

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: POOL PRODUCTS)
DISTRIBUTION MARKET ANTITRUST)
LITIGATION)
_____)

MDL No. 2328
SECTION: R(2)

Chief Judge Vance
Mag. Judge Wilkinson

This Document Relates to: All Cases

DEFENDANTS' EIGHTH REPORT ON THE STATUS OF FACT DISCOVERY

Pursuant to the Court's March 7, 2013 Pretrial Order No. 17, ECF No. 200, Defendants Hayward Industries, Inc. ("Hayward"), Pentair Water Pool and Spa, Inc. ("Pentair"), Zodiac Pool Systems, Inc. ("Zodiac" and, collectively with Hayward and Pentair, the "Manufacturer Defendants"), Pool Corporation ("Pool Corp."), SCP Distributors LLC ("SCP"), and Superior Pool Products LLC ("SPP" and, collectively with Pool Corp. and SCP, the "Pool Defendants"), by counsel, submit the following report on the status of fact discovery.

I. POOL DEFENDANTS' REPORT

A. Document Production

Pool Defendants provided a privilege log on July 24, 2013 in accordance with the scheduling order entered in this case. Pool Defendants produced the transactional data ordered in PTO No. 18 on July 11, 2013.

II. MANUFACTURER DEFENDANTS' REPORT

A. Document Production

Hayward has completed its document review and production consisting of 1,121,054 pages pursuant to Pretrial Order No. 18, dated June 21, 2013. Hayward produced its privilege log on July 24, 2013, consistent with the Court's previously entered amended scheduling order.

Zodiac has completed its document review and production to Plaintiffs totaling 407,278 pages pursuant to Pretrial Order No. 18, dated June 21, 2013. Zodiac produced its privilege log to all parties on July 24, 2013, consistent with the Court's previously entered amended scheduling order. On June 28, 2013, Zodiac received additional follow-up questions regarding one of its responses to Plaintiffs' initial data questions. Zodiac has agreed to provide responses to these limited additional questions and is in the process of preparing those responses.

Pentair has completed its document production to Plaintiffs, which consisted of 1,036,650 pages of electronic documents and 5,738 hard-copy documents. (The number of pages of electronic documents does not include various electronic spreadsheets and other such items which only were provided in native electronic format due to their size and volume.) On July 24, 2013, Pentair provided to all parties its privilege log and redaction log, and supplied a supplemental version of those logs on July 30, 2013, along with a very few additional documents which were no longer deemed to be privileged in their entirety. On July 15, 2013, Pentair sent to all parties a letter notifying them that Pentair had inadvertently produced documents containing privileged material and requesting "claw-back" treatment for those documents consistent with Pre-Trial Order No. 6. Pentair has received responses to that letter from the other parties, including most recently from Plaintiffs.

B. Depositions

Following the status hearing on March 6, 2013, the parties began taking depositions, which, to date, have included the following:

| Date | Deponent | Affiliation |
|-------------|--------------------------|----------------------------|
| 3/8/2013 | SPS Services, Ltd. | Direct Purchaser Plaintiff |
| 3/15/2013 | Aqua Clear Pools & Decks | Direct Purchaser Plaintiff |
| 3/19/2013 | John Damaska | Zodiac |
| 3/20/2013 | Scott Bushey | Zodiac |

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| 3/21/2013 | Pro Pools Services | Direct Purchaser Plaintiff |
| 3/22/2013 | Jean Bove | Indirect Purchaser Plaintiff |
| 3/28/2013 | Thatcher Pools | Direct Purchaser Plaintiff |
| 4/1/2013 | James Hilton, Sr. | Third Party |
| 4/3/2013 | 30(b)(6) - Code of Conduct | Pentair |
| 4/4/2013 | 30(b)(6) - Corporate Structure & HR | Pentair |
| 4/4/2013 | Oasis Pool Services | Direct Purchaser Plaintiff |
| 4/8/2013 | David Coulter | Third Party |
| 4/9/2013 | Bill Haas | Third Party |
| 4/15/2013 | Eric Watters | Third Party |
| 4/16/2013 | Enrique Gomez | Zodiac |
| 4/17/2013 | David Albee | Hayward |
| 4/18/2013 | Doug Bragg | Hayward |
| 4/18/2013 | 30(b)(6) – IT | Pentair |
| 4/19/2013 | Stephen Markowitz | Zodiac |
| 4/19/2013 | John Salvo | Third Party |
| 4/23/2013 | Craig Goodson | Zodiac |
| 4/29/2013 | Robert Snodgrass | Third Party |
| 5/2/2013 | 30(b)(6) - Pricing and Acquisitions | Pool Corp. |
| 5/3/2013 | Melanie Housey | Pool Corp. |
| 5/7/2013 | Robert Nichols | Hayward |
| 5/8/2013 | Paul Walter | Pentair |
| 5/8/2013 | Bill Cook | Pool Corp. |
| 5/9/2013 | Darren Coleman | Pentair |
| 5/10/2013 | Fred Manno | Hayward |
| 5/15/2013 | John Oster | Pentair |
| 5/15/2013 | Paul Snopek | Pentair |
| 5/16/2013 | Scott Cummings | Pentair |
| 5/22/2013 | John Hulme | Pool Corp. |
| 5/23/2013 | Don Porter | Pentair |
| 5/23/2013 | Jon Cannon | Pentair |
| 5/24/2013 | Kevin Kistler | Indirect Purchaser Plaintiff |
| 5/29/2013 | Greg Kahle | Pentair |
| 5/30/2013 | Mike Echols | Pentair |
| 6/4/2013 | William Whitmarsh | Hayward |
| 6/11/2013 | Donna Williams | Pool Corp. |
| 6/19/2013 | Tom Canaday | Pool Corp. |
| 6/25/2013 | Dale O'Dell | Pool Corp. |
| 6/26/2013 | Rick Postoll | Pool Corp. |

