013  
25 until 2016, when she passed away.

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## CERTIFICATE OF REPORTER

STATE OF FLORIDA :

COUNTY OF ORANGE :

I, Linde R. Blosser, Court Reporter and Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing deposition; that a review of the transcript was not requested; and that the foregoing transcript, pages 4 through 90, is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 24th day of August 2019.

  
LINDE R. BLOSSER

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# EXHIBIT 4

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# EXHIBIT 4

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DISTRICT COURT CLERK OF THE COURT

CLARK COUNTY, NEVADA

TERESA BAHENA, individually, and as special administrator for EVERTINA M. TRUJILLO TAPIA, deceased, MARIANA BAHENA, individually, MERCEDES BAHENA, individually, ROCIO PEREYA, individually, MARICELA BAHENA, individually, ERNESTO TORRES and LEONOR TORRES, individually, and LEONOR TORRES, as special administrator for ANDRES TORRES, deceased, LEONOR TORRES for ARMANDO TORRES and CRYSTAL TORRES, minors, represented as their guardian ad litem, VICTORIA CAMPE, as special administrator of FRANK ENRIQUEZ, deceased, PATRICIA JAYNE MENDEZ for HOSEPH ENRIQUEZ, HEREMY ENRIQUEZ and JAMIE ENRIQUEZ, minors, represented as their guardian ad litem, MARIA ARRIAGA for KOJI ARRIAGA represented as his guardian ad litem,

CASE NO. A503395  
DEPT NO. XV

Plaintiffs,

vs.

FORD MOTOR COMPANY, GOODYEAR TIRE AND RUBBER COMPANY, GARM INVESTMENTS, INC., d/b/a VALLEY VIEW HITCH AND TRUCK RENTAL, Roe Corporations I-XX and Does I-XX,

Defendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

This matter having come on for bearing originally on January 9, 2007 and then again on January 18, 2007 where Defendant Goodyear Tire and Rubber Company appeared through counsel Dan Polsenberg of Beckley Singleton, Jonathan Owens of

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JAN 29 2007

CLERK OF THE COURT

SALLY LOEHNER  
DISTRICT JUDGE  
DEPARTMENT FIFTEEN  
LAS VEGAS, NEVADA 89155

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1 Alverson, Taylor, et al., and Anthony Latiolat of Yoka and Smith (appearing *pro hac*  
2 *vice*); Defendant Ford Motor Company appeared through counsel Jay Schuttert and  
3 Jonathan Hicks of Snell & Wilmer; Defendant Garm Investments appeared through  
4 counsel James Rosenberger of Pico, Escobar & Rosenberger and Timothy Dunn of Dunn  
5 & Dunn (appearing *pro hac vice*); Counterdefendant Ernesto Torres appeared through  
6 counsel Phillip Emerson of Emerson & Manke; the heirs of Plaintiff Erventina Trujillo  
7 Tapia appeared through counsel Matthew Callister of Callister & Reynolds; and all  
8 remaining Plaintiffs appeared through counsel Chad Bowers and Albert Massi; the Court  
9 having considered:  
10

11 a) Plaintiffs' motion to compel, motion for clarification and motion for  
12 sanctions filed December 29, 2006;  
13

14 b) Plaintiffs' supplement to their motion to compel, motion for clarification  
15 and motion for sanctions filed January 2, 2007;  
16

17 c) Defendant Goodyear's opposition to Plaintiffs' motion to compel, motion  
18 for clarification and motion for sanctions filed January 8, 2007;  
19

20 d) Defendant Garm Investments' motion for sanctions filed December 20,  
21 2006;  
22

23 e) Defendant Goodyear's opposition to Garm Investments' motion for  
24 sanctions filed January 3, 2007;  
25

26 f) Plaintiffs' motion for prove up hearing without benefit of a jury filed  
27 January 11, 2007;  
28

g) Plaintiffs' supplement to motion for prove up hearing without benefit of a  
jury filed January 16, 2007;



1 h) Defendant Goodyear's opposition to Plaintiffs' motion for prove up  
2 hearing filed January 17, 2007;

3 i) Defendant Goodyear's countermotion for reconsideration of sanctions  
4 filed January 17, 2007;

5 j) Defendant Goodyear's exhibits in support of its opposition to motion for  
6 prove up hearing and its countermotion to reconsider sanctions filed January 17, 2007;  
7 and  
8

9 k) Defendant Goodyear's supplement to exhibits to its opposition to motion  
10 for prove up hearing and its countermotion to sanctions filed January 19, 2007;  
11 the court hereby FINDS:  
12

13  
14 FINDINGS OF FACT

15 1. On December 5, 2006, the Discovery Commissioner heard a motion to  
16 compel filed by all Plaintiffs, wherein Plaintiffs requested that the Commissioner compel  
17 Defendant Goodyear to ~~provide complete answers matching specific pages in Goodyear's~~  
18 74,000 page production of documents to specific requests for production contained in  
19 Ernesto Torres' request for production propounded initially in February, 2006. The  
20 Commissioner's findings included that he "does not believe Mr. Owens' client,  
21 Defendant Goodyear, is acting in good faith and Goodyear cannot produce documents  
22 without designating what request specific documents respond to, as that is evasive non-  
23 compliance with discovery."  
24

25 2. This Court signed the recommendations from that hearing on January 5,  
26 2007 as an order after no timely objection had been filed and served pursuant to  
27 NRC16.1(d)(2).  
28

1                   3.     On December 14, 2006, the Discovery Commissioner heard Defendant  
2  
3     Goodyear's motion for protective order and recommended that:

4                   "prior to December 28, 2006, Goodyear will have a representative appear  
5                   at the office of Plaintiffs' counsel in Las Vegas Nevada to render  
6                   testimony in the presence of a court reporter regarding the authenticity of  
7                   the approximately 74,000 documents bates stamped GY-BAHENA  
8                   produced by Goodyear in this matter. Any document Goodyear's  
9                   representative does not either affirm or deny as authentic will be deemed  
10                  authentic."

11                  4.     That this Court signed the recommendations from that hearing as an order  
12                  on January 5, 2007 after no timely objection had been filed and served pursuant to NRC  
13                  16.1(d)(2).

14                  5.     That at the time the Court signed the order from the December 14, 2006  
15                  discovery hearing, the Court and the Discovery Commissioner were unaware of any  
16                  objection being filed and served by Goodyear as required by NRC 16.1(d)(2).

17                  6.     That the Court re-validated its January 5, 2007 order after hearing  
18                  Defendant Goodyear's objection at the January 9, 2007 hearing.

19                  7.     That had the Court been made aware of Goodyear's objection to the  
20                  Discovery Commissioner's recommendation from the December 14, 2006 hearing, the  
21                  Court would have overruled Goodyear's objections because the signed recommendation  
22                  is very clear on its face.

23                  8.     That Goodyear failed to produce any representative in Nevada by  
24                  December 28, 2006 pursuant to this Court's order from the December 14, 2006 hearing;

25                  9.     That Defendant Goodyear provided answers to Plaintiff Ernesto Torres'  
26                  first set of interrogatories on or about April 3, 2006; supplemental responses to Plaintiff  
27                  Ernesto Torres' first set of interrogatories on or about May 16, 2006; answers to Plaintiff  
28                  Joseph Enriquez's interrogatories to Goodyear on or about December 13, 2006; answers

1 to Plaintiff Jeremy Enriquez's interrogatories to Goodyear on or about December 13,  
 2 2006; and answers to Defendant Garm Investments' interrogatories to Goodyear, all  
 3 without any signature under oath of any representative of Defendant Goodyear.  
 4

### 5 6 CONCLUSIONS OF LAW

7 Pursuant to the factors enumerated in Young v. Johnny Ribiero, 106 Nev. 88  
 8 (1990), the court determines:  
 9

10 1. That the degree of willfulness of Goodyear is extreme for the following  
 11 reasons:

- 12 A. That it was not oversight not to have interrogatories signed; 7
- 13 B. That Goodyear has Nevada counsel and other counsel and it is not
- 14 oversight for Goodyear's interrogatory answers not to be verified;
- 15 C. That it was willful for Goodyear's Nevada counsel to sign
- 16 unverified interrogatories; A
- 17 D. That throughout this litigation Goodyear has intentionally delayed
- 18 responding to everything until the last possible day; ✓B
- 19 E. That an attorney who signs responses to interrogatories, delivers
- 20 them to opposing counsel and does not have the verification from A
- 21 his client has violated NRCP Rule 11/26(g) advertently,
- 22 inadvertently or willfully; J
- 23 F. That a party pursuing litigation in good faith who does not intend
- 24 to provide its employee in Clark County, after a December 14, B
- 25 2006 hearing orders the production of an employee by December
- 26 28<sup>th</sup>, does not wait until January 3, 2007 to object to the order
- 27
- 28

1 from said hearing. That such delay on the eve of trial is bad faith  
2 and delay;

3  
4 G. That Nevada Rules of Civil Procedure 1 requires all rules to "be  
5 construed and administered to secure the just, speedy, and  
6 inexpensive determination of every action," and there was nothing  
7 either just or speedy about Defendant Goodyear's responses to  
8 discovery in this case;

9  
10 H. That the Discovery Commissioner found Defendant Goodyear to  
11 be "hiding the ball" and not acting in good faith on the prior two  
12 occasions this case had been in front of him for discovery disputes.  
13 The December proceeding was the third time this matter was  
14 before the Discovery Commissioner. The Court finds the degree  
15 of willfulness of Goodyear to defeat or obstruct the discovery  
16 process to be extreme; and

17  
18 I. That Defendant Goodyear's general objections to interrogatories  
19 were made in bad faith.

20 2. That considering the extent to which the non offending party would be  
21 prejudiced by a lesser sanction, the lesser sanction is to continue the trial date. Here,  
22 Plaintiffs include a 14 year old in a persistent vegetative state for the last two years, and  
23 the estates of three dead Plaintiffs. Prejudice to Plaintiffs would be extreme and  
24 inappropriate if the trial was continued.

25 3. That in considering the severity of striking Goodyear's Answer relative to  
26 the severity of the abusive conduct by Goodyear, the decision goes in favor of the  
27 Plaintiffs. The Court is unaware of who is directing Goodyear's local counsel to be so  
28

1 recalcitrant. The Court could not determine if the marching orders in this case are being  
2 given by Goodyear itself, Goodyear's counsel in the mid-west or Mr. Latioliat's firm.  
3  
4 However, during the entire history of this case, it is clear that Goodyear has taken the  
5 approach of stalling, obstructing and objecting. Therefore, the court considers  
6 Goodyear's posture in this case to be totally untenable and unjustified. Goodyear's  
7 responses to Plaintiffs' interrogatories are nothing short of appalling.

8 4. The fourth consideration in Young v. Ribiero, supra, deals with  
9 irreparably lost or destroyed evidence and does not apply to this case.

10 5. The fifth consideration in Young v. Ribiero, supra, deals with available  
11 sanctions for lost or destroyed evidence and does not apply to this case.

12 6. The sixth consideration in Young v. Ribiero, supra, is Nevada policy  
13 favoring adjudication on the merits. However, the court believes the Nevada Supreme  
14 Court is about to create a sea change on abusive discovery tactics and this case may just  
15 wind up being the sea change case wherein our Supreme Court will determine whether it  
16 is going to allow mega parties to conduct and respond to discovery in the manner in  
17 which Goodyear has done in this case. Every policy has its limits and the limits here  
18 were broken when on the eve of trial Goodyear failed to respond in good faith to  
19 plaintiffs' interrogatories and Goodyear did not object in a timely fashion to the  
20 Discovery Commissioner's recommendation that an employee appear in this jurisdiction  
21 on or before December 28<sup>th</sup> given the fact that the trial was scheduled to commence  
22 January 29, 2007. Goodyear knew full well that when it filed it's objection on January  
23 3<sup>rd</sup>, that if the court were inclined to require Goodyear to fully respond to discovery and  
24 to present its employee here, that the court would have been required to vacate the trial  
25 date.  
26  
27  
28

1           7.     The seventh consideration in Young v. Ribiero, supra, requires the Court  
2 to determine whether the sanctions imposed unfairly operate to penalize the party for the  
3 misconduct of its attorneys. As stated in "3" above, attorneys do not take the posture of  
4 stalling and delaying and objecting without authorization from their client. Mr. Owens  
5 informed this Court on January 9, 2007 that he, in fact, spoke to someone in Akron, Ohio,  
6 who he believed worked for Goodyear prior to responding to the interrogatories in  
7 question.  
8

9           8.     The final consideration in Young v. Ribiero, supra, is the need of the  
10 Court to deter parties and future litigants from similar abuses. The Court finds in this  
11 case that there is an overwhelming need to deter Goodyear from continuation of its  
12 abusive discovery practices.  
13

14           In regard to Plaintiffs' request for prove up without a jury, the Court believes this  
15 request stands on all fours pursuant to Temora Trading Company, Ltd. v. Perry, 98 Nev.  
16 229 (1982), where the Court entered default judgment after the Court struck Temora's  
17 answer for failing to comply with discovery orders and the default judgment was upheld.  
18 However, the Court thinks the policy of this State is for juries to determine damages.  
19 Additionally, it is more fair to Defendant Goodyear if the damage issue is presented by  
20 the Plaintiffs to a jury.  
21

22  
23                               ORDER

24           The Court, having considered the extensive pleadings filed herein as well as the  
25 arguments of counsel at two separate hearings, hereby ORDERS:  
26

- 27           1.     That Defendant Goodyear's motion for reconsideration is granted.  
28           2.     That Plaintiffs' motion for prove up without a jury is denied.

SALLY LOEHRER  
DISTRICT JUDGE  
DEPARTMENT FIFTEEN  
LAS VEGAS, NEVADA 89156

3. That Defendant Goodyear's answer will remain stricken and Goodyear may not defend on liability for and causation of compensatory damages. However, Defendant Goodyear will be allowed to call their own damage witnesses and cross-examine Plaintiffs' witnesses.

4. That Defendant Goodyear is sanctioned the sum of \$10,000.00 in attorney's fees for failure to provide suitable interrogatory answers under oath to Defendant Garm Investments.

5. That Defendant Goodyear is additionally sanctioned the sum of \$10,000.00 in attorney fees for failure to provide verified interrogatory answers under oath to Plaintiffs. This \$10,000.00 sanction may be netted by Defendant Goodyear against monies (approximately \$4,000.00) owed to it by Plaintiffs for the cost of photocopies.

6. In a second phase of trial, Plaintiffs will present evidence of malice for punitive damages and Defendant Goodyear may defend the issue and amount of punitive damages in that phase.

DATED this 29th day of January, 2007

  
DISTRICT JUDGE

I hereby certify that on the date filed I placed a copy of the foregoing Order in the folder(s) in the Clerk's Office of the following:

Chad Bowers, Esq.	(Al Massi, Ltd.)
Matthew Callister, Esq.	(Callister & Reynolds)
Jonathan Owens, Esq.	(Alverson, Taylor)
Daniel Polsenberg, Esq.	(Beckley Singleton)
Jay Schuttart, Esq.	(Snell & Wilmer)
James Rosenberger, Esq.	(Pico, Escobar)
Phillip Emerson, Esq.	(Emerson & Manke)

  
DIANE SANZO, Judicial Assistant

# EXHIBIT 5

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# EXHIBIT 5



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CLERK OF THE COURT

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1 DFLT  
2 MATTHEW Q. CALLISTER, ESQ.  
3 Nevada Bar No. 001396  
4 R. DUANE FRIZELL, ESQ.  
5 Nevada Bar No. 009807  
6 CALLISTER & REYNOLDS  
7 823 Las Vegas Blvd. So.  
8 Las Vegas, NV 89101  
9 (702) 385-3343  
10 (702) 385-2899—Facsimile  
11 Attorneys for the Bahena Plaintiffs

## IN THE EIGHTH JUDICIAL DISTRICT COURT

## FOR CLARK COUNTY, NEVADA

TERESA BAHENA, *et al.*,

Plaintiffs,

vs.

GOODYEAR TIRE AND RUBBER  
COMPANY, *et al.*,

Defendants.

Case No.: A503395  
Dept.: 15

**LIABILITY DEFAULT JUDGMENT AGAINST DEFENDANT  
GOODYEAR TIRE AND RUBBER COMPANY**

At a hearing on January 9, 2007, the Court struck the answer of Defendant Goodyear Tire and Rubber Company ("Goodyear"). At a subsequent hearing on January 18, 2007, the Court upheld and reaffirmed its decision to strike Goodyear's answer. The findings of fact and conclusions of law supporting the Court's striking of Goodyear's answer are set forth in detail in the transcripts of the hearings as well as in the subsequent written orders and rulings of the Court on the matter.

Pursuant to the Court's findings of fact and conclusions of law, as well as Nevada Rules of Civil Procedure 11(c), 37(b), and 55(b), and *Hamlett v. Reynolds*, 114 Nev. 863, 864-65, 963 P.2d 457, 458 (1998), the Court now enters this liability default judgment against Goodyear and in favor of Plaintiffs as to Plaintiffs' First Amended Complaint (filed Aug. 9, 2006) ("Amended Complaint").

///

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CLERK OF THE COURT

1 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby  
2 entered in favor of Plaintiffs and against Goodyear as follows:

- 3 1. With respect to Plaintiffs' First Cause of Action (Wrongful Death), as set forth in  
4 Paragraphs 26-31 of the Amended Complaint, Goodyear is hereby adjudged fully  
5 liable to Plaintiffs.
- 6 2. With respect to Plaintiffs' Second Cause of Action (Strict Products Liability), as  
7 set forth in Paragraphs 31-52 of the Amended Complaint, Goodyear is hereby  
8 adjudged fully liable to Plaintiffs.
- 9 3. With respect to Plaintiffs' Third Cause of Action (Implied Warranty), as set forth  
10 in Paragraphs 52-69 of the Amended Complaint, Goodyear is hereby adjudged  
11 fully liable to Plaintiffs.
- 12 4. With respect to Plaintiffs' Fourth Cause of Action (Negligence), as set forth in  
13 Paragraphs 69-85 of the Amended Complaint, Goodyear is hereby adjudged fully  
14 liable to Plaintiffs.
- 15 5. With respect to Plaintiffs' Fifth Cause of Action (Breach of Express Warranty), as  
16 set forth in Paragraphs 85-101 of the Amended Complaint, Goodyear is hereby  
17 adjudged fully liable to Plaintiffs.
- 18 6. With respect to Plaintiffs' Sixth Cause of Action (Negligent Infliction of  
19 Emotional Distress), as set forth in Paragraphs 101-06 of the Amended  
20 Complaint, Goodyear is hereby adjudged fully liable to Plaintiffs.
- 21 7. With respect to Plaintiffs' Seventh Cause of Action (Negligence), as set forth in  
22 Paragraphs 106-14 of the Amended Complaint, Goodyear is hereby adjudged fully  
23 liable to Plaintiffs.
- 24 8. As to Plaintiffs' First through Seventh Causes of Action (Wrongful Death, Strict  
25 Products Liability, Implied Warranty, Negligence, Breach of Express Warranty,  
26 Negligent Infliction of Emotional Distress, and Negligence), judgment as to  
27  
28

1 liability is hereby entered against Goodyear and in favor of Plaintiffs on these  
2 claims. Nevertheless, the Court concludes that as to damages for these claims,  
3 Goodyear is entitled to a full evidentiary, prove-up hearing to be held in the  
4 presence of a jury. Accordingly, a jury shall determine any and all damages to be  
5 awarded for these claims.

