

**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' SEVENTH STATUS REPORT ON FACT DISCOVERY PURSUANT TO
PRETRIAL ORDER NO. 17**

Pursuant to the Court's Pretrial Order Number 17, entered on March 7, 2013, direct purchaser plaintiffs ("DPPs") and indirect purchaser plaintiffs ("IPPs") hereby submit their seventh status 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. Transaction Data

On June 3, 2013, DPPs served a third set of questions to PoolCorp concerning PoolCorp's transaction data. On June 20, 2013, the Court ordered PoolCorp to produce transaction data documents in response to these questions "as promptly as possible." Pretrial Order No. 18 at ¶ 17. As of today's date, these documents have not yet been received.

ii. Document Production

The defendants have been producing documents on a rolling basis. On June 24, 2013, PoolCorp represented that its production of documents has been substantially completed. No such representations have been received from the other defendants, and an additional production from Pentair has been received on July 2, 2013. DPPs have received no further productions from Hayward and Zodiac since June 23, 2013 and June 25, 2013, respectively, and no indications that additional productions should be expected from these defendants.

iii. Depositions

The depositions of all defendant witnesses taken by DPPs to date are listed in the table in Attachment A.

b. Discovery From DPPs to Defendants

i. Document Production

DPPs have completed their document production. Additionally, pursuant to Pretrial Order No. 18, on June 24, 2013, DPPs produced unredacted versions of those documents that were previously produced with redacted downstream material.

ii. Depositions

DPPs have produced five of the seven named direct purchaser plaintiffs for depositions. The depositions of Liquid Art and A Plus Pools have been scheduled for July 12, 2013 and July 18, 2013, respectively.

II. Status Report by the IPPs

The IPPs continue to review and analyze documents produced by PoolCorp and the Manufacturer Defendants. A new class representative for the State of Florida is interested in

participating in the litigation and a motion for leave to file an amended complaint will be filed very shortly to substitute the new party. This party will be made available for deposition as soon as practicable after the Court rules on the motion to amend. IPP counsel are participating in person and monitoring by internet video the parties currently scheduled on the parties' deposition calendar. IPP counsel will participate in the scheduled mediation in Chicago on July 22, 2013. There are no other discovery matters relating to the IPPs at this time.

III. Status Report on Third-Party Discovery

In Pretrial Order No. 18, the Court ordered the parties to meet and confer regarding "a numerical limit on party and non-party depositions." Order at ¶ 6. The Court further ordered that before a new limit is set, "no new depositions shall be noticed, but previously noticed depositions shall proceed." *Id.* The parties have a dispute as to the meaning of the Court's Order as applied to third-party witnesses whose depositions must be re-noticed with new dates that have not yet been negotiated with those third-party witnesses or their counsel. DPPs believe that these depositions should be subject to the new limits to be applied to both defendants and plaintiffs alike.

Soon after the opening of fact discovery, the Manufacturer Defendants noticed for deposition the majority of witnesses disclosed in the DPPs' original and supplemental disclosures under Rule 26. In total, the Manufacturer Defendants noticed 32 depositions of plaintiffs and nonparties. On February 14, 2013, Magistrate Judge Wilkinson ordered the parties to meet-and-confer to agree upon dates and locations for these depositions, among other things. The parties did so, and new notices were served on the basis of the parties' agreement. However, the noticed dates were not cleared by the Manufacturer Defendants with the third-party witnesses in advance, and many proved inconvenient to the witnesses. The remainder of the noticed

depositions were cancelled at the time of the stay and will have to be re-noticed with a new agreed date. By the June 20, 2013 status conference, the parties had entered into negotiations with counsel for four of those third-party witnesses (Greg Howard, Tom Epple, David Dent and Timothy Saxer) and were close to agreement on dates for those witnesses, although no new notices have been served. As far as DPPs are aware, new dates had not been discussed with any other witness.

DPPs do not object to the Manufacturer Defendants issuing new subpoenas for the four third-party witnesses who have already set aside dates for depositions. However, the depositions of the remaining third-party witnesses should be included in the upcoming negotiations of deposition limits that should fairly apply to both defendants and plaintiffs alike. This will also allow the parties to review the voluminous productions recently received for documents relevant to these witnesses prior to their depositions.

Dated: July 2, 2013

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Plaintiffs' Seventh Status Report on Fact Discovery Pursuant to Pretrial Order No. 17 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 2nd day of July, 2013.

/s/ Leonard A. Davis

LEONARD A. DAVIS