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|-----------|-----------------------|----------------------------|
| 6/26/2013 | Tom Dissinger | Hayward |
| 7/9/2013 | David Nibler | Zodiac |
| 7/10/2013 | Barry Greenwald | Zodiac |
| 7/11/2013 | Anthony Prudhomme | Zodiac |
| 7/12/2013 | Liquid Art | Direct Purchaser Plaintiff |
| 7/16/2013 | Douglas Learn | Third Party |
| 7/18/2013 | A Plus Pools | Direct Purchaser Plaintiff |
| 7/25/2013 | Greg Howard/Carecraft | Third Party |

Plaintiffs have cancelled a number of party depositions, including most recently the deposition of Pentair employee Chris Parrish, which was scheduled to take place on August 7, 2013. Previously, as reported in prior discovery status reports, Plaintiffs have cancelled several other party depositions.

C. Re-Scheduling of Previously Noticed Third Party Depositions

Pursuant to Pretrial Order No. 18, dated June 20, 2013, the Court ordered that “[t]he parties shall meet and confer regarding a numerical limit on party and non-party depositions. By August 15, 2013, liaison counsel shall submit a letter to the Court with the agreed upon limits, or if the parties cannot agree, each side’s proposed limits and a brief explanation of its position. Before the Court sets a limit, no new depositions shall be noticed, but previously noticed depositions shall proceed.”

The parties have exchanged various proposals concerning previously noticed depositions that they believe need to be re-scheduled, as well as depositions of third-parties that no longer will be pursued. Pursuant to the Manufacturer Defendants’ request, which was made after a recent interview of Mr. David Castator, one of Plaintiffs’ previously identified witnesses, Plaintiffs have agreed to remove Mr. Castator from their witness list and have represented to Manufacturer Defendants’ counsel that Mr. Castator is not an “individual[] plaintiffs relied upon

in drafting the complaint” and DPPs do not have a present belief that he is “likely to have discoverable information that plaintiffs may use to support their claims.”

Manufacturer Defendants conducted similar interviews of representatives of Cardinal Systems, a company which is mentioned in Plaintiffs’ Second Amended Complaint, but only with reference to contact with Pool Corp. Those interviews revealed that Cardinal Systems’s representatives had no relevant information vis-à-vis Manufacturer Defendants and their information would only relate to conduct and communications between Pool Corp and Cardinal Systems (Cardinal Systems is and was a manufacturer of pool walls and liners, so these could have been routine prospective or actual customer communications). Accordingly, the Manufacturer Defendants requested that Plaintiffs agree that these witnesses have no evidence of any alleged contract, combination, or conspiracy to which the Manufacturer Defendants were parties, which would allow the Manufacturer Defendants to eliminate the need to take three additional depositions. With no explanation, Plaintiffs responded that they were not willing to accept this proposal “at this point.” The Manufacturer Defendants will continue their efforts to reach agreements to avoid deposing persons not reasonably believed to possess knowledge of relevant facts.

Likewise, Manufacturer Defendants contacted Jack Lacey and Ken Moyer, two additional persons listed on Plaintiffs’ witness list. During those interviews, both Mr. Lacey and Mr. Moyer stated that they had not been contacted by the Plaintiffs prior to the filing of the amended complaint. In light of that information, the Manufacturer Defendants asked whether Plaintiffs would agree to provide a stipulation similar to that made with respect to Mr. Castator – to wit: Mr. Lacey and Mr. Moyer are not individuals whom Plaintiffs relied upon in drafting the complaint and Plaintiffs do not have a present belief that they are likely to have discoverable

information that Plaintiffs may use to support their claims. Again, Plaintiffs declined this request “at this point.”

Dated: August 2, 2013

/s/ Wayne J. Lee

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2013, a copy of the foregoing Defendants' Eighth Report on the Status of Fact Discovery was served upon all parties by electronically uploading the same to LexisNexis File & Serve in accordance with Pretrial Order No. 8 in this case.

/s/ Samantha P. Griffin