- 6 9. With respect to Plaintiffs' Eighth Cause of Action (Exemplary, Punitive  
7 Damages), as set forth in Paragraphs 114-17 of the Amended Complaint, the  
8 Court concludes that under NRS § 42.005(3), punitive damages "will be assessed"  
9 against Goodyear. Accordingly, at the prove-up hearing on Plaintiffs'  
10 compensatory damages, the jury will not make a finding as to whether punitive  
11 damages will be assessed. Nevertheless, no evidence pertaining to Plaintiffs'  
12 claim for punitive damages shall be introduced during the prove-up hearing on  
13 compensatory damages. Rather, after the jury has rendered a verdict as to  
14 compensatory damages, a second prove-up hearing shall ensue. Pursuant to NRS  
15 § 42.005(3), the second prove-up hearing shall be limited to "determin[ing] the  
16 amount of [punitive] damages to be assessed." At the second hearing, the jury  
17 "shall make a finding of the amount to be assessed according to the provisions of  
18 [NRS § 42.005]." Further, under NRS § 42.005(3), "[t]he findings . . . must be  
19 made by special verdict." In addition, as required by NRS § 42.005(3), "the jury  
20 must not be instructed, or otherwise advised, of the limitations on the amount of  
21 an award of punitive damages."  
22  
23  
24  
25  
26  
27  
28

1 10. This is not a final, appealable order or judgment.

2 IT IS SO ORDERED.

3 SIGNED this 24 day of January 2007.

4

5

6

  
DISTRICT COURT JUDGE

7 Submitted By:

8

9

 #9374  
MATTHEW Q. CALLISTER, ESQ.

10 Nevada Bar No. 001396

R. DUANE FRIZELL, ESQ.

11 Nevada Bar No. 9807

CALLISTER & REYNOLDS

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13 (702) 385-3343

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14 Attorneys for the Bahena Plaintiffs

15

16

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# EXHIBIT 6

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# EXHIBIT 6

1-23-07, A503395

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1 TRAN  
2 CASE NO. A503395  
3 DEPT. NO. XV

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CLERK OF THE COURT  
DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \*

7 TERESA BAHENA, ET AL,

8 Plaintiffs,

9 vs.

10 GOODYEAR TIRE AND RUBBER  
11 COMPANY,

12 Defendant.

ORIGINAL

REPORTER'S TRANSCRIPT  
OF  
MOTIONS IN LIMINE

13  
14 BEFORE THE HONORABLE SALLY LOEHRER  
15 DISTRICT COURT JUDGE

16  
17 TUESDAY, JANUARY 23, 2007  
18 9:00 A.M.

## 19 APPEARANCES:

20 For the Plaintiff: CHAD BOWERS, ESQ.  
21 MATTHEW CALLISTER, ESQ.

22 For the Defendant: ANTHONY LATIOLAIT, ESQ.  
JEFFREY CASTO, ESQ.  
DANIEL POLSENBERG, ESQ.

Reported by: Mary Beth Cook, CCR #268, RPR

MARY BETH COOK, CCR 268, RPR

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FEB 11 2008  
CLERK OF THE COURT



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LAS VEGAS, CLARK COUNTY, NEVADA  
TUESDAY, JANUARY 23, 2007  
9:00 A.M.

PROCEEDINGS  
\* \* \*

THE COURT: Bahena versus Ford, Goodyear and Garm Investments. For Bahena we have Chad Bowers, and for Goodyear we have Mr. Latiolait and Mr. Polsenberg.

MR. POLSENBERG: Good morning, your Honor.

THE COURT: And Mr. Owens. And you might be.

MR. CASTO: Jeffrey Casto, your Honor.

MR. POLSENBERG: Mr. Casto is the subject of our motion for pro hoc vice, and if the Court -- he's been cleared by the State Bar.

We've provided the Court with a copy of the documents that will be supporting the motion. If the Court would allow, Mr. Casto will be able to argue some of the motions this morning.

THE COURT: We just got the application this morning. You're pressing the Court to do these things and make sure that they're appropriate and follow the Supreme Court rule,

4

punitive damages, and ultimately it would be a jury determination whether punitive damages would be awarded or not, which it always is. And because in the normal trial the jury is asked in the first phase of the trial an interrogatory whether or not they feel punitive damages are warranted, and if they answer it yes then we go to the second part of the trial where additional evidence is taken regarding that.

In this case because the jury is not going to be able to answer that question, we're going to put on a punitive damages second phase of the trial. After the jury has determined compensatory damages and come back and returned that verdict, then we will go forward on punitive damages, and the instructions will be crafted such that the jury will be clearly told that it is within their purview and their purview alone if they find the statutory criteria has been met they may award punitive damages. If the statutory criteria hasn't been met, they can't award punitive damages. Even if the statutory criteria is met, it's still a discretionary call by the jury as to whether they wish to award punitive damages or not. So the instructions that go along

3

et cetera. Do you have the order allowing him to practice, Mr. Polsenberg?

MR. POLSENBERG: I don't believe we have the actual order yet. If the Court would just allow him to appear this morning and we can submit the order afterwards.

THE COURT: Mr. Casto, my law clerk has reviewed the application to appear here pro hoc vice. This is only your second appearance in the time frames listed, so the Court will allow you to practice here pro hoc vice. Your order must be filed today.

We also have Mr. Callister for some of the plaintiffs and Mr.

MR. FRIZELL: Frizell.

THE COURT: Mr. Frizell for some of the plaintiffs. What we have is -- let's take defendant's motion for summary judgment on plaintiff's claim for punitive damages first. We discussed this at some length yesterday as to how we were going to do this, and it appeared to me after our discussion yesterday and during our discussion yesterday that punitive damages would be the second part of the trial. That both parties would be allowed to put on evidence of

5

that portion of the trial will go in accordance with what I've just said this morning. So for that reason the defendant's motion for summary judgment to dismiss the plaintiff's claim for punitive damages is denied.

Now let's take a look at the motions in limine. The first one is to exclude evidence of discovery conducted in other Goodyear cases. I asked Mr. Bowers yesterday, and my law clerk called him and asked him, to submit to me the depositions that he wanted to use or the portions of the depositions that he wanted to use because there's no way in the world the Court can make a decision on this motion without knowing what it is or -- what it is that the plaintiff wants to use. Mr. Bowers sent over about this much paper under seal, and it was depositions or portion of depositions of Zekowski, Robinson and O'Connor. I'm not sure if he sent over anything from Hammontree.

Did you send anything over on Mr. Hammontree?

MR. BOWERS: I did, your Honor. We obviously didn't understand how you were going to handle this procedurally until yesterday and so we

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1 did what we did a couple of weeks ago and we quit  
2 working on that portion of the case. I've gone  
3 through partly yesterday and partly again today,  
4 and I believe I informed your law clerk, I  
5 anticipate all told there are four bankers boxes  
6 of material that will ultimately be submitted.  
7 Unfortunately those things that I got to you  
8 yesterday afternoon was the best I could do on  
9 short notice. I sent down three of what I believe  
10 are about 12 depositions, so with exhibits and so  
11 forth there's another three-and-a-half boxes or  
12 so. I'm sorry --

13 THE COURT: Are there other persons  
14 other than Zekoski, Robinson, O'Connor and  
15 Hammontree?

16 MR. BOWERS: No.

17 THE COURT: Well, I read probably a  
18 couple hundred pages of the depositions that you  
19 gave to me yesterday. And the first -- the trial  
20 is going to be on damages, so none of those  
21 depositions would come in during the trial because  
22 the trial is simply on damages. And since the  
23 plaintiff is going to have to put on a case for  
24 punitive damages in the second portion of the  
25 trial, I presume that that's where you would want

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1 to use those depositions. Now, Mr. Casto or  
2 Mr. Latiolait, I believe pursuant to our statute,  
3 NRS 51.325, what I would have to find is that it's  
4 the same party and it is a substantially similar  
5 issue. Now, in the first deposition that  
6 Mr. Bowers gave me, and I can't recall who it was,  
7 but I think it was -- isn't there an Olsen? Is it  
8 an Olsen, Mr. Richard Olsen?

9 MR. BOWERS: Yes, it is.

10 THE COURT: His name is not typed here,  
11 but anyway, I think it was Mr. Olsen's deposition  
12 that I read that it's a van, a tire failure on a  
13 van, and it was a light truck tire and it was -- I  
14 don't remember how they denominated it, but the --  
15 happened to be a Kelly-Springfield tire. But in  
16 the depositions probably 95 percent of the  
17 testimony and the research and these groups that  
18 were formed within Goodyear was to address the  
19 Goodyear tread separation where the belt and the  
20 tread would separate from the bladder of the tire  
21 and come off. And that's my understanding of what  
22 Goodyear was looking at, what they were studying  
23 and what they were figuring out why was there this  
24 incidence of this and what was causing it and what  
25 could they do to fix it and things of that sort.

8

1 I understand that the defense theory of  
2 this case is that this particular tire failed  
3 because of a road hazard, and I'm not sure what  
4 the plaintiff's theory is because they've never  
5 told me.

6 MR. LATIOLAIT: I can tell you if you'd  
7 like.

8 THE COURT: All right, why don't you  
9 tell me.

10 MR. LATIOLAIT: Mr. Casto can comment on  
11 some of these prior depositions because he has a  
12 familiarity with those. The plaintiff's theory is  
13 twofold. One, it's a design defect; they think  
14 that the tire should have had what's called a  
15 nylon cap ply which is another component that goes  
16 over the steel belt, and their theory is that I  
17 guess we should have incorporated it earlier or we  
18 failed to warn that it wasn't in the tire. The  
19 plaintiff's own expert has testified it wasn't put  
20 into all tires at that time by all manufacturers  
21 anyway.

22 The plaintiff's second theory of  
23 liability is a manufacturing defect theory which I  
24 don't think relates to their punitive damage  
25 claims. I think there's an issue before the Court

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1 as to whether their manufacturing defect claim is  
2 in play or not here. And that is that there was a  
3 lack of adhesion between two of the components in  
4 the tire that was a product of something that  
5 occurred in the manufacturing plant. Plaintiff's  
6 expert, Dennis Carlson, was not able to provide  
7 any specificity about it. He just thinks that  
8 there was some lack of adhesion caused by  
9 potentially overed components, potentially  
10 contamination, but he saw no specific physical  
11 evidence in the tire that would allow him to point  
12 to what exactly occurred in the manufacturing  
13 process.

14 THE COURT: From the depositions that I  
15 read, it seems like Goodyear never figured out  
16 what the problem was either. They identified four  
17 issues. They did four things to correct the  
18 problem, and from the limited amount of time that  
19 I had to read the depositions it seemed that it  
20 cured the problem. And those four things were the  
21 nylon overlay on the top of the tread, more  
22 gauge -- wider-gauge material between the -- I  
23 don't know what, between something and something  
24 before you get to the steel belts. More material  
25 before you get to the steel belts. They changed

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1 the curing process, and I can't remember what the  
2 fourth one was, but there was four things that  
3 they did that they implemented, and that,  
4 according to the depositions I read, fixed the  
5 problem.

6 At any rate, in my opinion the question  
7 is is whether the issues are substantially similar  
8 to this case which I believe they are, so I think  
9 under our evidence statute 51.325 those  
10 depositions or portions of those depositions could  
11 come in during the punitive damage trial on this  
12 case.

13 Now, under our rules each party can use  
14 whatever parts of the depositions they want to,  
15 but if we're going to do it this way what needs to  
16 be done, and it needs to be done by February 1st  
17 which is Thursday, four days into the trial, each  
18 party has to designate what portions of the  
19 depositions they're going to use. So this  
20 requires the plaintiff to designate in one color  
21 ink in the margin on the left what they want to  
22 read. Then it goes to the defense and the defense  
23 designates in a different color marker on the  
24 left-hand side what they want to read. Objections  
25 are submitted in writing to the Court because then

12

1 THE COURT: A week from Tuesday is  
2 February 6th.

3 MR. BOWERS: I think we're going to have  
4 a very difficult -- we certainly want to, but  
5 acknowledging that there's experts on each side.

6 THE COURT: Mr. Massi thought the whole  
7 case would be done in five days yesterday.

8 MR. POLSENBURG: I know, and the more I  
9 look at it, I think we're looking at three weeks.

10 THE COURT: You're not looking at three  
11 weeks. You've got two weeks and that's it because  
12 we've already scheduled other trials behind you  
13 based on our conversation with you. Yesterday was  
14 calendar call, so you're looking at two weeks.  
15 You've got the week of January 29th and the week  
16 of February 5th.

17 MR. BOWERS: That original date you  
18 suggested I think we can accommodate and we'll  
19 certainly try to get it done sooner.

20 THE COURT: You need to get them to them  
21 not later than 5:00 on January 31st what you're  
22 going to designate, and then you need to get what  
23 you designate and your objections to me not later  
24 than 3:00 on Friday, February 2nd so that I can  
25 look at them over the weekend even though I'm

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1 it goes back to them. You object to whatever  
2 testimony they want read that you don't like. You  
3 object to it by page line and your reason for  
4 objection. What you want read goes back to them.  
5 They object. I get the list of objections and --  
6 when are we going get to -- we're going to get to  
7 the punitive damages probably February 5th. I'm  
8 unfortunately going to be out of town on the  
9 weekend on the 3rd and the 4th, so how soon can  
10 you designate what portions that you're going to  
11 read?

12 MR. BOWERS: You know, with that  
13 deadline I think you suggested February 1st, I  
14 think I can accommodate that.

15 THE COURT: You have to designate and  
16 then you have to get them to him and he's got to  
17 get them back to you.

18 MR. BOWERS: I was just thinking we  
19 actually sat down and sort of plotted out  
20 witnesses and tried to be as realistic in the time  
21 frame as possible. I think it would be overly  
22 optimistic to believe that we'd be done with the  
23 first portion of this trial prior to a week from  
24 Tuesday. I don't know what date that's going to  
25 be.

13

1 going to be out of town.

2 MR. LATIOLAIT: Your Honor, can I --  
3 couple of points. One, Mr. Bowers said we sat  
4 down. He must have been talking about his side of  
5 the table because he hasn't sat down with us and  
6 told us his schedule so that's something we need  
7 to talk about.

8 THE COURT: He gave you a list of  
9 witnesses that they're going to call and the order  
10 in which they intend to call them. That was given  
11 to you yesterday.

12 MR. LATIOLAIT: That looked like an  
13 overinclusive list and yesterday the defense was  
14 asked to line out those witnesses they really  
15 don't intend to call and at some point I'd like  
16 the plaintiffs to go through that exercise.

17 MR. BOWERS: There's a list of everybody  
18 we intend to call except for punitive damage  
19 phase.

20 THE COURT: We got it yesterday. It was  
21 given to you and us at the same time.

22 MR. BOWERS: I thought we gave it to  
23 them. If they don't have it.

24 MR. POLSENBURG: The only list that we  
25 had was the pretrial list which I don't think --

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1 MR. BOWERS: There's another shorter  
2 list.  
3 THE COURT: It's a short list, and it's  
4 in order in which they're going to be called.  
5 MR. LATIOLAIT: We didn't get that.  
6 THE COURT: My law clerk is going to  
7 look for our copy.  
8 MR. BOWERS: If not, I'll be happy to  
9 provide one to you after court.  
10 MR. LATIOLAIT: The other item, your  
11 Honor, is something I've done in the past on the  
12 designation of testimony that might make the  
13 Court's job a little easier and we don't have to  
14 prepare as much paperwork, and that is for the  
15 objections to the designations my office would  
16 prepare a key to the objections kind of numbered  
17 one through 12, your basic objections, hearsay,  
18 foundation, et cetera, and then just write the  
19 number of the objection next to the testimony, and  
20 you can rule right in the copies of the  
21 depositions.  
22 THE COURT: That will be fine. That's  
23 an efficient way of doing it.  
24 MR. BOWERS: I'm sorry, your Honor. We  
25 were handing -- just so I'm clear. We're not

1 depositions they want to use, they've got get them  
2 to you. We're not going to reengineer it in the  
3 middle of the trial.  
4 MR. BOWERS: By January 31st.  
5 THE COURT: Yes. Here, Mr. Latiolait,  
6 and here, Mr. Bowers, this is the list of  
7 witnesses and it looks pretty much like trial  
8 witnesses to me.  
9 MR. BOWERS: Again, with the caveat,  
10 your Honor, we apologize if you didn't get one and  
11 this assumes --  
12 THE COURT: I added this Chris McGinnis  
13 and Larry Moreno.  
14 MR. BOWERS: This list will need to be  
15 revamped for punitive damages.  
16 THE COURT: This is the list in the  
17 damage portion of the trial.  
18 MR. LATIOLAIT: Are we going to assume  
19 they're going to be called in this exact order?  
20 MR. BOWERS: We made this list out with  
21 that intention. Certainly there may be some  
22 deviation for scheduling.  
23 MR. LATIOLAIT: Can we get 24-hour  
24 notice of any deviation from that schedule for our  
25 own planning purposes?

1 designating on a piece of paper what we're using.  
2 We're actually physically handing the piles of  
3 paper what the text is.  
4 THE COURT: Yeah. The deposition, the  
5 actual deposition, you use -- what color do you  
6 want.  
7 MR. BOWERS: I like black, your Honor.  
8 THE COURT: It just goes in the margin  
9 from the line so you're going to use black and you  
10 use red. So what they want read is going to be  
11 black on the left-hand side of margin. What you  
12 want read you're going to put in red and you're  
13 going to give me the key to your objections. To  
14 anything that they got in black, you're going to  
15 hand write in ink the objection number, one  
16 through ten or whatever, and you're going to give  
17 me the key to your objections. But I need that  
18 from you, Mr. Latiolait, by 3:00 on Friday,  
19 February 2nd or by the time we recess court that  
20 evening.  
21 MR. OWENS: Your Honor, on that point  
22 for the benefit of counsel, Mr. Olsen will be here  
23 live, Richard Olsen. He's one of the witnesses  
24 who will be here live.  
25 THE COURT: All right. Now, which

1 THE COURT: To the extent that that's  
2 possible. Sometimes people, especially some of  
3 these doctors, they may say I'm available on such  
4 and such a date, but I'm doing surgery in the  
5 morning and there's a wreck in surgery and they  
6 don't get out the whole day so.  
7 MR. BOWERS: Most of these people are  
8 from out of town.  
9 THE COURT: Oliveri isn't, and I guess  
10 he's the only local one. So you don't have that  
11 problem. They weren't treated here locally so,  
12 yes, try to give them 24 hours notice of any  
13 deviation. I don't care if they're within the day  
14 the order is mixed up, as long as the ones that  
15 are listed that day testify that day and the same  
16 would be -- so the motion in limine to preclude  
17 evidence of discovery conducted in other Goodyear  
18 cases is denied. However, when the testimony is  
19 read from these depositions, the case name will  
20 not be identified. The case name won't be  
21 identified. So that is part of what your request  
22 was if we use these the case name won't be  
23 identified, the attorney name won't be identified  
24 that's doing it. The questions will be -- you  
25 have to provide your own reader. The question

1 will be asked by -- the plaintiff wants a question  
 2 asked, the plaintiff asks the question and the  
 3 reader reads the answer. If you want the question  
 4 asked, you read the question and the reader reads  
 5 the answer. But the other than who the deponent  
 6 actually is and the date the deposition was  
 7 taken -- when were these depositions taken, before  
 8 this accident or after?  
 9 MR. BOWERS: After primarily.  
 10 MR. LATIOLAIT: These depositions taken  
 11 after this accident in 2004.  
 12 MR. BOWERS: I'm sorry, you're right.  
 13 THE COURT: We won't give the date of  
 14 the deposition.  
 15 MR. LATIOLAIT: My other concern will be  
 16 any sort of reference by counsel that this  
 17 deposition was taken in a different case.  
 18 THE COURT: That motion is limine is  
 19 granted. That's being granted. So there won't be  
 20 any reference as to the date of the deposition or  
 21 the case that it was taken in. They'll simply be  
 22 read here in open court for any purpose that  
 23 either party wants those portions of the  
 24 depositions to be read for.  
 25 Now, about -- clearing the courtroom.

