

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE: POOL PRODUCTS DISTRIBUTION  
MARKET ANTITRUST LITIGATION**

**THIS DOCUMENT RELATES TO: ALL  
ACTIONS**

\* **MDL NO. 2328**  
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\* **SECTION R/2**  
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\* **Judge Vance**  
\* **Mag. Judge Wilkinson**  
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**PLAINTIFFS' SECOND BI-WEEKLY STATUS REPORT ON FACT DISCOVERY  
PURSUANT TO PRETRIAL ORDER NO. 16**

Pursuant to the Court's Pre-Trial Order Number 16, entered on December 7, 2012, direct purchaser plaintiffs ("DPPs") and indirect purchaser plaintiffs ("IPPs") hereby submit their second bi-weekly report on the status of fact discovery. The DPPs' report on the status of discovery is included as Section I, the IPPs' report is included as Section II, and a report on the status of third-party discovery is included as Section III.

**I. Status Report by the DPPs**

**a. Discovery From Defendants to DPPs**

**i. PoolCorp Defendants**

DPPs believe that the parties are close to an agreement concerning twelve remaining disputed custodians, including eleven regional managers and one branch manager. The DPPs have proposed a compromise in which DPPs would agree to forgo the documents of three of the twelve custodians and to limit the searches of the documents of three of the remaining nine to their electronic documents. PoolCorp's counsel has indicated that a response to this proposal

may be expected shortly. The parties have reached tentative agreement regarding the remainder of the additional custodians named by the DPPs.

In addition, on January 24, 2013 and pursuant to Pretrial Order No. 15, DPPs proposed a list of ten PoolCorp custodians from whom diaries and calendars are to be produced. DPPs believe the parties are now close to an agreement on these custodians.

On January 26, 2013, DPPs also requested PoolCorp to provide specific information concerning its transaction database in the hope that the information can be provided informally without the need for a Rule 30(b)(6) deposition. PoolCorp has advised DPPs that it believes it can provide responses to this request this week.

**ii. Hayward Industries, Inc.**

While the parties have agreed to a custodian list, they are still negotiating the scope of the document search to be completed. Counsel engaged in another meet-and-confer session on February 4, 2013, as well as exchanged a series of emails and have reached agreement over one of the terms, but are still in discussion over the others.

On January 31, 2013, counsel for DPPs sent Hayward a list of questions and requested further information regarding Hayward's transaction data. Hayward acknowledged receipt of this email and stated that it required some time to respond but would do so in due course.

**iii. Pentair Water Pool and Spa, Inc.**

On February 1, 2013, DPPs conducted a second meet-and-confer by telephone with Pentair in an attempt to agree on a custodian list. DPPs reiterated their position regarding requested custodians, which primarily include high leadership positions and relevant regional managers, however Pentair continued object to the addition of any additional custodians. On February 6, 2013, the DPPs sent a letter to counsel for Pentair outlining the DPPs' positions regarding the

requested custodians in a further attempt to reach an agreement. In that correspondence, DPPs also withdrew several requested custodians in an effort to reach resolution. The DPPs requested that Pentair respond with availability by February 8, 2013 to follow up on this correspondence, however Pentair has not responded.

On February 5, 2013, the DPPs forwarded correspondence to Pentair containing questions concerning the transactional data produced to date and questions concerning further transactional data to be produced by Pentair. Pentair responded that it would review the list of questions and respond accordingly. Pentair's response is still pending.

**iv. Zodiac Pool Systems, Inc.**

DPPs and Zodiac agreed upon a list of 30 current or former employees of Zodiac. Zodiac will search for documents from these custodians that are responsive to DPPs' discovery requests.

DPPs have also provided counsel for Zodiac with a series of questions concerning the transaction data that Zodiac produced to the FTC (and therefore to DPPs), and concerning the further transaction data to be produced by Zodiac in response to DPPs' discovery requests in this case. DPPs provided these questions with a view to having a discussion concerning transactional data involving Zodiac personnel and DPPs' representatives. Zodiac's counsel has advised DPPs that they are working with appropriate Zodiac employees on the questions, and will inform DPPs when Zodiac is ready to have a discussion.

**b. Discovery From DPPs to Defendants**

On February 8, 2013, counsel for DPPs emailed PoolCorp regarding the one remaining custodian about whom PoolCorp requested further information. DPPs are awaiting a response from counsel for PoolCorp, but anticipate an agreement on DPPs' custodians will be reached soon.

The seven named DPPs have begun the process of gathering both electronic and paper documents, and six of the seven Plaintiffs have already produced many of their documents to the DPPs' discovery vendor. The vendor is currently processing the documents for review and production, and counsel has begun their review of these documents. DPPs anticipate that they will begin production on a rolling basis in the near future.

On February 4, 2013, counsel for Pentair served notices of deposition on six of the named DPPs, pursuant to Federal Rule of Civil Procedure 30(b)(6). As set forth in Section III below, the parties have scheduled a meet-and-confer session to discuss the scheduling of depositions in this case pursuant to Magistrate Judge Wilkinson's telephonic order to the parties on February 8, 2013.

## **II. Status Report by the IPPs**

IPPs' counsel are cooperating with and supporting the efforts of counsel for DPPs. There are no other discovery issues relating to the IPPs, and they will be producing documents to the parties in accordance with the current schedule.

## **III. Status Report on Third-Party Discovery**

On February 4, 2013, Pentair served 30 notices of deposition pertaining to non-party witnesses set forth on DPPs' prior initial and supplemental witness disclosures. On February 7, 2013, notices of subpoenas were served, which corresponded to each of the non-party depositions. On February 8, 2013, the parties appeared telephonically before Magistrate Judge Wilkinson on the subject of Plaintiffs', PoolCorp's, Hayward's, and Zodiac's concerns over the lack of coordination among the parties prior to the service of non-party discovery. Magistrate Judge Wilkinson ordered the notices and subpoenas quashed and the parties to meet and confer by February 22, 2013. The parties were further ordered to submit to the Court by February 28,

2013, a discovery plan with deponents and proposed dates for depositions. A meet-and-confer session has been scheduled for February 13, 2013, and will be held in Washington D.C. with all parties expected to be in attendance in person or by telephone.

Dated: February 12, 2013

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**Liaison for Indirect Purchaser Class Plaintiff**

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<sup>1</sup> Jay L. Himes is substituted in place of Hollis L. Salzman, who is no longer with the firm of Labaton Sucharow, LLP.

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing Plaintiffs' Second Bi-Weekly Status Report on Fact Discovery Pursuant to Pretrial Order No. 16 has been served on Direct Purchaser Plaintiffs' Co-Liaison Counsel, Russ Herman and Camilo Salas, III, Indirect Purchaser Plaintiffs' Liaison Counsel, Thomas H. Brill, Defendants' Liaison Counsel, William Gaudet, and Manufacturer Defendants' Liaison Counsel, Wayne Lee, by e-mail and upon all parties by electronically uploading the same to LexisNexis File & Serve in accordance with Pretrial Order No. 8, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF System, which will send a notice of electronic filing in accordance with the procedures established in MDL 2328, on this 12<sup>th</sup> day of February, 2013.

/s/ Leonard A. Davis  
LEONARD A. DAVIS