1 I'm not going to do that.  
 2 MR. POLSENBERG: I agree, your Honor.  
 3 In fact, we talked --  
 4 THE COURT: You're the one that wanted  
 5 it.  
 6 MR. POLSENBERG: I know. We talked  
 7 about that this morning before the hearing and we  
 8 would agree you don't have to clear the courtroom  
 9 if you just do the other parts.  
 10 THE COURT: Thank you. Goodyear's  
 11 motion in limine No. 2 to exclude reference to the  
 12 Ford Firestone recall. Now, it seems to me that  
 13 where this would come in would be when plaintiff's  
 14 expert, Dennis Carlson, is testifying. And I know  
 15 you've got another motion to preclude him from  
 16 testifying in total.  
 17 But for the plaintiffs to qualify their  
 18 expert, they have to parade him out with all of  
 19 his blue ribbons attached and whatever his  
 20 background is in the tire industry, his background  
 21 is. Whatever his background is in working for any  
 22 regulatory agency that had anything to do with  
 23 tires, that's his background. Now, if it's  
 24 possible to parade him out with all of his bells  
 25 and whistles and ribbons on him and not say

1 Firestone tire recall, they shall do it that way.  
 2 If it's not possible or if you're the ones that  
 3 are contesting his expertise because his expertise  
 4 with the agency was with the Firestone tires,  
 5 you're the ones that's opening the door to get  
 6 into the Firestone tire problem.  
 7 MR. LATIOLAIT: I think we can have a  
 8 compromise on this, and I understand that the  
 9 plaintiffs want to be able to say that Mr. Carlson  
 10 worked for the states' attorney generals on the  
 11 Firestone investigation or the investigation  
 12 relating to Firestone tires on Explorer, something  
 13 like that, but any effort to go beyond that and  
 14 talk about that recall and in any way to imply or  
 15 compare that situation to these tires is my main  
 16 concern.  
 17 THE COURT: Well, Firestone tires aren't  
 18 Goodyear tires. I think we can all agree to that.  
 19 MR. BOWERS: Just so we're clear, we  
 20 think there's enough problems with Goodyear light  
 21 truck tires we don't need to bring Firestone into  
 22 it other than for the purpose you're talking  
 23 about. I think your ruling totally suffices.  
 24 THE COURT: Other than that, that will  
 25 be the end of the Firestone discussion.

1 MR. LATIOLAIT: This motion in limine  
 2 isn't intended to address voir dire because in  
 3 these cases it's inevitable that you may have a  
 4 juror who had a Firestone tire that was recalled  
 5 and may talk about that during the voir dire  
 6 process.  
 7 THE COURT: All right. So that motion  
 8 is granted in part and denied in part. Granted in  
 9 that we're not going to get into the Firestone  
 10 problems with their tires and denied to the extent  
 11 that plaintiffs can let the man say that he worked  
 12 for the attorney generals during some type of  
 13 Firestone problem.  
 14 The next one is Goodyear's motion in  
 15 limine No. 3 to exclude all testimony evidence or  
 16 comment on other accidents, claims, or lawsuits.  
 17 I don't know what evidence the plaintiff has  
 18 because it wasn't -- at least I didn't read enough  
 19 of the depositions to figure that out.  
 20 What evidence do you have, Mr. Bowers?  
 21 MR. BOWERS: I think that evidence would  
 22 consist -- we're sort getting back to the problems  
 23 that started all this and I don't want to go all  
 24 the way back there, but that evidence would  
 25 consist of in part the information submitted by



1 Goodyear to the National Highway Traffic Safety  
2 Administration about the accidents that they had  
3 involving only Load Range E tires. We're not  
4 looking for all kinds of tires; we're looking for  
5 those kinds of tires. The argument that Goodyear  
6 is going to make is every tire is different. I  
7 think the Court has expressed its thoughts on that  
8 one, and its different modes of disablement. The  
9 only mode of disablement that we're concerned  
10 about is tread separation. We're not worried  
11 about anything else. I'm not worried about -- so  
12 that's it. It would be evidence that came from  
13 Goodyear's own documents or Goodyear's submission  
14 of events which I believe its entirety is included  
15 in our documents.

16 THE COURT: If we were doing this in a  
17 traditional manner, it wouldn't be admissible to  
18 the extent that it would be admissible to punitive  
19 damage phase of the trial, but this would be  
20 admissible in punitive damages because that's what  
21 the jury has to consider. This is not just a  
22 single isolated event for punitive damage  
23 purposes.

24 MR. CASTO: Your Honor, may I be heard?

25 THE COURT: You may.

1 minute, your Honor. There's the carcass, couple  
2 belts and then a tread. What Goodyear is saying  
3 is that NHTSA only looked at or these other  
4 accidents only concern belt-to-belt separations.  
5 Ours is a carcass-to-belt separation so none of  
6 this stuff comes in, totally different tire,  
7 forget about it.

8 Our response to that in our expert's  
9 affidavit is our allegation is that the lack of a  
10 nylon overlay, the layer between the second belt  
11 and the tread of the tire, that increases the  
12 tire's ability to stay together and --

13 THE COURT: Makes it more robust.

14 MR. BOWERS: Put it on in Latin America  
15 where road conditions are worse and you're more  
16 likely to hit a road hazard and we did that back  
17 in the early '90s more forgiving, that concept.  
18 The reason we think that's relevant and Goodyear's  
19 own in-house reporting, if you get back into these  
20 records with some of these depositions we're going  
21 to talk about, don't initially distinguish between  
22 belt-to-belt or carcass-to-belt separations.

23 So the main point is our expert  
24 affidavit points out, as the Court's observed  
25 already this line of questioning is all of the

1 MR. CASTO: There is a difference for  
2 punitive damage purposes. First of all, every  
3 single one of these other accidents involves a  
4 tread and belt detachment. This case is  
5 different. This case involves a detachment of  
6 both treads -- the tread and both steel belts.  
7 That is a unique failure mode. Plaintiff's expert  
8 Dennis Carlson admitted that in his deposition.  
9 That's why this case is different from these other  
10 accidents. The investigation that Goodyear  
11 undertook with respect to Load Range E tires was  
12 limited solely to those tires that sustained  
13 detachment between the belts. They never had a  
14 failure mode like this where they had a failure  
15 with both belts coming off of the carcass, and  
16 that's what substantially is similar here.  
17 Plaintiff's expert says the reason it failed was  
18 because of an isolated manufacturing defect which  
19 gave this adhesion problem. That is unique to  
20 this tire, not to these other cases, so we think  
21 the evidence is very prejudicial to Goodyear, and  
22 it's not probative because it involves dissimilar  
23 tires having dissimilar failure modes.

24 THE COURT: Mr. Bowers.

25 MR. BOWERS: I can speak to that for a

1 differences -- they submit an affidavit from a guy  
2 named James Stroble who I understand is  
3 Mr. Olsen's boss in engineering, recycled from a  
4 Texas case called Farrell which was initially  
5 drafted and used discovery. They submitted that  
6 in this case for the proposition that the tires  
7 are too dissimilar. And so a couple paragraphs  
8 dealt with that, and then they went on to the rest  
9 of whatever the discovery problems were in Farrell.

10 But what's interesting, if you read the  
11 things that were different that Mr. Stroble  
12 commented on that made this tire not like the  
13 others, this tread separation wouldn't qualify,  
14 all of those things Mr. Carlson addressed as not  
15 having an effect on the separation resistance of  
16 the tire, the robustness of the tire, the  
17 forgiveness of the tire.

18 That's our argument, and we're not aware  
19 of any distinction outside of those made by  
20 Goodyear that there's a difference for this  
21 particular defect. That's all we're talking  
22 about, the Forgiveness, robustness of the tire,  
23 ability to stay together. We're not aware of  
24 anything other than Goodyear's statements that  
25 there's a difference between the belt one and two

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1 and the belt and the carcass.

2 THE COURT: I must have misread the  
3 deposition because I thought the first one that I  
4 read indicated that the belts came off with the  
5 tread.

6 MR. CASTO: No, your Honor. I think the  
7 testimony in there would be that the tread and top  
8 belt came off. When you see the exhibits that  
9 actually go with this, the first team that met on  
10 this that Mr. Bill Robinson chaired, the focus of  
11 that team and all the teams and all the  
12 discussions after that was this between the belt  
13 detachment issue. So this is a unique failure  
14 mode here.

15 THE COURT: Like I said, I must have  
16 misread the deposition because I got the distinct  
17 impression -- go get that whole pile of stuff I  
18 read last night. I got the distinct impression  
19 that the belts came off with the tread, and let me  
20 see if I can't find that because I always have to  
21 check my thinking abilities and my recollection  
22 abilities and make sure that I'm still competent.

23 MR. CASTO: Mr. Olsen was the leader of  
24 the first team on this if you will, and he was  
25 deposed in this case and said if I had seen this

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1 punitive damage trial on the case. You're able to  
2 defend, of course, you're able to distinguish, but  
3 I think it goes more to the weight of the evidence  
4 rather than admissibility of the evidence, so --  
5 other lawsuits we're going to exclude evidence of  
6 other lawsuits and what the settlement or what the  
7 jury awards may have been because that's not  
8 relevant to this case. However, other claims,  
9 other statistical data as to tire -- I guess you  
10 don't call them failures. What do you call them,  
11 adjustments?

12 MR. LATIOLAIT: That's something  
13 different.

14 MR. BOWERS: There's several terms, your  
15 Honor.

16 THE COURT: What do you call it when a  
17 tire that should work doesn't work? What does  
18 Goodyear call it?

19 MR. CASTO: We call it a disablement,  
20 but the effect to Goodyear, your Honor, if the  
21 tire simply there's no damage to the vehicle or no  
22 personal injury there's simply a warranty exchange  
23 and adjustment. If there's damage to the vehicle  
24 there's a property damage claim. If there's  
25 damage to the person, it's a personal injury

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1 failure mode there would never have been any other  
2 team because this is something we had not seen  
3 before and it was because of the impact. Speaking  
4 to the overlay issue, the fact that an overlay may  
5 make a tire more robust does not mean it makes it  
6 indestructible. The force of the impact in this  
7 case, and we have a brief animation we can show  
8 you, your Honor, the force of the impact in this  
9 case was so severe it actually broke the belt of  
10 the tire.

11 THE COURT: Give me just a moment,  
12 please. I know it was in the first one which is  
13 Richard Olsen. You're correct and I'm in error in  
14 my reading. They had a couple of tires that the  
15 tread and top belt had come off together from the  
16 rest of the composite. "We have never seen such a  
17 failure mode like that before which raised our  
18 curiosity. We saw a few more of those the  
19 following month and raised our curiosity even more  
20 and we started looking into the situation." So  
21 you're correct and I misread the deal.

22 Well, I think that other claims and how  
23 they started handling their investigation into  
24 these tires based on the property damage and based  
25 on all this and the next thing is relevant in the

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1 claim, so those are the three categories.

2 THE COURT: But what you call it is a  
3 disablement?

4 MR. CASTO: Yes, your Honor.

5 THE COURT: I never could figure out  
6 what word you used. So we're going to limit this  
7 to Load Range E tires because that's the tire that  
8 was -- so anything that comes in in the punitive  
9 damage deal has to be related to Load Range E  
10 tires, only light truck tires only. Any other  
11 limitations? All right, that's what it's going to  
12 be limited to.

13 Goodyear's motion in limine No. 4, to  
14 exclude all evidence of any other tire, other  
15 Goodyear tire model and other tire disablements.  
16 Well, I guess that's granted because all we're  
17 talking about is Load Range E light truck tires.  
18 Any problems with any other tires that Goodyear  
19 has had is simply not relevant to this case and  
20 should be excluded. That motion is granted as  
21 I've indicated.

22 Goodyear's motion in limine No. 5, to  
23 apply the existing protective order to all the  
24 documents and prohibit the reference of  
25 confidential documents, exhibits, and testimony.

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1 That motion is granted. Now, whatever Goodyear  
2 has deemed confidential I think is -- if it's been  
3 filed at all, it's filed under seal. Exhibits  
4 have to be maintained with the court for a certain  
5 number of years, but if exhibits truly are  
6 confidential, they can be filed under seal as  
7 exhibits. If the case goes to the appellate  
8 level, then the appellate court can, of course,  
9 open the sealed exhibits so that they can look at  
10 them, but we can't return them to you at the end  
11 of the trial because the law requires that we keep  
12 these as part of the case file. They don't have  
13 to be open to view for everybody.

14 But my question to Goodyear might be  
15 we're now in the latter half of the 2000s, this  
16 decade. We're in 2007. And all these documents  
17 came about in '94, '95, '96, '97. What's  
18 confidential about that stuff that's ten years  
19 old?

20 MR. CASTO: First of all, the documents  
21 go beyond that time frame, your Honor. Secondly,  
22 the confidentiality is because the history of the  
23 tire building builds on itself so that the  
24 techniques and approach that Goodyear has, the  
25 information that they put within their

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1 going to leave the label on now. Is it going to  
2 be on anything that the jury sees?

3 MR. BOWERS: It may ultimately.

4 THE COURT: Whatever exhibit you're  
5 going to put on the overhead, I think that that  
6 should be obliterated.

7 MR. POLSENBERG: Totally agree.

8 MR. BOWERS: Does Goodyear happen to  
9 have nonobliterated copy so we don't have to go  
10 back and recopy these things?

11 THE COURT: You don't have to recopy  
12 them over again. Don't you have that white stuff  
13 that comes out of a tape dispenser?

14 MR. BOWERS: That legend is substantial.  
15 It covers a good -- it should be on your motion.

16 MR. CASTO: It's only on the edge of  
17 each document.

18 MR. BOWERS: We'll talk about it.  
19 That's fine.

20 MR. CASTO: I think what happened  
21 mechanically they shrunk the document and then put  
22 the legend on it so you can certainly cut the  
23 document.

24 THE COURT: Nothing that's shown to the  
25 jury, that's exhibited to the jury, will have the

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1 specifications which was produced and  
2 specification and history -- this tire was  
3 manufactured in 1999. One of the groups of  
4 documents we've produced was the specification  
5 which is the detailed itemization of the  
6 components and placement and location, the  
7 centering of those, the gauges of those. Those  
8 are produced. There are cure tire drawings that  
9 go in there.

10 THE COURT: So that would be still  
11 confidential information.

12 MR. CASTO: Yes, your Honor.

13 THE COURT: But a whole bunch of other  
14 stuff that's been marked confidential probably  
15 isn't, so we will try to make a decision on a  
16 paper-by-paper basis outside the presence of the  
17 jury which of these the clerk needs to mark and  
18 put in her file as sealed.

19 MR. BOWERS: Your Honor, as I recall  
20 that motion, there was some obligation to go back  
21 and dedesignate everything.

22 THE COURT: We're not going to do that.

23 MR. BOWERS: It's going to be a lot of  
24 work.

25 THE COURT: That's too much work. We're

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1 word "confidential" on it, and then at the end of  
2 each day we can take the exhibits that were  
3 admitted and we'll figure out whether the clerk is  
4 supposed to file those exhibits under seal or not,  
5 and we'll probably have some code with Jennifer  
6 like an S behind the exhibit number or something  
7 or an S underneath the exhibit number and that  
8 will be our clue that when the trial is all over  
9 ones with the little S under the exhibit number on  
10 the little exhibit sticker are the ones that are  
11 going to be sealed and the ones that don't have  
12 that designation on them won't be sealed, and  
13 we'll go through that every night at the end of  
14 trial.

15 MR. LATIOLAIT: Based upon your  
16 comments, your Honor, I presume it's also correct  
17 that the plaintiffs are barred from making any  
18 improper reference to the assertion of  
19 confidentiality.

20 THE COURT: Of course. There will be no  
21 reference to it whatsoever. That takes care of  
22 number five.

23 Number six, Goodyear's motion in limine  
24 No. 6, to exclude all reference to any sort of  
25 private recall of tires or other evidence

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1 regarding an alleged postsale duty to recall. I  
 2 presume this gets into your expert's testimony.  
 3 MR. BOWERS: It does in part. If they  
 4 just want to prohibit the use of the word  
 5 "recall," that's fine.  
 6 THE COURT: Well, it was never a recall.  
 7 It was a limited product replacement program and  
 8 that's the term you should use. You should use  
 9 limited product replacement program. You shall  
 10 not use the word "recall" or in essence a recall  
 11 because recalls can only be done by government  
 12 order; is that correct? Is that what I'm  
 13 understanding?  
 14 MR. LATIOLAIT: Yes, your Honor.  
 15 THE COURT: I thought the manufacturer  
 16 issued recalls. I thought read about it in the  
 17 newspaper all the time that a manufacturer issued  
 18 a recall. Broccoli that's bad or the spinach  
 19 that's bad.  
 20 MR. LATIOLAIT: In terms of tires, your  
 21 Honor, any recall has to be approved by NHTSA, so  
 22 it actually does go through the agency before.  
 23 THE COURT: Isn't it the manufacturer  
 24 that requests it?  
 25 MR. LATIOLAIT: In some instances.

1 THE COURT: On all my Ford products I  
 2 get my recall notices from Ford and it doesn't say  
 3 the government has issued a recall. It says Ford  
 4 has issued a recall. Bring your machine in and  
 5 they'll replace this or that or the next thing for  
 6 free.  
 7 MR. LATIOLAIT: Ford would have to  
 8 propose it to the agency first. The agency would  
 9 have to approve it before the consumer is  
 10 notified.  
 11 THE COURT: But still it's done by the  
 12 manufacturer.  
 13 MR. LATIOLAIT: The initiation of many  
 14 recalls is done by the manufacturer.  
 15 THE COURT: All right, thank you. But  
 16 it will be called a limited product replacement  
 17 program.  
 18 Number seven, Goodyear's motion to  
 19 exclude testimony of plaintiff's expert Allan J.  
 20 Kam. That's denied. He can testify in the  
 21 punitive damages trial as we've indicated, but he  
 22 won't get into anything other than that he worked  
 23 for the attorney generals on Firestone recall.  
 24 MR. BOWERS: I'm sorry, your Honor.  
 25 You're confusing Mr. Kam with Mr. Carlson.

1 THE COURT: He's the tire lawyer. Oh,  
 2 okay, you know what? Nevada has a real broad  
 3 definition of an expert, and a guy who puts down  
 4 concrete can be an expert because most of the  
 5 jurors don't lay concrete, and he can be an  
 6 uneducated whatever, but if he knows how you put  
 7 the frame up and put the steel in and flatten the  
 8 concrete, he's an expert.  
 9 You think that this is going to invade  
 10 the province of the jury? Do you think anybody  
 11 sitting over there in that box is going to have  
 12 any understanding of what these rules and  
 13 regulations are, government rules and regulations?  
 14 If you don't come from Philadelphia and have 14  
 15 letters behind your name, I guarantee none of us  
 16 understands that stuff. We do absolutely need  
 17 experts to testify and to tell us about what  
 18 regulations are and what they mean and how -- we  
 19 might read it as A, B, C and D, but then you've  
 20 got the whole code of federal regulations that  
 21 interprets it E, F, X and Y. So I think it's  
 22 absolutely essential to have an expert on  
 23 regulations.  
 24 Mr. Casto.  
 25 MR. CASTO: Thank you. What Mr. Kam is

1 offering is legal conclusions about those  
 2 regulations. Number two, those regulations don't  
 3 apply in this case because only NHTSA has  
 4 authority to order a recall in this case, and  
 5 there's no private cause of action by an  
 6 individual concerning the failure to recall a  
 7 product, or my understanding there's no ability  
 8 under Nevada law for a postsale duty to warn.  
 9 THE COURT: But isn't this all part of  
 10 the punitive damages deal as to how these are  
 11 studied and how it happens? And it's good for  
 12 your side that it was never recalled.  
 13 MR. CASTO: It isn't good for our side  
 14 in terms of this analysis because what Mr. Kam  
 15 does -- first of all, the preliminary evaluation  
 16 that NHTSA undertook occurred after Mr. Kam had  
 17 left the agency. Mr. Kam was not involved in this  
 18 preliminary evaluation. We are not permitted to  
 19 inquire from Mr. Kam how the protocol that he  
 20 utilized when he was at NHTSA would compare with  
 21 what is done here because he's precluded from law  
 22 from testifying about that.  
 23 THE COURT: But the end result is is  
 24 that NHTSA never recalled your tire.  
 25 MR. CASTO: We don't need an expert to

1 tell us that. It's a fact.  
 2 THE COURT: He can testify to it.  
 3 MR. CASTO: The fact that NHTSA didn't  
 4 recall the tire is a fact, your Honor. What  
 5 Mr. Kam is going to say is that NHTSA should have  
 6 recalled the tire.  
 7 THE COURT: That's his opinion. That's  
 8 what experts testify about is their opinions.  
 9 MR. CASTO: That's a legal conclusion.  
 10 MR. BOWERS: Your Honor, if I may --  
 11 THE COURT: I'm not sure about that.  
 12 That's just his opinion, and experts are not  
 13 precluded from giving their opinion on matters  
 14 that are in controversy.  
 15 MR. CASTO: First of all, Mr. Kam is  
 16 going to talk about what the duty is of a  
 17 manufacturer under the safety act in terms of  
 18 recalling a product. In this particular case  
 19 Goodyear undertook the voluntary replacement  
 20 program which you called the limited product  
 21 replacement program. That's already happened.  
 22 That's a fact in terms of what's occurred in the  
 23 case with respect to Goodyear.  
 24 Mr. Kam is not an engineer. Mr. Kam  
 25 hasn't evaluated the tire in this case. We've got

1 THE COURT: But he's an expert in  
 2 regulations and the jury certainly isn't.  
 3 MR. CASTO: Regulations may be one part  
 4 of that, your Honor, but in terms of the  
 5 individual documents, he's going to now interpret  
 6 the documents and say how they apply to a  
 7 regulation when he lacks the predicate  
 8 understanding, because NHTSA would undertake the  
 9 evaluation in concert with engineers, and Mr. Kam  
 10 is not an engineer.  
 11 THE COURT: Mr. Bowers.  
 12 MR. BOWERS: Your Honor, this is what  
 13 Goodyear wants to say. Tire was never recalled so  
 14 there's no obligation, everything was fine. NHTSA  
 15 never made us recall the tire. In fact, it's  
 16 documented at length in Mr. Kam's testimony and at  
 17 length in Goodyear's own correspondence and the  
 18 testimony of some of the depositions you've  
 19 approved what happens is NHTSA said we have  
 20 concerns about this problem but this tire is at  
 21 the end of its life expectancy, taking this  
 22 investigation to the next level and going through  
 23 a formal recall is a very tedious process.  
 24 Goodyear says we will enter into this limited  
 25 product replacement campaign in lieu of a formal

1 Mr. Carlson who is the expert saying that this  
 2 tire failed because of a manufacturing defect  
 3 because of adhesion between two components. That  
 4 individual instance of that tire has nothing to do  
 5 with an overarching issue concerning all Load Range  
 6 E tires that would give rise to a duty to recall  
 7 that Mr. Kam is going to articulate.  
 8 Mr. Kam essentially is going to  
 9 speculate about what NHTSA would have done or  
 10 should have done, and what we have here, in fact,  
 11 NHTSA actually did evaluate this. All the  
 12 documents that Mr. Kam reviewed were provided to  
 13 NHTSA by Goodyear. Goodyear had, in fact,  
 14 concluded its investigation of Load Range E tires  
 15 before NHTSA even began its evaluation of Load  
 16 Range E tires. And so what Mr. Kam is going to do  
 17 is say something that's totally irrelevant. What  
 18 he's going to do is take these individual  
 19 documents and basically give a four-hour closing  
 20 argument to the jury by interpreting for the jury  
 21 documents which the jury itself is completely  
 22 capable of reading on its own.  
 23 THE COURT: Oh, I doubt that.  
 24 MR. CASTO: Mr. Kam's not an engineer,  
 25 neither is the jury.

1 recall and we can all go our separate ways. That  
 2 would be great if NHTSA employees were allowed to  
 3 testify about what had happened. We could call  
 4 them. There's federal regulations that prevent  
 5 that from happening.  
 6 Mr. Casto just gave a wonderful version  
 7 of Goodyear's events of what happened in this  
 8 case. We are entitled to our version of events of  
 9 what happened in this case. Unfortunately not  
 10 being employees of Goodyear or able to have access  
 11 to current employees of NHTSA, the only thing we  
 12 can do is call somebody who's an expert in how  
 13 NHTSA works, how regulations apply to  
 14 manufacturers' documents and what happened. I  
 15 think the Court is absolutely right; the jury can  
 16 have that assistance both from people that come  
 17 from Goodyear to give their side of the story and  
 18 Mr. Kam give his side of the story and accept or  
 19 reject it.  
 20 THE COURT: You have people who are  
 21 involved in this that are going to testify in your  
 22 side.  
 23 MR. CASTO: That's absolutely my point.  
 24 What Mr. Bowers is that he's not able to present  
 25 that evidence. He just told us earlier he's got



1 boxes of depositions and exhibits that do exactly  
 2 that, and at the end of the day the jury's  
 3 determination is punitive damages arising from the  
 4 defect, not punitive damages arising from the  
 5 failure to recall.  
 6 MR. BOWERS: That's precisely the point.  
 7 If he were to come in and say that under Nevada  
 8 law this is a breach of the law, he couldn't  
 9 necessarily say that, but that's not what he's  
 10 saying. He's explaining how this process works.  
 11 They've also assert privilege, your  
 12 Honor. They've asserted privilege as to what  
 13 happened in that dialogue back and forth between  
 14 NHTSA. I asked Woody Gaudet, a guy in this case  
 15 who sent these letters out, what happened when  
 16 NHTSA finished their investigation, why was it  
 17 that Goodyear entered into this replacement  
 18 campaign. Those things are pretty close in time.  
 19 Why was that? Privilege. What was the discussion  
 20 that went back and forth? Privilege. Okay, fine,  
 21 your counsel is there, assert the privilege. I  
 22 can't get it through privilege -- through  
 23 Goodyear's employees because of privilege. I  
 24 can't get it from NHTSA because of government  
 25 regulation. This is the only way that I can get

1 have your people testify. You've got them. They  
 2 know exactly what happened and they can testify as  
 3 much as you want them to testify.  
 4 MR. CASTO: If I can make two other  
 5 points. The issue of privilege was simply done.  
 6 Mr. Gaudet was asked the question where did you  
 7 learn about the discussions with NHTSA, and that  
 8 was a discussion he had with Goodyear's lawyer, so  
 9 that was the basis of privilege was for him not to  
 10 divulge conversations we had with Goodyear's  
 11 counsel that was negotiating with NHTSA, not that  
 12 Mr. Gaudet couldn't talk about what he personally  
 13 had done with respect to NHTSA.  
 14 THE COURT: I appreciate that position,  
 15 but the motion is denied.  
 16 MR. CASTO: May we be permitted to have  
 17 a hearing on Mr. Kam outside the presence of the  
 18 jury so that we can voir dire him before his  
 19 testimony is permitted?  
 20 THE COURT: Haven't you taken his  
 21 deposition?  
 22 MR. LATIOLAIT: We have, your Honor, but  
 23 there's so much ambiguity as to exactly what his  
 24 opinions are going to be.  
 25 THE COURT: No. We're not going to voir

1 this. If I'm wrong, fine, that's what a jury is  
 2 for, but I shouldn't be precluded from giving this  
 3 evidence.  
 4 THE COURT: Well, it would seem to me,  
 5 Mr. Casto, if your people allege privilege and  
 6 wouldn't answer the question, then the best  
 7 alternative that the plaintiff has is to call a  
 8 guy who used to work there because the government  
 9 regulations would preclude anybody who worked on  
 10 the job from actually testifying about it. It's a  
 11 lot like this med mal stuff. Quality assurance.  
 12 We took care of it internally. We're never going  
 13 to tell you that the machine failed and that's  
 14 what killed you client because that's quality  
 15 assurance and we have to report it to the  
 16 government, but you can't ever get those reports  
 17 where we report to the government because  
 18 government is only concerned about fixing things  
 19 in the future, they're not concerned about the guy  
 20 that got killed today.  
 21 I understand that's the great overriding  
 22 proposition on all this stuff on safety, whether  
 23 it's in the tire industry or whether it's in the  
 24 medical field. That's the way it works, so I'm  
 25 going to allow them to call their person. You can

1 dire him before trial or during the trial when the  
 2 jury is out there. We have a Supreme Court that  
 3 has told us in no uncertain terms we are not to  
 4 waste the jurors' time. Once they're here in the  
 5 morning, they're to be in trial and they're not to  
 6 sit out in the hall for 20 minutes, 15 minutes,  
 7 hour and a half while lawyers are arguing  
 8 intricacies of the law to the Court so, no, we're  
 9 not going to do that.  
 10 MR. POLSENBERG: I agree with that, and  
 11 I'm probably the number one offender, but I think  
 12 that what we could do --  
 13 THE COURT: So stipulated.  
 14 MR. POLSENBERG: Let's get your opinion  
 15 three weeks from now. I think we could do -- I  
 16 have serious concerns about Mr. Kam.  
 17 THE COURT: Mr. Casto has already  
 18 expressed all those, Mr. Polsenberg. You may be  
 19 seated.  
 20 MR. POLSENBERG: My suggestion is we  
 21 could do it after the jury leaves for the day and  
 22 do a voir dire outside the jury's presence some  
 23 evening after they've left.  
 24 MR. BOWERS: Your Honor --  
 25 THE COURT: Thank you for your

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1 suggestions. Let's move to number eight.  
 2 Goodyear's motion in limine No. 8, to  
 3 exclude all evidence not produced during  
 4 discovery. That motion is granted, and I don't  
 5 care who it cuts against or, for, it's just  
 6 granted.  
 7 MR. OWENS: On that point, yesterday  
 8 Mr. Bowers represented that there are three day in  
 9 the life videos that were identified, two of which  
 10 were identified, one was produced. The one that  
 11 was produced was done on the 11th of December.  
 12 Last week the Court made reference to Goodyear  
 13 waiting until the last moment to disclose  
 14 evidence. They had that video since early  
 15 October and didn't bother to produce it until the  
 16 end of discovery. The other was identified the  
 17 last day of discovery. We would ask that those  
 18 two videos be excluded.  
 19 THE COURT: Mr. Owens, I think that  
 20 Mr. Bowers told me yesterday that they told you  
 21 when they were available and that you did not go  
 22 over to get copies of them.  
 23 MR. OWENS: They told us on the 11th and  
 24 they told us on the 15th of December. That's what  
 25 I'm saying. I'm not saying the first one --

1 trying to make noise with.  
 2 THE COURT: Motion to exclude those is  
 3 denied. You had the ability to pick them up  
 4 before the discovery close off.  
 5 MR. OWENS: There's no reason for him  
 6 not to have produced them.  
 7 THE COURT: You know what, Mr. Owens,  
 8 there's no reason for you not to have answered the  
 9 interrogatories.  
 10 MR. LATIOLAIT: Your Honor, I have a  
 11 concern based upon Mr. Bowers' comments here.  
 12 This would have been raised as a motion in limine.  
 13 Is he planning on showing photos of dead bodies in  
 14 this trial?  
 15 THE COURT: Well, I imagine he intends  
 16 to show pictures of the people before they died.  
 17 MR. BOWERS: There's pictures of Andrew  
 18 Torres in the hospital. They've been available.  
 19 Your counsel has looked at them a couple of weeks  
 20 ago. They've been designated since we took the  
 21 deposition of the coroner's investigator in  
 22 February of 2006.  
 23 MR. LATIOLAIT: Pictures of Andrew  
 24 Torres dead, that's what I heard him say.  
 25 MR. BOWERS: This isn't carnage on the

1 THE COURT: What was the discovery  
 2 cutoff, December 13th?  
 3 MR. BOWERS: It was within the discovery  
 4 cutoff. It was the 15th of December.  
 5 THE COURT: So do you have them now?  
 6 MR. LATIOLAIT: I was handed it this  
 7 morning.  
 8 MR. BOWERS: They have two of them this  
 9 morning. Your Honor, I supplemented these. I  
 10 said they're here if you want them. If you want  
 11 them they're here. Pictures of Andrew dead are  
 12 here. I'm not giving those out either, come to  
 13 the office and inspect them. Mr. Owens' office  
 14 called, makes an appointment next week at one I  
 15 want to come and see the pictures of Andrew dead.  
 16 No one shows up. I sent an e-mail, do you want to  
 17 come see the pictures. No one shows up.  
 18 Eventually John comes over --  
 19 THE COURT: I thought this was the day  
 20 in the life.  
 21 MR. BOWERS: I'm saying this is the same  
 22 thing. I'm saying these things are available,  
 23 come get them. Nobody gets them, nobody wants  
 24 them. Yesterday you say give them to them. I  
 25 give them to them. This is just something they're

1 highway. These are photos from the hospital.  
 2 This has been -- these were out in February of  
 3 2006.  
 4 THE COURT: You can object when he moves  
 5 to admit them during the trial and I'll rule on  
 6 them at that time.  
 7 Goodyear's motion in limine No. 9, to  
 8 exclude opinions outside an expert's disclosed  
 9 opinions. Now -- let me tell you this. I wrote  
 10 this note down to tell you. I allow opposing  
 11 experts to sit through the testimony of the other  
 12 side's opposing experts, so when the plaintiff's  
 13 experts are testifying, the defense experts on  
 14 that topic can sit in on the trial, and when the  
 15 defense experts are giving testimony on a topic,  
 16 the plaintiff's opposing expert can sit in the  
 17 trial, so everybody needs to know that. I allow  
 18 opposing experts to be in the courtroom while the  
 19 other side's expert is testifying. It's faster  
 20 and quicker and easier to do that so that if one  
 21 side wants to call a rebuttal or this or that or  
 22 the next thing, they heard the testimony live and  
 23 they can comment on it live. They can sit at  
 24 counsel table to assist in preparation of  
 25 cross-examination questions, and that's probably

1 unique to me, but that's what I allow and you can  
2 do that if you want to. If you don't want to have  
3 your expert in here, you don't have to, but I  
4 allow it. Otherwise, the exclusion of witness  
5 rule applies with the exception of expert  
6 witnesses. And if one expert is going to testify  
7 on Topic A, he can't sit through the other side's  
8 expert on Topic Z. The A to A expert can sit  
9 through their testimony and the B to B. It has to  
10 be the same thing that each expert is going to  
11 testify on they can sit through that.

12 Now, I believe that this is --

13 MR. ROSENBERGER: In that regard I just  
14 had one question, just in case I am in this case.  
15 In the event that the expert testifies, can we  
16 take the transcript of that and give it to the A-A  
17 expert.

18 THE COURT: Of course. If you order it.

19 MR. ROSENBERGER: In lieu of him  
20 appearing.

21 THE COURT: Order an overnight  
22 transcript and pay for it.

23 Now, I believe that this goes primarily  
24 to hedonic damages. Was Mr. Johnson asked to  
25 calculate hedonic damages before his deposition

1 confused. Did Mr. Johnson testify at his  
2 deposition or in his written report that he valued  
3 the hedonic damages of X person at so much money?

4 MR. LATIOLAIT: He did not. In fact,  
5 this is what happened. He submitted a report on  
6 various plaintiffs in this case. Nowhere in any  
7 of those reports is there any reference to hedonic  
8 damages whatsoever. At his deposition, at the end  
9 of his deposition after we'd gone through all of  
10 his opinions that were set forth in his report,  
11 the question was asked, I think by Ford's counsel,  
12 do you intend to offer any other opinions at  
13 trial. Yeah, I want to talk to the jury about  
14 hedonic damages. Oh, really, what are you going  
15 to do? I'm going to explain the principle to them  
16 and give them a mechanism for calculating hedonic  
17 damages. This isn't in your report. You're  
18 right, it's not in my report. Have you calculated  
19 hedonic damages? No, I haven't calculated hedonic  
20 damages, I haven't been asked to do that.

21 THE COURT: So, Mr. Bowers, has he been  
22 asked to calculate hedonic damages?

23 MR. BOWERS: No. I would love to have  
24 Mr. Johnson come here and not calculate hedonic  
25 damages and talk about what they are as an

1 was taken?

2 MR. BOWERS: He was asked to discuss the  
3 fact that hedonic damages are an economic  
4 principle that economists use to value loss.

5 THE COURT: Was he asked to do that  
6 before his deposition was taken?

7 MR. BOWERS: Yes.

8 THE COURT: So did he have an opinion as  
9 to what the hedonic damages were when he was  
10 deposed?

11 MR. BOWERS: He answered their  
12 questions, but we're not offering him to say what  
13 the numbers of hedonic damages were. We're  
14 offering him to say hedonic damages include loss  
15 of enjoyment of the value of life for things X, Y  
16 and Z and that economics recognizes those things.  
17 Mr. Weiner thinks that concept doesn't exist,  
18 their economics expert. Mr. Johnson's number is  
19 too high or his calculation is bad -- that's one  
20 of the things he says -- Mr. Weiner says is I  
21 don't like the way Mr. Johnson puts a value on  
22 hedonic damages, but then he goes on to stay it  
23 doesn't matter because this isn't a legitimate  
24 economic concept.

25 THE COURT: So, Mr. Latiolait, I'm

1 economic concept. That's all I want. They  
2 acknowledge at the end of the deposition, he  
3 voluntarily raised -- this wasn't in his report --  
4 that there weren't any numbers, this is an  
5 economic principle, this is what goes into it.  
6 They were free to cross-examine him about it.  
7 Their economic expert had a chance to review that  
8 material.

9 If you prevent him from putting a number  
10 on it, that's absolutely fair. We don't care.  
11 That's not the purpose of his testimony. The  
12 purpose of his testimony is to explain -- when I  
13 say his testimony, we're talking about this  
14 limited aspect, there's obviously other things.  
15 But the purpose of his testimony on hedonic  
16 damages is just explain this concept under  
17 economics that there is a value to the loss of  
18 enjoyment of life and there are ways to calculate  
19 it. That's it. If you want to grant their motion  
20 by preventing him from putting a number on it,  
21 that would be absolutely fine by us.

22 MR. LATIOLAIT: Your Honor is correct  
23 that in the state of Nevada pouring cement is a  
24 subject of expert testimony, then an economic  
25 principle is a subject of expert testimony and

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1 that economic principle was not disclosed to us in  
2 Mr. Johnson's report, and it didn't come up until  
3 the very end of his deposition, so it wasn't in  
4 his report, it ought to be excluded under the  
5 rules.

6 THE COURT: Well, let me ask you this,  
7 when anybody comes up with -- your expert or their  
8 expert comes up with how you value the life of a  
9 dead person, I'm sure there's certain things that  
10 they go through, companionship and society and  
11 earning capacity and support to others and all  
12 these factors. Well, doesn't anybody that values  
13 this doesn't anybody value enjoyment of life?

14 MR. LATIOLAIT: That's absolutely true,  
15 and that's the province of the jury. The jury has  
16 specific instructions on how they are to value a  
17 death claim, and they should follow the  
18 instructions. They should not follow an economic  
19 theory that's not captured in the jury  
20 instructions, and an economic theory that wasn't  
21 disclosed to us in expert reports.

22 THE COURT: Mr. Bowers.

23 MR. BOWERS: The point of an expert  
24 report is so that people know what's happening.  
25 We're not trying to hide the ball. He volunteered

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1 enjoyment of life.

2 THE COURT: I'm going to allow  
3 Mr. Johnson to say that when they calculate the  
4 value of someone's life they can include that a  
5 component for enjoyment of life.

6 MR. BOWERS: Thank you, your Honor.

7 THE COURT: But that's it. It's going  
8 to be pretty limited.

9 MR. LATIOLAIT: That's fine.

10 THE COURT: Number 10, to exclude expert  
11 testimony regarding economic loss attributable to  
12 12-year-old Andrew Torres and 16-year-old Joseph  
13 Enriquez. I think that this goes to weight and  
14 not admissibility. It's very difficult to predict  
15 any individual person. That's why you have to use  
16 national statistics from the labor commission or  
17 from whatever commissions there are, but it  
18 goes -- in my opinion it's not inadmissible. It  
19 simply goes to the weight to give whatever that  
20 testimony might be.

21 MR. LATIOLAIT: I don't disagree with  
22 your Honor on the idea of what future earnings  
23 potentially could be, but understand that  
24 Mr. Johnson goes beyond this and then gives the  
25 jury specific numbers that they're to understand

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1 to them well ahead of time what his thoughts were.  
2 Their economics expert was able to get a handle on  
3 this. The disclosure is a moot point. We're  
4 again getting back to is this going to Goodyear's  
5 way, or is this going to be the way the law says  
6 and the jury makes a decision.

7 THE COURT: Well, wait a minute,  
8 Mr. Bowers. We require expert reports to detail  
9 what the expert's going to give an opinion on.  
10 Why didn't the man put in his written report  
11 hedonic damages?

12 MR. BOWERS: Because he didn't have any  
13 calculations to go with it. It's like saying he  
14 didn't put in his report what the rate of interest  
15 is. He's going to talk about it. It's there.  
16 It's in the calculations, but he didn't set it out  
17 to the side. They had to ask him in his  
18 deposition what's the real rate of interest you're  
19 going to use. Again, the reason it's not in the  
20 report is because we're not offering a specific  
21 calculation. We're not offering a number. We're  
22 offering -- and the jury instruction is quite  
23 clear. Jury instruction is consider these things  
24 for what they're worth. All we're offering for is  
25 the notion that hedonic damages include a loss of

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1 are expert opinion. And included in those numbers  
2 of his expert opinion is the opinion that somebody  
3 who dies at the age of 12 would have earned X over  
4 their lifetime based on statistics. That's an  
5 okay expert opinion, but for him to say and I  
6 think the money that he would have had for himself  
7 is this amount because he would not have gotten  
8 married, he would not have had children, he would  
9 have allocated a certain amount of his income to  
10 his parents. That's not expert opinion. That's  
11 rank speculation and, in fact, it defies  
12 statistics.

13 THE COURT: Certainly to say how many  
14 people are 12 that are going to have children I  
15 imagine there's a statistical analysis of that,  
16 but for him to say -- and I would think it would  
17 be more than 50 percent just being -- I would  
18 think that more than 50 percent of the people in  
19 America have children at some point in their life,  
20 and unless Mr. Johnson has some statistics that  
21 show that statistically it is less likely that a  
22 person is going to have a child than more likely,  
23 then he certainly can't say and he can't put  
24 numbers up here saying that it's less likely that  
25 this Andrew Torres was going to have children.

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1 Was the guy gay? Did they have that figured out  
2 at age 12? Maybe if he was part of the gay  
3 population that would be true that it's less  
4 likely that he's going to have a child than the  
5 nongay population. Is that the allegation here?

6 MR. LATIOLAIT: No, your Honor, and  
7 that's exactly the problem. Mr. Johnson uses  
8 statistics when they assist his testimony, and  
9 when statistics may undercut the numbers that he's  
10 going to present to the jury, he wants to ignore  
11 them.

12 THE COURT: Unless there's some  
13 statistical book out there somewhere that says  
14 what percentage of people in the United States  
15 don't have children, unless that's the greater  
16 percentage of people, then he's not going to be  
17 able to put his number up there and his expert  
18 report that says he believes and expert opinion  
19 that Mr. Andrew Torres who died when he was 12 is  
20 not going to have children. Doesn't the average  
21 American family have 2.3 kids or 3.1 or 1.7 or  
22 something?

23 MR. BOWERS: Your Honor, these are all  
24 things that there's multiple books on all this  
25 stuff, and that's a lot of difference in economics

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1 glamorized to the millions and millions of dollars  
2 a year in income and do not marry and flaunt their  
3 children to the world. I sit in this court and  
4 see a cross-section of our community every day,  
5 and the cross-section of our community that I see  
6 every day I'd be hard-pressed to say that the  
7 people who are living together and having children  
8 more than 50 percent of them are married. I'd be  
9 hard-pressed to say that, so I don't know about  
10 marriage anymore.

11 MR. LATIOLAIT: Okay, understood, and I  
12 guess maybe the basis for my statement is, well,  
13 neither does Mr. Johnson, so to come in here and  
14 to wear the cloak of an expert and tell the jury  
15 that Andrew Torres's loss of future earning  
16 calculation should assume that he wasn't going to  
17 get married because Mr. Johnson thinks that or  
18 that Mr. Torres was going to give 30 percent of  
19 his income to his parents because Mr. Johnson  
20 thinks that is improper expert opinion.

21 THE COURT: If he has some statistical  
22 basis for determining how much money the average  
23 child gives to their parent, he can use that  
24 percentage, but whether or not the guy's going to  
25 marry, unless there's some statistics on that, and

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1 evaluation is which book do you use. They have an  
2 economist. His name is Mr. Weiner. He's free to  
3 come in and certainly will come in and point out  
4 all these discrepancies.

5 THE COURT: I'm granting the motion in  
6 limine unless you can come in and show me  
7 statistically that it's less likely that a person  
8 is going to be a parent than not a parent.

9 MR. BOWERS: Let's be really clear about  
10 what we're granting. You're granting a motion in  
11 limine as to the assumption that he doesn't have  
12 children.

13 THE COURT: That's correct.

14 MR. BOWERS: Can he do a calculation  
15 based on him having children and present that  
16 instead?

17 THE COURT: Of course, but he hasn't  
18 done that yet.

19 MR. LATIOLAIT: Marriage?

20 THE COURT: Well, you know, marriage is  
21 these days. It's probably less likely that people  
22 get married than not. You're talking to somebody  
23 that has been married for 30 years, but, you know,  
24 we live in a society where movie stars are  
25 glamorized and do not marry. Athletes are

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1 really that would be a forecasting one because  
2 let's say he's 12 years old now, he would be  
3 trying to forecast ten years from now what  
4 percentage of our population marries, and I don't  
5 think that's a matter for expert opinion.

6 MR. BOWERS: Whether he's married or  
7 not?

8 THE COURT: Yeah, I don't think that's a  
9 matter for expert opinion so that motion in limine  
10 is granted. They cannot consider whether he does  
11 or doesn't marry.

12 MR. BOWERS: Or does or doesn't have  
13 children. Those two things are out.

14 THE COURT: Right. The next one is  
15 Goodyear's motion in limine No. 11 to exclude  
16 certain testimony and opinions of Dennis Carlson.  
17 Now, the fact that Mr. Carlson was involved in the  
18 tire industry but not in every part of it does not  
19 make his testimony inadmissible or his opinion  
20 inadmissible. Unlike the other fellow, this guy  
21 is a licensed engineer, and so your motion is  
22 denied.

23 There's an objection to the declaration  
24 of Carlson filed by the plaintiffs in support of  
25 their opposition to motion in limine. Mr. Carlson

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1 is going to testify live, correct?

2 MR. BOWERS: You're right.

3 THE COURT: So his affidavit will not be  
4 admitted for any purpose in the trial.

5 Plaintiff's motion in limine to use  
6 prior Goodyear testimony, that has been granted.  
7 I think that was taken care of.

8 Plaintiff's motion in limine to exclude  
9 evidence. This is the History Channel film? Now,  
10 this is directed to Mr. Latolait. Does the film  
11 show the production of a light truck Range E tire?

12 MR. CASTO: I can answer that. He  
13 probably can't. It does not, but it's not offered  
14 for that. It's offered simply to demonstrate the  
15 steps in the manufacturing process generically.  
16 It's an exemplar video. It will be edited to have  
17 deleted any references to the History Channel or  
18 any titles that would have been generated from the  
19 History Channel. It's simply the steps --

20 THE COURT: What type of tire components  
21 are they using in the production video?

22 MR. CASTO: Doesn't get to the  
23 components themselves, your Honor. It's simply  
24 the general process by which raw materials are  
25 stored. The next step is the general process by

1 their race car tires or whatever all these other  
2 things are they may point out might somehow be  
3 relevant to that, my contention was I don't want  
4 this -- I don't think it's appropriate, I think  
5 it's prejudicial to have something clearly  
6 associated with the television production and  
7 Goodyear. So when Mr. Casto said we will delete  
8 any mention of the professional host, any mention  
9 of associated with a commercial television  
10 program, and I heard him to say, if I'm incorrect  
11 please correct me, delete out any mention of the  
12 little boxes that come up. I think you know what  
13 I'm talking about when you're watching television  
14 and there's some sort of graphic on the screen.  
15 If those will all be off and this looks like a  
16 video some dude made about Goodyear I'm fine with  
17 it.

18 THE COURT: You can't have the History  
19 Channel.

20 MR. CASTO: That will be done, your  
21 Honor.

22 THE COURT: Plaintiff's motion in limine  
23 to exclude evidence -- plaintiffs move to exclude  
24 evidence of the immigration status of Koji Arriaga  
25 and his guardian Maria Arriaga prior drug use or

1 which batches of rubber are mixed. The next  
2 process is the general components that go into a  
3 tire like a tread and a steel belt. There is a  
4 component which is the animation we have provided  
5 to counsel which would have the specific  
6 components in an animation in this individual tire  
7 as they are built. Then it shows generically how  
8 the tire is cured or vulcanized and then goes out  
9 the door. That's what it generically shows so the  
10 jury has some understanding of the different  
11 components of the tire and how they're built.

12 THE COURT: Have you watched the video?

13 MR. BOWERS: Which one? There's no --

14 THE COURT: The History Channel.

15 MR. BOWERS: I don't care about the  
16 animation, that's fine. Yes, I've watched the  
17 video, and my immediate thought is comes on the  
18 History Channel, you've got some host walking  
19 around with a microphone and down in the corner  
20 it's got a professional production on it. If you  
21 ever watched "Hands On History" on the History  
22 Channel, the minute this comes on, oh, great, they  
23 did something about Goodyear, and that was my  
24 point. Giving them the benefit of the doubt that  
25 somehow sheets of rubber that might be used in one

1 alcohol use. Drug and alcohol use is out because  
2 they weren't the driver of the car. Is  
3 Mr. Arriaga, Koji Arriaga, and Maria Arriaga are  
4 they still alive?

5 MR. BOWERS: Yes, your Honor.

6 THE COURT: And are they in the United  
7 States?

8 MR. BOWERS: Yes, your Honor.

9 THE COURT: Well, then their immigration  
10 status is irrelevant.

11 MR. LATIOLAIT: May I be heard?

12 THE COURT: That's a real separator of  
13 American opinion today having to do with  
14 immigration.

15 MR. LATIOLAIT: And, your Honor, we  
16 wouldn't offer it for an improper purpose, but  
17 there is a proper purpose if Mr. Arriaga is making  
18 a claim for loss of earnings. Some jurisdictions  
19 in this country recognize the rule that if you're  
20 in this country illegally and you file a lawsuit  
21 that your claim for loss of earnings if an  
22 economist bases it upon earnings in the United  
23 States is essentially a claim for illegal earnings  
24 and that the loss of earnings should be limited to  
25 what they could earn in their own country as legal

1 wages. I wouldn't mention the status. I would  
 2 simply say if they're going to put on lost wage  
 3 claim, they ought to reduce it to legal wages and  
 4 not illegal wages, and the jury knows nothing  
 5 about their status.  
 6 THE COURT: How old is this fellow?  
 7 MR. BOWERS: He'll be 18 shortly, your  
 8 Honor.  
 9 THE COURT: Is he obtaining legal  
 10 status, a green card?  
 11 MR. BOWERS: I'm not sure what he's up  
 12 to.  
 13 THE COURT: Because if you have a green  
 14 card, you can --  
 15 MR. LATIOLAIT: Absolutely.  
 16 THE COURT: -- earn wages.  
 17 MR. BOWERS: If Mr. Latiolait -- talk  
 18 about something that divides.  
 19 THE COURT: Do you have a lost wage  
 20 claim for this kid?  
 21 MR. BOWERS: I do. I don't know how  
 22 strong it is.  
 23 THE COURT: Is he disabled or something?  
 24 MR. BOWERS: No.  
 25 THE COURT: Then you don't have a lost

1 would need the Court's direction on. This relates  
 2 to Joseph Enriquez who plaintiff's economist will  
 3 provide assumptions of Joseph Enriquez what he  
 4 would earn with a high school diploma, what he  
 5 would earn with a college degree.  
 6 MR. BOWERS: Can we approach on this  
 7 issue? There's a privacy concern on this.  
 8 THE COURT: You may. How old is Joseph  
 9 Enriquez?  
 10 MR. BOWERS: He's 17. He's the one  
 11 that's a vegetable.  
 12 (Off-the-record bench conference.)  
 13 THE COURT: Let's look at the jury  
 14 questionnaire. That's the ruling regarding  
 15 Mr. Enriquez's situation.  
 16 MR. BOWERS: Just for the record, can we  
 17 state what it was?  
 18 THE COURT: The defense will be allowed  
 19 to ask the plaintiff's expert if he is aware that  
 20 Mr. Enriquez was not even attending school as a  
 21 full-time student at the time that this event  
 22 occurred and what effect that has on his  
 23 calculation of the guy's future earnings.  
 24 MR. BOWERS: But can't discuss any of  
 25 the specifics.

1 wage claim because he's just 18 now.  
 2 MR. BOWERS: If you're going to tell me,  
 3 your Honor, that if I pursue a lost wage claim  
 4 then I'm going to run of the risk of his  
 5 immigration status being discussed, then I will  
 6 discuss that matter with the client knowing that  
 7 ruling and take care of it if that's how you  
 8 decide.  
 9 THE COURT: Or else you have to do the  
 10 wage claim based on whatever the wages are in his  
 11 country for kids that are 16, 18 years of age.  
 12 Did he have a job when this event occurred?  
 13 MR. BOWERS: I don't know if he had one  
 14 at the time. He's been working somewhat since  
 15 then. I can handle that. If that's your ruling,  
 16 I'll deal with it.  
 17 THE COURT: That's the ruling. Let's go  
 18 to the plaintiff's motion in limine to exclude  
 19 evidence of expert biomechanical evidence. That  
 20 whole issue is out.  
 21 MR. LATIOLAIT: There's an issue of bad  
 22 acts on the plaintiff's first motion that I don't  
 23 know the Court has addressed.  
 24 THE COURT: Drug and alcohol use is out.  
 25 MR. LATIOLAIT: Specifically one that I

1 THE COURT: Can't discuss any of the  
 2 specifics as to why he wasn't attending school.  
 3 Which questions do we need to look at?  
 4 Somebody gave me a copy this morning.  
 5 MR. BOWERS: I gave you a copy of the  
 6 one I had culled together yesterday before  
 7 Mr. Latiolait --  
 8 THE COURT: This one was just given to  
 9 me today.  
 10 MR. BOWERS: Mr. Latiolait sent me some  
 11 changes this morning which we will try to bring to  
 12 the Court because we have some disagreement.  
 13 MR. LATIOLAIT: We handwrote on it so it  
 14 will make it all easier.  
 15 MR. BOWERS: Your Honor, he wants 88, 89  
 16 and 90.  
 17 THE COURT: I didn't even have that  
 18 many.  
 19 MR. BOWERS: No, this is the amendment.  
 20 MR. LATIOLAIT: These are the old  
 21 numbers. We'll renumber.  
 22 MR. BOWERS: He wants those 88 to 90, I  
 23 don't want them, and I don't want to prepare the  
 24 questionnaire since I had finished one. Whatever  
 25 you add to have Mr. Owens' office duplicate and

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1 bring it down today.  
 2 THE COURT: 88, 89 and 90 those are  
 3 perfectly appropriate for voir dire, so those will  
 4 be included, and then somebody will bring me the  
 5 completed questionnaire today and I'll sign it.  
 6 MR. BOWERS: Could you ask Mr. Owens'  
 7 office to do that?  
 8 MR. LATIOLAIT: What's the timing on  
 9 when we get them back and when voir dire begins?  
 10 THE COURT: You've got to get them to  
 11 me, the original, to sign. Then you've got to  
 12 make the copies today. We have to have the copies  
 13 at five tonight or eight tomorrow morning at the  
 14 jury commission office. The jurors are coming in  
 15 tomorrow. Then there has to be copies made, so I  
 16 don't know, if you want to pick them up from jury  
 17 services tomorrow they should be finished by noon  
 18 and then you can make the copies and distribute  
 19 them. If jury services does it, I don't know if  
 20 they do it in-house or send them out to be copied.  
 21 I don't know what happens to them, but after  
 22 they're done you can probably pick them up at noon  
 23 tomorrow. I think the panel is coming in in the  
 24 morning to fill them out. You can pick them up at  
 25 noon tomorrow, Mr. Latiolait, and take them down

1 MR. CALLISTER: I kind of figured that  
 2 by now. I kind of intuited during the next hour.  
 3 MR. LATIOLAIT: So your Honor knows, I  
 4 won't be at the hearing on Thursday on the good  
 5 faith settlement because Goodyear has not filed a  
 6 opposition to it.  
 7 THE COURT: That will be fine. I don't  
 8 know if I've got Ford's material.  
 9 MR. LATIOLAIT: One thing for the  
 10 record, I've not been officially told what the  
 11 settlement Ford made was nor an allocation and I  
 12 assume we're going to get that.  
 13 THE COURT: You're not going to object?  
 14 MR. LATIOLAIT: Yes, I'm not going to  
 15 object, but we do need to know the amount and the  
 16 allocation.  
 17 THE COURT: I'll tell you what the  
 18 allocation is going to be because the attorneys  
 19 told me this. The allocation of the money that  
 20 Ford and Garm pays simply goes into a pot and it  
 21 will be allocated to the plaintiffs according to  
 22 however the jury comes up with the damages.  
 23 Because there's nine plaintiffs and assuming that  
 24 the jury would find damages in favor of each of  
 25 the nine plaintiffs, whatever percentage of the

1 to Kinko's or wherever you get your copies made.  
 2 The originals come back to the Court. You each  
 3 get one set and jury selection begins on Monday.  
 4 MR. BOWERS: Just so I'm clear, your  
 5 Honor, is Mr. Owens' office going to add these  
 6 final things and correct the form?  
 7 MR. OWENS: That's fine.  
 8 MR. LATIOLAIT: One last question. Time  
 9 limits on jury selection or how long does this  
 10 Court generally allow?  
 11 THE COURT: Well, choosing a jury is the  
 12 most important part of your case with all due  
 13 respect to the work you've done prior. The jurors  
 14 are the most important element of this case, and  
 15 we will pick a jury on Monday. We will pick a  
 16 jury on Monday. I'll tell you Monday morning when  
 17 you get here how we pick jurors. You'll qualify a  
 18 panel of, I believe, 20. You get five peremps per  
 19 side. You'll qualify 20 jurors, so the plaintiffs  
 20 have to share theirs. Hopefully there will be  
 21 only one defendant, and after 20 people are  
 22 qualified to serve you get the list.  
 23 MR. LATIOLAIT: There was a motion for  
 24 reconsideration that we received late yesterday.  
 25 THE COURT: It's going to be denied.

1 whole damages are that each plaintiff gets, that's  
 2 how the damages -- that's how the money that's  
 3 into the pot will be distributed because you get  
 4 the benefit of the first money that's paid into  
 5 the pot because you would only pay whatever is  
 6 over and above the money that's in the pot.  
 7 So that was the agreement,  
 8 Mr. Callister?  
 9 MR. CALLISTER: That's correct.  
 10 THE COURT: That was the agreement,  
 11 Mr. Bowers, so the jury is one that's going to  
 12 ultimately be determining the percentage of  
 13 distribution of the settlement pot.  
 14 MR. POLSENBERG: I hate to raise this  
 15 issue. What if the Supreme Court were to reverse  
 16 the results of this trial?  
 17 THE COURT: Well, the damages have been  
 18 tried fully, Mr. Polsenberg, and that portion  
 19 shall never have to be tried over again and the  
 20 only thing that would have to be tried is  
 21 liability.  
 22 MR. POLSENBERG: I disagree with the  
 23 Court on that.  
 24 THE COURT: You have the right to  
 25 disagree, Mr. Polsenberg, because this is America.



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3 ATTEST: Full, true and accurate transcript.  
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5 Mary Beth Cook  
6 MARY BETH COOK, CCR #268, RPR  
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# EXHIBIT 7

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# EXHIBIT 7

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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TERESA BAHENA, ET AL,

ORIGINAL

Plaintiffs,

vs.

REPORTER'S TRANSCRIPT  
OF  
JURY TRIALGOODYEAR TIRE AND RUBBER  
COMPANY,

Defendant.

BEFORE THE HONORABLE SALLY LOEHRER  
DISTRICT COURT JUDGEMONDAY, JANUARY 29, 2007  
10:15 A.M.

## APPEARANCES:

For the Plaintiffs: ALBERT MASSI, ESQ.  
CHAD BOWERS, ESQ.  
MATTHEW CALLISTER, ESQ.For the Defendant: ANTHONY LATIOLAIT, ESQ.  
JEFFREY CASTO, ESQ.  
DANIEL POLSENBERG, ESQ.  
JONATHAN OWENS, ESQ.

Reported By: Mary Beth Cook, CCR #268, RPR

MARY BETH COOK, CCR 268, RPR (702) 671-4408

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1 On behalf of Joseph from California Dr. Adams,  
 2 Dr. Zehler will be here. Patricia Hedrick, who is  
 3 a life care planner on behalf of Joseph, will be  
 4 here; a Dr. Robert Johnson, he's an economist and  
 5 he'll be here on behalf of several of the  
 6 plaintiffs. We also have in addition to the  
 7 plaintiffs Dr. Richard Adams, Dr. Schaefer. Alan  
 8 Kam and Lawrence Moreno, and that's -- they will  
 9 be experts in different fields that really is  
 10 irrelevant for our purposes right now.  
 11 We expect, ladies and gentlemen, that  
 12 our part of this damages trial will last through  
 13 the end of this week. Thank you, Judge.  
 14 THE COURT: Thank you, Mr. Massi.  
 15 Mr. Callister, do you wish to say anything else?  
 16 MR. CALLISTER: Nothing else.  
 17 THE COURT: For the defense, please  
 18 someone introduce yourself and all of the members  
 19 of the defense team and your list of witnesses and  
 20 give us your two-minute statement.  
 21 MR. CASTO: Thank you, your Honor. Good  
 22 morning, ladies and gentlemen. My name is Jeffrey  
 23 Casto. I represent Goodyear. On behalf of  
 24 Goodyear here today is Richard Olsen from Akron,  
 25 Ohio. There's also Mr. Latiolait who's counsel

1 for Goodyear, Mr. Owens and Mr. Polsenberg.  
 2 There will be a number of witnesses that  
 3 will be called here on behalf of Goodyear, and  
 4 those include Dr. Brandner, Dr. Chue,  
 5 Dr. Elkanich, Darin Lefkowitz, Stan Peralta,  
 6 Dr. Rimoldi, David Weiner, Edward Workman, and  
 7 Richard Wulff. There may also be testimony that  
 8 you will hear from Annette Davis and Al Owens and  
 9 James Gardner, James Schultz and Mr. Olsen. I  
 10 think I've covered them.  
 11 Very briefly, ladies and gentlemen, this  
 12 portion of the trial is going to involve damages.  
 13 Liability has been determined already in this  
 14 case. There are a number of people that were  
 15 involved in this accident. There were ten people  
 16 in the van in August of 2004. Those people have  
 17 different ages, different medical histories,  
 18 different family circumstances. Many of the  
 19 injuries are not disputed by Goodyear. Some of  
 20 the residuals from those injuries may be disputed  
 21 in terms of the degree of permanency, in terms of  
 22 the degree of future medical care or necessity or  
 23 other elements of damages, but the testimony from  
 24 Goodyear, I believe, will be relatively brief, and  
 25 in that regard we'll be focusing on those issues,

1 not the fact that there were ten people in the van  
 2 on August 2004, not about the fact that those  
 3 people were injured. Those issues will not be  
 4 disputed. Thank you.  
 5 THE COURT: Thank you, Counsel.  
 6 (Jurors were excused by the Court  
 7 who were unable to serve. Colloquy  
 8 was reported but not transcribed.)  
 9 THE COURT: The questions that I'm going  
 10 to ask you are very, very limited this morning  
 11 because you were all here and you all filled out  
 12 the 70 or 80 questions last week, so what I want  
 13 to know is your name and whether you've been a  
 14 juror before and if so to tell us what type of  
 15 trial or trials you sat on, whether they went  
 16 clear through to jury deliberation or not.  
 17 And we're going to start with the top  
 18 row, far left hand. Mr. Brucken, would you please  
 19 stand up, tell us your name.  
 20 THE JUROR: Barney Brucken, I've never  
 21 been a juror before.  
 22 THE COURT: Next.  
 23 THE JUROR: Billie Jo Taney, and I've  
 24 never been selected before.  
 25 THE COURT: Have you been through the

1 jury process? Have you gone this far and not been  
 2 chosen or very first time you've ever been in for  
 3 service?  
 4 THE JUROR: I've been almost as far, but  
 5 been dismissed.  
 6 THE COURT: Okay, thank you. Next.  
 7 THE JUROR: Othon Carranza, and this is  
 8 my first time.  
 9 THE COURT: Thank you, sir. Next.  
 10 THE JUROR: Mike Jackson, first time.  
 11 THE COURT: Thank you.  
 12 THE JUROR: Nicholas Christensen, never  
 13 been called.  
 14 THE COURT: Thank you, sir. Next.  
 15 THE JUROR: Michael Whiteman, never been  
 16 called.  
 17 THE COURT: Next.  
 18 THE JUROR: Steven Frey, I served on a  
 19 criminal case, went to verdict.  
 20 THE COURT: Was the jury able to reach a  
 21 decision?  
 22 THE JUROR: Yes.  
 23 THE COURT: Were you the foreman on the  
 24 panel?  
 25 THE JUROR: No, I was not.

1 THE COURT: It's hard to establish a  
2 pattern when there's only one.  
3 MR. FRIZELL: There's case law showing  
4 that just one is a prima facie.  
5 THE COURT: There's only one.  
6 MR. POLSENBERG: You understand that my  
7 wife is black, right?  
8 THE COURT: But there are Hispanics.  
9 Were any Hispanics challenged?  
10 MR. FRIZELL: Yes. Defendants struck  
11 No. 3, Carranza, and also an Asian, your Honor,  
12 No. 25, Mike Anselmo.  
13 THE COURT: He's Asian?  
14 MR. FRIZELL: That's what he put on his  
15 questionnaire.  
16 MR. POLSENBERG: I didn't know.  
17 THE COURT: And you struck the only  
18 black person. You struck Anselmo. All right.  
19 It's not a pattern, but I always make you put your  
20 nonracial reason for striking.  
21 MR. POLSENBERG: You bet. For Michael  
22 Jackson, I liked him on the questionnaire but once  
23 he came in here and started answering questions,  
24 every time he answered the question there was more  
25 information. On his questionnaire his

1 mother-in-law had a broken limb or something. Now  
2 she's in a class action with some radiation case.  
3 He had a niece with brain damage. He was part of  
4 the Ford Explorer tire separation recall. I loved  
5 him on paper. He even said that punitive damages  
6 should be consideration of fairness. He was on my  
7 keep list until he started adding all this new  
8 information.  
9 THE COURT: How about Orthon Carranza  
10 who appears to have a Hispanic surname?  
11 MR. POLSENBERG: When I asked him the  
12 question at the end, he was not following me. He  
13 also -- he's the one who wrote -- I even asked him  
14 about it. I asked him up front about his answers  
15 for punitive damages, you do the crime, you do the  
16 time. With that kind of mentality, I don't think  
17 that I can do that. And, besides, it's not like I  
18 got rid of all the Hispanics.  
19 THE COURT: How about Michael Anselmo  
20 who I would have thought was Hispanic but  
21 evidently his questionnaire says Asian background?  
22 That's No. 25.  
23 MR. POLSENBERG: When he told me right  
24 at the end about his father dying, I didn't write  
25 down in the notes, somebody in his family dying

1 and he was very sympathetic. He answers on his  
2 questionnaire, yes, he's going to have sympathy.  
3 I sympathize and I tend to take sides. As much as  
4 he said -- his answers kept me from using a  
5 challenge for cause because he said no, I could be  
6 open-minded, but I didn't believe him.  
7 THE COURT: All right. Thank you.  
8 Those are all racial and ethnic origin neutral  
9 reasons. Your challenge is denied.  
10 (Sidebar conference concluded.)  
11 (Juror oath administered and  
12 pretrial jury instructions  
13 concluded.)  
14 THE COURT: Does either party wish to  
15 invoke the exclusion of witness rule at this time?  
16 MR. MASSI: Plaintiff does, your Honor.  
17 THE COURT: If there are any persons not  
18 parties to the lawsuit who have been subpoenaed or  
19 otherwise notified that they will be testifying in  
20 the case, please leave the courtroom at this time,  
21 remain available in the hallway until the bailiff  
22 calls you to testify. After you have testified,  
23 please do not discuss your testimony with anyone  
24 other than the parties or the attorneys.  
25 And the record will reflect that the

1 Batson and JEB Alabama challenges were done to the  
2 exercise of preempts by the other side in the  
3 hallway and have been ruled upon.  
4 That concludes the opening instructions  
5 of the court. Is the plaintiff ready to open?  
6 MR. MASSI: Yes, your Honor.  
7 THE COURT: You may proceed.  
8 MR. MASSI: Thank you, Judge. If the  
9 Court please, counsel, ladies and gentlemen. As I  
10 said, my name is Al Massi, and myself and Chad  
11 Bowers represent plaintiffs in this case and their  
12 request for damages against Goodyear for the harm  
13 that was caused them.  
14 There are three ways we're able to  
15 present evidence to you. We do it through  
16 testimony, we do it through exhibits, or we do  
17 what's called demonstrative evidence. Testimony  
18 is witnesses, family, experts, physicians. I  
19 mentioned before an economist testifying, telling  
20 you their story either in person or as the Court  
21 indicated through deposition. Exhibits, you'll  
22 see packets of exhibits. You'll be presented with  
23 tabbed and indexed so you can follow through and  
24 check whichever you wish or whatever part you wish  
25 containing, for example, medical bills, reports

1 and in the case of Joseph what's called a life  
2 care plan, and I'll explain it to you later.  
3 Photos of the exhibits.  
4 And then as part of demonstrative  
5 evidence, photos will also be presented, some of  
6 them very difficult, and you need to be prepared  
7 for that. Films, charts of experts, particularly  
8 economic charts. That seems to be the one that  
9 will most be used in this case in the use of an  
10 aspect of the chart.

11 All of this is going to be presented in  
12 our effort to show you that our clients they  
13 aren't just claimants wanting damages from  
14 Goodyear. They're people who have not only been  
15 physically damaged but they've been emotionally  
16 scarred. We want to show you the effects and hope  
17 to show you the effects this loss has had on their  
18 lives, and by doing that hopefully explain to you  
19 that this is their one chance, their one effort, . .  
20 their one opportunity here now and to you to be  
21 compensated for these damages, to be compensated  
22 for their loss.

23 Through testimony we're going to have  
24 the testimony of a father, a sister, an aunt and  
25 brothers in these extended families, all telling

1 you about the reality of their day every day, and  
2 the reality of their families every day. Through  
3 exhibits you're going to see the hard evidence, as  
4 I said, bills, reports, charts. Photos, you're  
5 going to see pictures of people who can't speak  
6 for themselves, people who are no longer with us.  
7 In one case, Joseph's case, a young man who can't  
8 speak at all and cannot speak for himself.  
9 They'll be presented by people who care  
10 for others for people who can't care for  
11 themselves, and they're going to tell you and we  
12 hope you'll come to understand about their lives  
13 before August the 16th, 2004, and how their lives  
14 are now, and how they're going to be for the rest  
15 of their lives, after we all go home and they go  
16 back to their headquarters and we continue with  
17 our lives and they continue on with what is left  
18 of their lives, all of which has been affected by  
19 something that you've already been told several  
20 times, and I'm going to tell you several times  
21 again because it's important. It wasn't their  
22 fault. Chad Bowers and I represent three of the  
23 families in their action against Goodyear for  
24 damages. I'm going to tell you again who these  
25 people are, and I want you to know them. It's

1 Ernesto and Leonor Torres. These are individuals,  
2 husband and wife, who had three children. They  
3 now have two children. Their children Armando is  
4 here -- their son Armando is here. Crystal is in  
5 school. We expect her here. Andrew is deceased.  
6 Arriaga, a family friend, is here. Victoria Campe  
7 is here, Frank Enriquez's sister. She represents  
8 Frank's estate. Frank also had a sister Patricia  
9 Jayne Mendez. Patricia will be here tomorrow with  
10 Joseph, Jeremy, and Jamie Enriquez. These are  
11 Frank's surviving children. Mr. Callister, as I  
12 said at the beginning, will be speaking for the  
13 Bahena family.

14 What's typical or usual in a civil case,  
15 the trial presentation of liability and damages.  
16 Damages is what people have suffered. This trial,  
17 again, is only about damages. Liability and fault  
18 having been decided. Goodyear is responsible for  
19 the damages they caused because of this defective  
20 tire. That part of it is over. They've got to  
21 live with it, just as our clients we're going to  
22 show you have to live with the effects of it.

23 There should be no more debate or  
24 discussion about it because you're going to be  
25 told that it's for you to decide what these

1 damages are going to be and to be the judges of  
2 how to compensate these families. It's my burden  
3 to show you by a preponderance, and the Court  
4 already addressed that to some extent. We all  
5 watch television, and we all know that every trial  
6 lasts 20 minutes and you get the result by the  
7 commercial or else they can't do it again the next  
8 week. It isn't the way it is obviously. Some of  
9 you have experienced it before. The rest of you  
10 will experience it for the first time. It takes  
11 time, but it's not our burden beyond a reasonable  
12 doubt to show you what these damages are. It is  
13 only by a preponderance, more likely than not.  
14 What our burden is to show you that the  
15 injuries claimed were caused by the acts of  
16 Goodyear, that the injuries claimed are of the  
17 nature we say they are, many permanent, some  
18 life-altering, some life-threatening, and all  
19 caused by the accident, the responsibility of  
20 Goodyear. You're going to see that the majority  
21 of the evidence is not going to be contradicted,  
22 as counsel already said, by the defendant.  
23 The damages are going to be  
24 demonstrated, and that the only remedy that these  
25 people have -- a lot of people don't like this,

1 but, again, it's something you have to live with.  
 2 The only remedy these people have is money. There  
 3 isn't any other remedy that is available and no  
 4 other remedy that's appropriate. That is their  
 5 only remedy and it's what we're asking and going  
 6 to ask for.  
 7 To understand how these people, how  
 8 these individuals came to share this one tragedy  
 9 you have to know about their background, and what  
 10 we're going to do is try and tell you about their  
 11 background. We're going to tell you that all  
 12 these families they lived and worked in Las Vegas.  
 13 Now, Jayne Mendez, that's driving up, she does  
 14 live in Occanside but has lived in Las Vegas but  
 15 is living in Oceanside with her boys now. And  
 16 they all lived here before August the 16th, '04.  
 17 The common thread among these families  
 18 was some of the young men in the family loved  
 19 amateur boxing. That was their sport. They had  
 20 played some soccer, they played some other, but  
 21 they loved amateur boxing. And the families were  
 22 on a trip in August of '04 with a couple other  
 23 groups, come other families, to go to Kansas for a  
 24 boxing tournament. So they rented a van and three  
 25 families, Torres family, Koji Arriaga and Frank

1 Enriquez and two of his three boys, were in the  
 2 van when they were driving up through eastern Utah  
 3 as I told you before. They were following each  
 4 other. Ernesto, Leonor, Andrew, Armando and  
 5 Crystal, Koji, Joseph, Jeremy and Jamie in that  
 6 van. Frank Enriquez was also there.  
 7 Now, along with, and my apologies to  
 8 Mr. Callister, along with Mrs. Bahena who should  
 9 not be left out on the side because it's another  
 10 family but a close family. They were traveling  
 11 about 9:30 in the morning on 170 in eastern Utah  
 12 when the right rear tire came apart, caused the  
 13 van to cross the road, go into the median and roll  
 14 and roll and roll, and it finally came to rest on  
 15 its wheels with a shredded tire that's hanging on  
 16 the rim. And I've asked Brian, our tech, to put  
 17 him up some pictures to get an impression of what  
 18 this impact, what this was like.  
 19 Brian, if you could show the side  
 20 picture. Next picture, please, and finally the  
 21 right side, please.  
 22 That's what was left after the rolls.  
 23 That's what was left after the impact, and that's  
 24 our right rear tire.  
 25 You'll be told that the injuries

1 suffered by these families directly and indirectly  
 2 were absolutely horrendous. From the moment that  
 3 van came to rest, there were three extended  
 4 families, and I stress that because this is about  
 5 family, you're going to be told, and what the  
 6 families did before and what you'll see they have  
 7 done after. Three extended families' lives they  
 8 were changed forever. The effect was so profound  
 9 one family member, little Jamie is Frank's son,  
 10 fortunately was not in the van. He was in a truck  
 11 ahead. Came back, saw his dad who was lost at the  
 12 scene. The brothers, Joseph and Jeremy, Joseph  
 13 himself profoundly injured and Jeremy, the middle  
 14 son in the van, and saw his dad and his brother  
 15 after.  
 16 These effects, these losses, the changes  
 17 are what we're asking you to evaluate. That's the  
 18 hard part for you. That's what you're going to be  
 19 the judge of. That's what we're going to be  
 20 asking you to do. Using the trial to compensate  
 21 these people and hold Goodyear responsible for  
 22 what damage they caused because of this defect.  
 23 To give you some impression generally of  
 24 some of the injuries, and they're going to be  
 25 expands on by the doctors and it's not my

1 intention to testify for them. I want to give you  
 2 a preview of some of these injuries. Ernesto,  
 3 Mr. Torres, on his own behalf he had facial and  
 4 scalp laceration, a concussion, left wrist  
 5 fracture, ulnar nerve damage, carpal tunnel  
 6 damage. Leonor, his wife, her right eye, neck  
 7 abrasion, chest wall contusion, bulging disk at  
 8 C5-6 in her neck.  
 9 Andrew, their son who's 12 years old,  
 10 after several days in intensive care Andrew died  
 11 of massive closed head trauma, blunt chest trauma,  
 12 blunt abdominal trauma with a liver contusion and  
 13 ankle fractures.  
 14 Crystal, their daughter, amazingly  
 15 bumped, bruised, shocked. Armando, was one of the  
 16 boxers. We're going to show you he had a closed  
 17 head injury, concussion, left brachial plexus left  
 18 shoulder, disk bulge in C3 to seven and  
 19 depression.  
 20 Frank Enriquez, after some time at the  
 21 scene, died of massive head and chest trauma.  
 22 Jeremy, another one of Frank's sons, had lumps and  
 23 bruises. He saw his dad before he died, saw his  
 24 brother Joseph. Jamie, young man I told you came  
 25 back and saw his father and his brother, and



1 Joseph who will be here only for a short time. I  
2 need you to understand what we're going to do is  
3 we are going to bring Joseph here, that's why  
4 Jayne is driving up today, because we think he  
5 deserves to be seen. Joseph suffered a closed  
6 head injury, profound closed head injury, subdural  
7 hematoma, brain stem injury, right eye hemorrhage,  
8 spleen laceration, pelvic rupture, shortened life  
9 expectancy, broken ribs.

10 Koji, concussion, right femur fracture,  
11 hypertension fracture C6, compression fracture C7.  
12 He had an anterior cervical fusion, right wrist  
13 and right hip fracture. And Ms. Tapia died of  
14 trauma.

15 You're going to be told of the effect of  
16 a loss where a boy, a man and a grandmother died.  
17 Three boys, Jeremy, Jamie, Joseph, lost their dad.  
18 Jeremy and Jamie lost the ability to meaningfully  
19 communicate with their brother. Victoria and  
20 Jayne will tell you about their brother Frank  
21 Enriquez, and Leonor will tell you about their son  
22 Andrew, about the effect on their son Armando and  
23 their daughter Crystal who lost her brother.  
24 Armando lost his brother, the use of his arm, and  
25 Koji his neck. You'll learn that they each live

1 planner, an individual when you have catastrophic  
2 losses like this what is going to be needed for  
3 the rest of these peoples' lives to maintain and  
4 care for them and have some quality of life.  
5 She'll be here with a plan for Joseph.

6 You'll have life expectancy charts for  
7 Frank, Andrew, Mrs. Bahena, and they will tell you  
8 how long they should have lived but for what  
9 happened because of Goodyear. And for Joseph how  
10 his life expectancy has been shortened, the cost  
11 of his present care, the cost and need of his  
12 future care.

13 Robert Johnson he's a doctor of  
14 economics is going to be here to testify and he's  
15 going to quantify these losses and he's going to  
16 tell you how he arrived at these numbers using  
17 some real cold statistics like life expectancy  
18 charts and things that economists use. And it's  
19 going to be quantification of one of the major  
20 aspects of these families' loss, but the part he  
21 is not going to quantify for you but tell you that  
22 economists recognize is something called the loss  
23 of enjoyment of life. It's commonly called  
24 hedonic damages. It's part of the general damages  
25 that a person suffers, and he's going to tell you

1 every day with that memory and its effect, and  
2 they are, as I said, all about family.  
3 Joseph -- Brian, do you have Joseph's  
4 picture, please. Go back would you please. I  
5 apologize. As I went through to do this and I  
6 forgot that and I apologize to the families. Show  
7 the picture of Frank with the boys. Frank  
8 Enriquez is one of the individuals who died at the  
9 scene survived by his three children, Jamie,  
10 Jeremy and Joseph on the right. Andrew, Ernesto  
11 and Leonor's son. May we have one picture of  
12 Andrew, please. And may I see a picture of Joseph  
13 now, please. Joseph is in a community home care  
14 setting in California, you'll be told, near his  
15 aunt Jayne, and she takes care of him, visits him,  
16 takes care of him at her home, takes him out and  
17 helps. She also cares for Jamie and Jeremy.  
18 They're going to be here tomorrow.

19 Koji is living and working in California  
20 with his uncle now. Armando he will tell you  
21 continues to have some hope for his shoulder.

22 You're going to be presented with the  
23 hard facts that I told you about, the exhibits,  
24 the bills through Ms. Hedrick. Ms. Hedrick,  
25 you'll learn, is a registered nurse, a life care

1 that while economists recognize there's a value to  
2 loss of enjoyment of life, it's up to you, it's  
3 going to be your judgment, not his, needed to  
4 determine the value in addition to these hard  
5 numbers you're going to be presented.

6 The loss of enjoyment of these people's  
7 lives, loss of care, comfort, and society of their  
8 loved one, the pain and suffering that they have  
9 endured, all part of the general damages because  
10 you're going to be asked to value not only Ernesto  
11 and Leonor's injuries that they received, you're  
12 going to be asked to value the loss of their son,  
13 their daughter's injuries; Frank, loss of his life  
14 with his son Joe, Jeremy, and Jamie and the loss  
15 of their dad. Armando's, Koji's, Jeremy's,  
16 Jamie's emotional and physical trauma. Joseph,  
17 who is living only with the constant support of  
18 others, the value of that.

19 And you're going to see and hear some  
20 depositions by medical providers and testimony of  
21 doctors and pictures of those losses. In Joseph's  
22 case you're going to see something called a day in  
23 the life film. This is a film that was done --  
24 there's two. We edited them down because we don't  
25 want you to sit through the whole day, but edited

1 down day in the life shows what life is like for  
 2 Joseph every day, what he goes through, what  
 3 others have to go through for him. You're going  
 4 to hear from the doctors and economists of the  
 5 quantity of his life, how much life he has left,  
 6 how much life the others who died would have had.  
 7 You're going to see through the film and from  
 8 Jeremy and Jamie and Jayne the quality of his  
 9 life, and that quality is never going to change.  
 10 It's not going to get any better.  
 11 We're going to attempt to show you some  
 12 of what I'm sure are hundreds of ways their lives  
 13 are changed. We're going to try and tell you  
 14 through these families how that change is never  
 15 going to go away and how it will affect their  
 16 families forever.  
 17 Told you we only have this one remedy,  
 18 the remedy is money, payment of money by the  
 19 company, and one opportunity, and we're going to  
 20 ask for our clients in this stage of the damage  
 21 trial for two different kinds of damages, special  
 22 damages they've incurred, the medical bills and  
 23 the funeral expenses and the lost wages, the hard  
 24 numbers I told you about. And then you are going  
 25 to judge these consequential damages, these

1 general damages, pain and suffering, the emotional  
 2 distress. Not only their own but that they  
 3 suffered because of their other losses directly  
 4 and indirectly as fathers -- you have fathers,  
 5 mothers, sons, grandmothers, sisters and brothers,  
 6 and they're all together and their emotional loss,  
 7 the loss of the care, comfort, and society of  
 8 loved ones, the loss of enjoyment of life for each  
 9 of them.  
 10 The limitations you're going to be told  
 11 about by Armando, by Koji, by Ernesto, what  
 12 Victoria has seen of her nephews and what Jayne  
 13 sees of her nephews every day and in particular  
 14 Joseph because you can't fix it, but we're  
 15 going -- you're going to be instructed you can and  
 16 we're going to argue that you should provide the  
 17 only justice these families have, the only justice  
 18 they're ever going to get and that's compensation,  
 19 a money award for the losses that they suffered  
 20 for the losses they will forever suffer after  
 21 we're all gone all of which was caused by  
 22 Goodyear.  
 23 We appreciate your time in listening.  
 24 We ask that you please do pay attention to  
 25 everything everyone says on both sides, and we ask

1 you to consider these things we're going to tell  
 2 you and we're going to add to it as we go along.  
 3 Thank you, your Honor.  
 4 THE COURT: Counsel for Goodyear, would  
 5 you like to open.  
 6 MR. CASTO: Thank you, your Honor.  
 7 MR. CALLISTER: Could I give a brief  
 8 opening as well?  
 9 THE COURT: I'm sorry. I overlooked  
 10 you.  
 11 MR. CALLISTER: Thank you, your Honor.  
 12 I promise I'll be brief.  
 13 Honorable Judge, fellow members of the  
 14 Bar, ladies and gentlemen of the jury. I'll try  
 15 to just succinctly summarize. Al has done a  
 16 stellar job.  
 17 I do not envy you your job. One of the  
 18 great ironies I've never been in your position.  
 19 I've been in this position for a long time. You  
 20 have a very difficult challenge in front of you,  
 21 and it is a bit of an inversion of what is the  
 22 typical scenario that you see on TV. You are not  
 23 being presented with a set of curious facts or  
 24 allegations and then asked to decide who's right  
 25 or wrong. That's been done for you. Your sole

1 job hence is to decide what is the appropriate  
 2 amount of compensation that these family members  
 3 are entitled to under the law.  
 4 I'd like to take a brief second just to  
 5 remind you who I represent, and I'll ask them to  
 6 stand up. On behalf of the estate of the late  
 7 Evertina sometimes referred to as Tapia, sometimes  
 8 Bahena but we're going to refer to her as Berta  
 9 the mom, is Teresa Bahena. Next to her one of her  
 10 sisters Rocio, next to her Maria, all here today  
 11 but Teresa especially because she appears  
 12 individually on behalf of the estate. Thank you.  
 13 Two sisters are not here today. They  
 14 could not travel to be with us. There's really  
 15 one other sister, Leonor, who you've already met.  
 16 This is kind of the sevensisters'  
 17 story, and it begins as early as 1988 when while  
 18 their mother, the late Evertina, living in Mexico  
 19 the sisters start to emigrate to the United  
 20 States. They marry. They're here lawfully. They  
 21 bear children, they go to work, and by the year  
 22 2000 or so mom wants to retire and come be with  
 23 her kids. So Ms. Bahena, Berta, comes up, begins  
 24 living with two of her daughters here in her home  
 25 and all is well. They're traveling, going to

1 Mesquite, going to the lake, doing thing that any  
 2 loving 64-year-old, very young grandmother would  
 3 do with her daughters and granddaughters.  
 4 Unfortunately that includes, as she'd  
 5 done previously, accompanying some of her  
 6 grandsons who she was so proud of and loved on a  
 7 boxing trip. Amateur boxing was a big particular  
 8 thrill in their family, and unfortunately, as Al  
 9 has shared with you, they wake up on August 16,  
 10 2004, get back in the car to continue driving,  
 11 these three families that are traveling as  
 12 economically as they can to get back East.  
 13 By 10:00 a.m. that morning Evertina  
 14 Bahena is dead, blunt head trauma as a result of a  
 15 one-car accident as the result of the failure of  
 16 Goodyear's tire. That's a given. There are no  
 17 defenses to that now. We're merely asking you in  
 18 this first phase, in which we address as  
 19 compensatory damages, what is the appropriate  
 20 amount. And I agree with everything my esteemed  
 21 co-counsel has said; it is an abysmal failure of  
 22 the system that that's the only way we can  
 23 compensate, but that is our system and that is  
 24 your obligation.  
 25 We will present the same type of

1 evidence that you've heard referred to. The judge  
 2 will instruct you on how to weigh that evidence.  
 3 We won't show you a day in the life because, of  
 4 course, that would be just a black screen for the  
 5 grandmother who is no more.  
 6 The key to remember, I would guess,  
 7 coming into this from your perspective is the  
 8 opportunity to issue a punitive verdict will  
 9 follow, but that's not this phase one, so the  
 10 phase one will require you to listen closely to  
 11 the experts because usually family members are  
 12 typically rather inept at putting a dollar number  
 13 on a deceased mother's life. Economic experts can  
 14 do that within a range, and they can also address  
 15 things like the funeral costs, if there was  
 16 ambulance costs or hospitalization cost because  
 17 that testimony can come in. In the case of the  
 18 late Evertina, there were none. She was dead at  
 19 the scene, so you'll only hear some evidence of  
 20 the funeral costs.  
 21 You'll get to see and handle her death  
 22 certificate. You'll see on that death certificate  
 23 that two of my clients here today, Rocio and  
 24 Teresa, had to go and identify their late mother's  
 25 body. They had to travel from where they were

1 with that job, knowing that would be their duty.  
 2 I cannot imagine, I'm sure you cannot, a more  
 3 horrific task. I can't imagine a more horrific  
 4 final moments than the time, that small moment of  
 5 time, the moment Goodyear's tire blew out and --  
 6 MR. CASTO: Objection, your Honor.  
 7 THE COURT: Objection is sustained.  
 8 This is more in the nature of closing than  
 9 opening.  
 10 MR. CALLISTER: Thank you, your Honor.  
 11 -- and the time of her death. We ask  
 12 you to listen carefully, conscientiously, evaluate  
 13 both types of damages, economics we've spoken of  
 14 as well as that loss of consortium, of having your  
 15 grandmother available to you, having your mother  
 16 available to you. You'll hear one of the key  
 17 components which is these seven sisters lost their  
 18 father who abandoned them more than 25 years ago.  
 19 Mother was everything to them, friend, confidante,  
 20 counselor, grandmother.  
 21 We urge you to listen to the evidence,  
 22 give it your own thought process, come to a  
 23 verdict, and we trust it will be a full and fair  
 24 one.  
 25 THE COURT: Thank you, Mr. Callister.

1 Counsel for the defense, would you like to open.  
 2 MR. CASTO: Thank you, your Honor. Good  
 3 afternoon, ladies and gentlemen. My name is Jeff  
 4 Casto, and with my co-counsel I represent  
 5 Goodyear. On behalf of Goodyear and myself, I  
 6 would like to extend our condolences to the  
 7 plaintiffs and the families in this case.  
 8 This was a very, very serious accident.  
 9 There were undoubtedly injuries which occurred.  
 10 There were undoubtedly deaths which occurred, and  
 11 as I mentioned earlier much of that evidence will  
 12 not be disputed. This phase of the trial does not  
 13 require you to determine whether or not Goodyear  
 14 is liable. Based upon that earlier determination,  
 15 you will not hear any evidence from Goodyear  
 16 during this phase of the trial concerning any  
 17 fault of Goodyear, whether they were at fault,  
 18 whether they are responsible, or whether they are  
 19 liable for any of the damages that you're going to  
 20 hear in the compensatory phase.  
 21 This trial deals with the damages that  
 22 will compensate the families in this case, and we  
 23 need your help in this phase of the trial to  
 24 listen to the evidence, and based upon all of the  
 25 evidence to make a determination that is fair and

1 that is appropriate for the injuries and the  
2 damages that have occurred.

3 There were ten people in the van on the  
4 day of the accident. All of those ten people were  
5 different, different ages, different family  
6 situations. The injuries that they sustained also  
7 differ, and there's a wide array of injuries and  
8 damages that they have incurred. Similarly there  
9 have been a number of experts that have evaluated  
10 this case, and they have a wide array in certain  
11 situations of the damages and injuries that flow  
12 as a result of the accident and will continue into  
13 the future. They will have differences in some  
14 instances about the prognosis and about the  
15 evaluations of some of the plaintiffs, and I would  
16 ask you to listen to all that evidence because, as  
17 I mentioned, at the end of the day we need your  
18 help to evaluate what is appropriate and  
19 reasonable compensation for each of the  
20 plaintiffs.

21 Now, there is a large number of people  
22 that have filed suit here, and there is a listing  
23 of them. Some of the injuries we don't dispute at  
24 all. Evertina Tapia, also known as Evertina  
25 Bahena, was killed in the accident. Her daughters

1 are listed there. There's another family  
2 involving the Torres. There was Ernesto Torres  
3 who was in the vehicle. There was Leonor Torres  
4 who was in the vehicle, and there were three  
5 children: Crystal, Armando and Andres. Andres  
6 was killed in the accident, and there's no dispute  
7 that that death occurred as a result of it.

8 There was the Enriquez family. Frank  
9 Enriquez was the father of three boys. He was  
10 killed in the accident. There is no dispute that  
11 his death was caused by that accident. His three  
12 boys are Jeremy, Joseph and Jamie. And then there  
13 is Koji Arriaga. Koji was also involved in the  
14 accident.

15 As I mentioned, ladies and gentlemen,  
16 much of the death and injury damage testimony is  
17 not going to be disputed. But you're going to  
18 hear expert testimony, and you're going to need to  
19 listen to all the evidence in this case because  
20 some of the plaintiffs have made varying degrees  
21 of recovery, and there is a dispute amongst  
22 medical testimony about the degree of that  
23 recovery for each of them.

24 Ernesto Torres was involved in the  
25 accident. He injured his neck, his left elbow,

1 his left wrist and received treatment for that.  
2 The medical testimony, and I believe the evidence  
3 in the case, will show that as a result of that  
4 treatment that he has substantially healed in a  
5 number of those areas. He reported during his  
6 treatment with respect to his neck no pain or  
7 problems. With respect to his left elbow, that it  
8 had healed, no pain or problems. With respect to  
9 his left wrist, no pain or problems. He was  
10 treated by a Dr. Oliveri. He last saw Dr. Oliveri  
11 in January of 2005, and he stopped physical  
12 therapy in 2004.

13 Now, Mr. Torres works as a baker or did  
14 work as a baker at the Aladdin. I'm not sure of  
15 his current employment. He was back to work full  
16 time in the bakery four months after the accident,  
17 so Mr. Torres is not a malingerer. He's certainly  
18 a gentleman who works for a living and was back to  
19 work within four months after the accident. And I  
20 believe that's what the evidence in this case will  
21 show.

22 Now, how do we know what the evidence  
23 will show? It will come from a variety of  
24 sources. Some of the evidence will come from  
25 exhibits, and you'll see those exhibits in

1 evidence. Some of them show on the screen. Some  
2 come because there have been depositions taken,  
3 and a deposition is simply a case where a person  
4 is questioned under oath and there's a court  
5 reporter present, and there's a transcript which  
6 is created which both lawyers have an opportunity  
7 to review. So we have a sworn testimony of  
8 various witnesses so we do understand what some of  
9 the witnesses are going to say if they've been  
10 deposed in this case.

11 Let me go a little bit further with  
12 respect to other plaintiffs in the case. Leonor  
13 Torres was involved in the case. She had various  
14 injuries. She had injuries to her spine, she had  
15 injuries to her knee, and she had injuries to her  
16 chest. Now, during the course of her medical  
17 treatment, she did receive very good care, and she  
18 also went back to work after the accident. In  
19 fact, I think she's doing the same job after the  
20 accident as she did before the accident, but  
21 something happened before the accident that part  
22 of the evidence will show in this case.

23 And that was that Leonor Torres slipped  
24 and fell at work eight months prior to the  
25 accident. Now, why is that important? It's

1 important only because she received extensive  
2 treatment for her lower back, for her buttocks,  
3 for her neck pain and for her headaches before the  
4 accident. She had a problem with her vertebrae,  
5 an L5-S1 disk herniation, which was preexisting  
6 prior to the accident. They took MRIs of Leonor  
7 and determined that her MRIs before and after the  
8 accident were identical; that since the accident  
9 she plays soccer and that after treating it was  
10 determined she made maximum medical improvement  
11 and not in need of additional treatment for the  
12 accident, but the L5-S1 disk herniation was not  
13 caused by the accident. It was preexisting to the  
14 accident.

15 Crystal Torres suffered abrasions to her  
16 hands. She was treated and released on the day of  
17 the accident so her injuries were relatively  
18 minor, and I'm not sure that fact is disputed in  
19 terms of her physical injuries.

20 Koji Arriaga was also in the van at the  
21 time of the accident. He suffered a fracture of  
22 his right femur and he suffered a fracture of his  
23 cervical vertebrae, two of his vertebrae. His  
24 fracture of his femur was repaired with a surgical  
25 plate and screws, and the evidence will show that

1 that fracture has healed. He does have injury to  
2 his neck which was also repaired surgically with a  
3 fusion, and there's been some inconsistent  
4 testimony about the nature of the recovery that he  
5 has made, but some of the medical records indicate  
6 from his treating physician, Dr. Elkanich, that  
7 with respect to his cervical fracture it was  
8 really minimal neck symptomatology, and that's a  
9 note from Dr. Elkanich from a note of November 5th  
10 of 2005. Koji was deposed, and during his  
11 deposition he testified he didn't want any more  
12 neck surgery.

13 Koji is currently employed. He worked  
14 as a roofer. Part of his job as a roofer was  
15 carrying 40-pound bundles of shingles. Koji, at  
16 the time his deposition was taken, was not in  
17 school and had not finished high school. But with  
18 respect to his employment, he told us there  
19 weren't any jobs he couldn't do because of the  
20 accident. And that after the accident he played  
21 soccer, so, again, Koji is a young man who has  
22 tried to move on with his life and has made a very  
23 good medical recovery in a number of areas that he  
24 sustained as a result of the accident.

25 Jeremy Enriquez, Jeremy suffered minor

1 cuts on his arms. We did not receive any medical  
2 bills from him. Jeremy has never seen any doctor  
3 for any problems sleeping which was a claim he  
4 made during his deposition. He has received  
5 counseling and reported that the counseling helped  
6 him to learn to deal with the loss of his father  
7 which is obviously a tragic event, but he's seeing  
8 professional care to cope with that. When he was  
9 deposed, Jeremy was going to school.

10 Now, Jamie Enriquez also has a claim,  
11 but Jamie Enriquez was not in the van involved in  
12 the accident. He did not see his father at the  
13 scene of the accident, but he did lose his father.  
14 He reports that he's seen and obtained counseling  
15 and that the counseling techniques have helped  
16 him. He was asked whether he was on any  
17 medication for any of his issues, and he reported  
18 that he was not.

19 Now, the most serious case is going to  
20 involve Joseph. Joseph is the young man who was  
21 seriously injured in the accident. Joseph was  
22 examined by Dr. Zehler who first saw him in  
23 June of 2006. And what Dr. Zehler told us was  
24 that with respect to Joseph he did not have an  
25 indication that Joseph had any capacity to fixate

1 on anything visually, to see anything visually  
2 that he could appreciate. There is a  
3 determination that Dr. Zehler ultimately made in  
4 terms of his evaluation that Joseph is in a  
5 minimally responsive state. That was the  
6 diagnosis given to him by Dr. Zehler. He thinks  
7 that most of the time his function is closer to a  
8 persistent vegetative state. He testified that  
9 Joseph does not process things visually; that he  
10 is not something -- not someone who will get  
11 function based upon his injuries, and that with  
12 respect to his vision and memory it is terribly  
13 guarded.

14 Now, there is a life care plan that was  
15 done by the plaintiffs on behalf of Joseph.  
16 Similarly, there was a life care plan evaluation  
17 that the defendants did on behalf of Joseph, and  
18 you're going to hear both of those individuals  
19 testify. The life care planner for the defendant  
20 is Edward Workman who's a Ph.D. And what  
21 Mr. Workman will tell us is he will give us his  
22 experience in formulating life care plans for  
23 patients similar to Joseph. So that this was not  
24 the first time he had to formulate a life care  
25 plan for somebody with the degree of impairment

1 that an individual like Joseph had sustained.  
 2 He will tell you what was involved in  
 3 formulating his life care plan. He will tell you  
 4 of all the medical records that he reviewed in  
 5 order to provide his evaluation; that he  
 6 personally visited Joseph; that he consulted with  
 7 the treatment team for Joseph; and that he  
 8 reviewed various reference sources.  
 9 Now, Dr. Workman will say is his view of  
 10 all this information and discussion that his  
 11 belief is the consensus of the medical opinion is  
 12 that the physical and neurological condition of  
 13 Joseph will remain substantially the same, that  
 14 is, he will not improve; that he is not a suitable  
 15 candidate for vocational rehabilitation; that he  
 16 has a G tube in his stomach into which they  
 17 provide hydration, vary, fluids, as well as food  
 18 and medication. And that physical rehabilitation  
 19 is not likely to produce any change in his ability  
 20 for day-to-day function, and that he's not likely  
 21 to gain much sight.  
 22 Now, what Dr. workman did was evaluated  
 23 all the needs of Joseph and will express opinions  
 24 about what the costs of those are. That the  
 25 objective of the life care plan is to outline what

1 the appropriate services are based upon Joseph's  
 2 specific and individualized needs, and that would  
 3 include all medical products that he would need,  
 4 all services that he would need, such as  
 5 occupational therapy, physical therapy, speech  
 6 therapy. And he will tell you what the cost would  
 7 be for that if Joseph were to remain in an  
 8 institution as well as the cost as to what it  
 9 would be if Joseph received care at home.  
 10 You'll also hear from an economist by  
 11 the name of Dr. Weiner. The plaintiffs indicated  
 12 that they have an economist. The defendants had  
 13 also retained an economist. One thing that's  
 14 significant that Mr. Massi mentioned about Joseph  
 15 is that a physician by the name of Dr. Adams  
 16 testified that Joseph's life expectancy is 25  
 17 years from the date of the accident. The other  
 18 things that Dr. Weiner evaluated when he reviewed  
 19 Joseph was a loss of wage claim, and he will tell  
 20 you different things that affect the wages that  
 21 someone will have in terms of a loss claim, and  
 22 there is a direct relationship between education  
 23 and income, and that on the date of the accident  
 24 that Joseph was not attending high school.  
 25 There are economic reports that

1 Dr. Weiner had also done for Frank Enriquez. One  
 2 of those, that he was unemployed on the date of  
 3 the accident. Secondly, that he had less than a  
 4 high school education, and there's other points  
 5 we'll get into when Dr. Weiner is put on the stand  
 6 with respect to that.  
 7 There's a claim for a wage loss  
 8 involving Andres Torres. What Dr. Weiner will  
 9 tell you is that Ernesto and Leonor are currently  
 10 employed. He will give you his opinions about the  
 11 probability of adult children giving money to  
 12 their parents, and if they give money his opinion  
 13 will be it was very little.  
 14 There's also a wage claim involving  
 15 Evertina, and what Dr. Weiner will tell you is  
 16 that with respect to her economic claim for her  
 17 lost wages that she did not give money to her  
 18 children when she was alive. In fact, heirs gave  
 19 her money, and that at the time of the accident  
 20 she was not working and did not have any visible  
 21 means of support.  
 22 And I mention this just because this is  
 23 the evidence that you will hear in the case, and  
 24 as part of the evidence that you need to determine  
 25 in terms of making a fair, just, and reasonable

1 evaluation of the compensation to which these  
 2 individuals are entitled.  
 3 As I mentioned, ladies and gentlemen,  
 4 liability in this case is not disputed. All that  
 5 Goodyear asks in this phase of the case is that  
 6 you listen to the evidence and that you make an  
 7 award that is an appropriate and reasonable  
 8 compensation for these individuals based upon the  
 9 evidence that you will hear in the courtroom, from  
 10 the witness stand, from the exhibits and from the  
 11 deposition testimony. Thank you very much.  
 12 THE COURT: Thank you, Counsel.  
 13 Counsel, are you ready to call your  
 14 first witness?  
 15 MR. BOWERS: May we approach for just a  
 16 moment, your Honor.  
 17 THE COURT: You may.  
 18 (off-the-record bench conference.)  
 19 MR. MASSI: With your permission, the  
 20 first witness is Dr. Smith, the deputy coroner  
 21 from Grand Junction. May I take Mr. and  
 22 Mrs. Torres from the courtroom during his  
 23 testimony.  
 24 THE COURT: You may.  
 25 / / /

1 All we want to do is get it narrowed down to what  
 2 they really are going to bring, that you are  
 3 allowing them to bring.  
 4 THE COURT: They probably don't know  
 5 yet. Probably engineering the case a little bit  
 6 on the road, so what were you supposed to do? You  
 7 were supposed to designate these depositions for  
 8 punitive damages by Wednesday, and then they're  
 9 supposed to designate by Thursday, and I'm  
 10 supposed to get them by Friday, the objections?  
 11 MR. LATIOLAIT: The plaintiffs are going  
 12 to designate.  
 13 THE COURT: By Wednesday of this week.  
 14 Will you be ready to do that?  
 15 MR. CALLISTER: We will be able to do it  
 16 by Wednesday.  
 17 THE COURT: I would guess that that  
 18 would be a little bit helpful. When you designate  
 19 what you're going to do, I would presume that then  
 20 they will be able to figure out what witnesses  
 21 they're going to call to rebut that, so I would  
 22 hope that -- I wouldn't hope. By Friday of this  
 23 week, sometime Friday this week, Mr. Latiolait,  
 24 you need to give them your exact list of witnesses  
 25 on punitive damages.

1 know.  
 2 MR. LATIOLAIT: There's staffing issues  
 3 that need to be taken care of in a 48-hour period  
 4 so it would be nice to know ahead of time.  
 5 THE COURT: You've got seven people.  
 6 That seems like a lot.  
 7 MR. LATIOLAIT: Who are handling live  
 8 witnesses during the trial.

9 -000-

10 ATTEST: Full, true and accurate transcript.

11 *MaryBethCook*  
 12 -----  
 13 MARY BETH COOK, CCR #266, RPR

1 MR. LATIOLAIT: All right.  
 2 THE COURT: Thank you. Anything else?  
 3 MR. MASSI: And what their expertise is.  
 4 Thanks, Judge.  
 5 THE COURT: I think that should be  
 6 discovered by now, should it not? We are in  
 7 trial.  
 8 MR. LATIOLAIT: They have reports.  
 9 MR. CASTO: Judge, I had my notes from  
 10 the hearing that the 31st the plaintiffs were to  
 11 provide their page line designations, and then  
 12 February 2nd the defendants were.  
 13 THE COURT: They have to be to me. I've  
 14 got to have them that afternoon with objections to  
 15 them because I've got to rule on the objections  
 16 over the weekend so when we come back in here on  
 17 February 5th we know what can be read and what  
 18 can't be read. When am I supposed to rule on the  
 19 objections? You have to give them to me this  
 20 Friday.  
 21 MR. LATIOLAIT: It would be helpful if  
 22 we knew ahead of time what volume of material  
 23 we're getting because we produced a ton of  
 24 depositions in this case.  
 25 THE COURT: I guess Wednesday you'll

# EXHIBIT 8

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# EXHIBIT 8



@ 4:43 PM  
FILED IN OPEN COURT  
FEB - 5 2007 20  
CHARLES J. SHORT  
CLERK OF THE COURT  
BY Jennifer Kimmel  
JENNIFER KIMMEL DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

Case No. A503395

Dept. No. 15

TERESA BAHENA, individually, and as special administrator for EVERTINA M. TRUJILLO TAPIA, deceased, MARIANA BAHENA, individually, MERCEDES BAHENA, individually, ROCIO PEREYA, individually, LOURDES MEZA, individually, MARICELA BAHENA, individually, ERNESTO TORRES and LEONOR TORRES, individually, and LEONOR TORRES, as special administrator for ANDRES TORRES, deceased, LEONOR TORRES for ARMANDO TORRES and CRYSTAL TORRES, minors, represented as their guardian *ad litem*, VICTORIA CAMPE, as special administrator of FRANK ENRIQUEZ, deceased, PATRICIA JAYNE MENDEZ for JOSEPH ENRIQUEZ, JEREMY ENRIQUEZ and JAMIE ENRIQUEZ, minors, represented as their guardian *ad litem*, MARIA ARRIAGA FOR KOJI ARRIAGA represented as his guardian *ad litem*,

Plaintiffs,

v.

GOODYEAR TIRE AND RUBBER COMPANY,  
Defendant.

### JURY INSTRUCTIONS

INSTRUCTION NO.: 1

#### LADIES AND GENTLEMEN OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

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INSTRUCTION NO.: 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

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INSTRUCTION NO.: 3

The masculine form as used in these instructions, if applicable as shown by the text of the instruction and the evidence, applies to a female person or a corporation.

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INSTRUCTION NO.: 41  
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One of the parties to this action is a corporation. A corporation is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding the case between individuals.

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INSTRUCTION NO.: 5

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to prove a certain allegation made by him, the meaning of such an instruction is this: That unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same to be not true.

The term "preponderance of the evidence" means such evidence as, when weighted with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.

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INSTRUCTION NO.: 6

The plaintiff has the burden to prove:

1. Plaintiff sustained damages; and
2. That Plaintiff's medical expenses and care were reasonable in cost and medically necessary to treat injuries sustained in the August 16, 2004 motor vehicle accident.

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INSTRUCTION NO.: 7

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3 The heirs of Frank Enriquez, deceased, are Joseph Enriquez, Jeremy Enriquez  
4 and Jamie Enriquez.  
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INSTRUCTION NO.: 8

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The heirs of Evertina M. Trujillo Tapia, deceased, are Teresa Bahena, Marina Bahena, Mercedes Bahena, Maricela Bahena, Rocio Pereya, Lourdes Meza and Leonor Torres.

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INSTRUCTION NO.: 9

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3 In determining the amount of losses if any suffered by heirs as a result of the  
4 death of an adult, such as Frank Enriquez and Evertina Tapia, you will decide upon a  
5 sum of money sufficient to reasonably and fairly compensate each heir for the  
6 following items:

- 7 1. Any grief or sorrow suffered by the heir and any grief or sorrow  
8 reasonably certain to be experienced by the heir in the future; and
- 9 2. The heir's loss of probable support, companionship, society, comfort and  
10 consortium. In determining that loss, you may consider the financial support, if  
11 any, which the heir would have received from the deceased except for his death  
12 and the right to receive support, if any, which the heir has lost by reason of his  
13 death.

14 In determining the amount of losses, you may also consider:

- 15 1. The age of the deceased and of the heir;
- 16 2. The health of the deceased and of the heir;
- 17 3. The respective life expectancies of the deceased and of the heir;
- 18 4. Whether the deceased was kindly, affectionate or otherwise;
- 19 5. The disposition of the deceased to contribute financially to support the  
20 heir;
- 21 6. The earning capacity of the deceased;
- 22 7. His habits of industry and thrift; and
- 23 8. Any other facts shown by the evidence indicating what benefits the heir might  
24 reasonably have been expected to receive from the deceased had he lived.

25 With respect to life expectancies, you will only be concerned with the shorter of two,  
26 that of the heir whose damages you are evaluating or that of the decedent, as one  
27 can derive a benefit from the life of another only so long as both are alive.  
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INSTRUCTION NO.: 10

The heirs of Andres Torres, deceased, are Leonor Torres and Ernesto Torres.

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INSTRUCTION NO.: 11

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3 In determining the amount of losses if any suffered by the heirs as a result of  
4 the death of a child, such as Andres Torres, you will decide upon a sum of money  
5 sufficient to reasonably and fairly compensate each heir for the following items:

- 6 1. Any grief or sorrow suffered by the heir and any grief or sorrow  
7 reasonably certain to be experienced by the heir in the future; and  
8 2. The heir's loss of probable support, companionship, society, and  
9 comfort. In determining that loss, you may consider not only the benefits that  
10 heir was reasonably certain to have received from the earnings and services of  
11 their child during the child's minority, but also the support and financial benefit  
12 which it is reasonably certain the heir would have received from the child after  
13 the latter's majority and during the period of the common life expectancy.  
14 3. You may also consider what loss, if any, the heir has suffered and will  
15 suffer in the future with reasonable certainty, by being deprived of the love,  
16 companionship, comfort, affection, society, solace or moral support of the child.  
17

18 As an offset against the factors of loss mentioned, you should take into  
19 consideration what it would have cost the heir to support and educate the deceased  
20 child had he lived.

21 In weighing these matters, you may consider:

- 22 1. the age of the deceased and of the heir;  
23 2. the state of health of health and the physical condition of the deceased as  
24 it existed at the time of death and immediately prior thereto;  
25 3. their station in life;  
26 4. their respective life expectancies as shown by the evidence;  
27 5. the disposition of the deceased, whether it was kindly, affectionate or  
28 otherwise;

- 1       6.     whether or not he showed a likelihood of contributing to the support of
- 2             the heir;
- 3       7.     the earning capacity, if any, of the deceased;
- 4       8.     all other facts in evidence that throw light upon the question of what
- 5             benefits the heir might reasonably have been expected to receive from the
- 6             deceased child had he lived.

7       With respect to the matter of life expectancy, you must keep this point in mind:  
8 the prospective period of time that will be of concern to you if you decide in favor of  
9 any heir is only the shorter of the two life expectancies, that of such heir or that of the  
10 deceased child, as one can derive a benefit from the life of another only so long as  
11 both are alive.

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INSTRUCTION NO.: 12

Plaintiffs, Victoria Campe, Leonor Torres and Teresa Bahena, are the personal representative of Frank Enriquez, Andres Torres and Evertina Tapia, deceased.

These plaintiffs are entitled to recover an amount that will reasonably compensate the estate for any special damages, such as medical expenses, which the decedent incurred before his or her death, and funeral expenses, provided that you find that such damages were actually suffered by the estate.

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INSTRUCTION NO.: 13

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3        You may also award to such heirs as damages an amount representing the pain,  
4 suffering and disfigurement experienced by the decedents and caused by the August  
5 16, 2004 motor vehicle accident.  
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INSTRUCTION NO.: 14

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3 In determining the amount of losses, if any, suffered by the plaintiffs for their  
4 own individual injuries as a proximate result of the accident in question, you will take  
5 into consideration the nature, extent and duration of the injuries or damage you  
6 believe from the evidence plaintiff has sustained, and you will decide upon a sum of  
7 money sufficient to reasonably and fairly compensate plaintiff for the following items:  
8

9 1. The reasonable medical expenses plaintiffs have necessarily incurred as a result  
10 of the accident; and  
11

12 2. The reasonable medical expenses which you believe the plaintiffs are  
13 reasonably certain to incur in the future as a result of the accident; and  
14

15 3. Plaintiffs loss of earnings from the date of the accident to the present; and  
16

17 4. Plaintiffs loss of earnings which you believe the plaintiffs are reasonably certain  
18 to experience in the future as a result of the accident; and  
19

20 5. The physical and mental pain, suffering, anguish and disability endured by the  
21 plaintiffs from the date of the accident to the present; and  
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23 6. The physical and mental pain, suffering, anguish and disability which you  
24 believe plaintiffs are reasonably certain to experience in the future as a result of the  
25 accident.  
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INSTRUCTION NO.: 14.5

Hedonic damages or damages for loss of enjoyment of life are to be considered as part of plaintiffs' damages for pain suffering.

The only plaintiffs entitled to claim this type of damages are Frank Enriquez, Evertina Tapia, and Andres Torres from the instant of the accident to the time of death; and plaintiff Joseph Enriquez from the date of the accident for the remainder of his life.

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INSTRUCTION NO. 15

No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation. Furthermore, the argument of counsel as to the amount of damages is not evidence of reasonable compensation. In making an award for pain and suffering, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in the light of the evidence.

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INSTRUCTION NO. 16

Whether any of these elements of damage have been proven by the evidence is for you to determine. Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that Plaintiff prove each item of damage by a preponderance of the evidence.

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INSTRUCTION NO.: 17

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true and insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the Court and any evidence ordered stricken by the Court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

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INSTRUCTION NO.: 18

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2       You must decide all questions of fact in this case from the  
3 evidence received in this trial and not from any other source.  
4 You must not make any independent investigation of the facts or  
5 the law or consider or discuss facts as to which there is no  
6 evidence. This means, for example, that you must not on your own  
7 visit the scene, conduct experiments, or consult reference works  
8 for additional information.  
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INSTRUCTION NO.: 19

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

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INSTRUCTION NO.: 20

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2 If, during this trial, I have said or done anything which  
3 has suggested to you that I am inclined to favor the claims or  
4 position of any party, you will not be influenced by any such  
5 suggestion.

6 I have not expressed, nor intended to express, nor have I  
7 intended to intimate, any opinion as to which witnesses are or  
8 are not worthy of belief, what facts are or are not established,  
9 or what inference should be drawn from the evidence. If any  
10 expression of mine has seemed to indicate an opinion relating to  
11 any of these matters, I instruct you to disregard it.  
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INSTRUCTION NO.: 21

There are two kinds of evidence; direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

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INSTRUCTION NO.: 22

In determining whether any proposition has been proved, you should consider all the evidence bearing on the question without regard to which party produced it.

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INSTRUCTION NO.: 23

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in Court.

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INSTRUCTION NO.: 24

The credibility or "believability" of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

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INSTRUCTION NO. 25

Discrepancies in a witness's testimony or between his testimony and that of others, if there are discrepancies, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

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INSTRUCTION NO.: 26

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told him what he would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

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INSTRUCTION NO.: 27

A person who has special knowledge, skill, experience, training or education in a particular science, profession or occupation may give his or her opinion as an expert as to any matter in which he or she is skilled. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the expert and the reasons given for his or her opinion. You are not bound by such opinions. Give it the weight, if any, to which you deem it entitled.

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INSTRUCTION NO.: 28

A question has been asked in which an expert witness was told to assume that certain facts were true and to give an opinion based upon that assumption. This is called a hypothetical question. If any fact assumed in the question has not been established by the evidence, you should determine the effect of that omission upon the value of the opinion.

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