

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MDL No. 2328

IN RE: POOL PRODUCTS
DISTRIBUTION MARKET ANTITRUST
LITIGATION

SECTION: R(2)

JUDGE VANCE
MAG. JUDGE
WILKINSON

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER NO. 1

The cases listed on Attachment A may merit special attention as complex litigation. Accordingly, the Court enters the following Order.

1. This Order governs the practice and procedures in the actions transferred to this Court by order of the Judicial Panel on Multidistrict Litigation dated April 17, 2012. The transferred cases are listed on the attached Schedule A. These cases are consolidated for pretrial purposes. This Order also applies to related actions filed in the Eastern District of Louisiana, which are also consolidated with this action for pretrial purposes. Related actions later filed in, removed to, or transferred to this Court will also be subject to this Order and will automatically be consolidated with this action without the necessity of further motions or orders. This consolidation,

however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

2. *Initial Conference.* The Court will hold a conference in these proceedings on **May 30, 2012 at 10:00 a.m.** in Courtroom C279, United States Courthouse, 500 Poydras Street, New Orleans, LA 70130.

(a) *Appearance at Initial Conference.* To minimize costs and facilitate a manageable conference, parties with similar interests may agree, to the extent practicable, to have an attending attorney represent their interest at the conference. A party, by designating an attorney to represent the party's interest at this initial conference, will not be precluded from personally participating or selecting other representation during the future course of this litigation, nor will attendance at the conference waive objections to jurisdiction, venue or service.

(b) *Service List.* Until the initial conference, service of all papers, including this Order, shall be upon the persons shown on Attachment B, which consists of counsel

who made appearances before the Judicial Panel on Multidistrict Litigation and other counsel who were served with papers filed with the JPML. Counsel on this list are requested to forward a copy of the Order to other attorneys who should be notified of the conference. The parties shall prepare a corrected service list at the initial conference, which shall include street and e-mail addresses of counsel, as well as telephone and fax numbers.

3. *Purposes and Agenda.* The conference will be held for the purposes specified in Fed. R. Civ. P. 16(a), 16(b), 16(c), and 26(f). A tentative agenda is set out on Attachment C. Counsel are encouraged to advise the Court by May 23, 2012 if there are items that should be added to the agenda.

4. *Preparations for Conference.*

(a) *Procedures for Complex Litigation.* Counsel are expected to familiarize themselves with the *Manual for Complex Litigation, Fourth* and to be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation.

(b) *Initial Conference of Counsel.* Before the conference, counsel shall confer and seek consensus to the extent

possible with respect to the items on the agenda, including a proposed discovery plan under Rule 26(f) that contains expert discovery deadlines, and a suggested schedule under Rule 16(b) for joinder of parties, amendment of pleadings, consideration of class action allegations, and motions under Rules 12, 23 and 56. If the parties wish to suggest provisions for a case management order, they shall submit them to the Court by May 23, 2012.

(c) *Preliminary Reports.* Counsel for the plaintiffs and the defendants will separately submit to the Court by May 23, 2012, a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered into evidence against a party in later proceedings. The parties are limited to one such submission for all plaintiffs and one such submission for all defendants.

(d) *List of Pending Motions.* Counsel's statement shall provide the Court with a list of all pending motions.

(e) *List of Related Cases.* Counsel's statement shall list all related cases pending in state or federal court and their current status, to the extent known.

5. *Admission of Counsel.* Attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. Association of local co-counsel is not required.

6. *Master Docket File.* Any pleading or document that is to be filed in any of these actions shall be filed with the Clerk of this Court and not in the transferor court. The Clerk of this Court will maintain a master docket case file under the style "In Re: Pool Products Distribution Market Antitrust Litigation" and the identification "MDL No. 2328." When a pleading is intended to be applicable to all of the actions, this shall be indicated by the words: "This Document Relates to All Cases." When a pleading is intended to apply to fewer than all of the cases, this Court's docket number for each individual case to which the document number relates shall appear immediately after the words "This Document Relates To." The following is a sample of the pleading style:

IN RE: POOL PRODUCTS DISTRIBUTION
MARKET ANTITRUST LITIGATION

MDL No. 2328

SECTION R(2)

This Document Relates to:

Judge Vance
Mag. Judge
Wilkinson

- (a) *Filing.* All documents filed in this Court, after those initiating a new case, must be filed electronically pursuant to Local Rule 5.1 and this Court's Administrative Procedures for Electronic Filing. Attorneys may register for electronic filing at www.laed.uscourts.gov/cmecf/cm_ecf_training.htm. An attorney who, due to exceptional circumstances, is unable to comply with the requirements of electronic filing, may apply to the Court for an order granting an exemption. The application shall be in writing, filed with the Clerk of the Court, and shall state the reason for the attorney's inability to comply. The Clerk of the Court is directed to make all entries on the master docket sheet with a notation listing the cases to which the document applies, except that a document closing a case will also be entered on the individual docket sheet. All documents shall be kept in the master file.

(b) *Docketing New Cases.* When an action that properly belongs in *In re: Pool Products Distribution Market Antitrust Litigation* is hereafter filed in the Eastern District of Louisiana or transferred here from another court, the Clerk of this Court shall:

- a. File a copy of this Order in the separate file for such action;
- b. Make an appropriate entry on the master docket sheet;
- c. Forward to the attorneys for the plaintiff in the newly filed or transferred case a copy of this Order;
- d. Upon the first appearance of any new defendant, forward to the attorneys for the defendant in such newly filed or transferred cases a copy of this Order.

7. *Extension of Time.* The defendants are granted an extension of time to respond to the complaints by motion or by answer, until a date to be set following the conference.

8. *Pending and New Discovery.* Pending the conference, all outstanding disclosure and discovery requirements are stayed, and no further discovery shall be initiated. This Order does not

preclude voluntary, informal discovery regarding the identification and location of relevant documents and witnesses, nor does it prevent a party from voluntarily making disclosures or responding to an outstanding discovery request under Federal Rules of Civil Procedure 33, 34, or 36.

9. *Pending Motions.* Any pending motions must be renoticed for resolution in accordance with a schedule to be issued after the initial conference.

10. *Orders of Transferor Courts.* All orders by transferor courts that impose dates for hearings, pleadings, discovery, or conferences are vacated.

11. *Preservation of Evidence.* All parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in possession, custody and control of the parties to this action, and any employees, agents, contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in this action.

"Documents, data, and tangible things" is to be interpreted broadly to include writings, records, files, correspondence, reports, memoranda, calendars, diaries, minutes, electronic

messages, voice mail, E-mail, telephone message records or logs, computer and network activity logs, backup data, removable computer storage media such as tapes, discs and cards, printouts, document image files, Web pages, databases, spreadsheets, software, books, ledgers, journals, orders, invoices, bills, vouchers, check statements, worksheets, summaries, compilations, computations, charts, diagrams, graphic presentations, drawings, films, charts, digital or chemical process photographs, video, phonographic, tape or digital recordings or transcripts thereof, drafts, jottings and notes, studies or drafts of studies or other similar such material. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata, is also included in this definition. Preservation includes the obligation not to alter any such thing as to its form, content or manner of filing. Until the parties reach an agreement on a preservation plan or the Court orders otherwise, each party shall take reasonable steps to preserve all documents, data and tangible things containing information potentially relevant to the subject matter of this litigation. Each counsel is under an obligation to the Court to exercise all reasonable efforts to identify and notify parties and nonparties, including employees of corporate or institutional parties of the contents of this paragraph. Failure

to comply may lead to dismissal of claims, striking of defenses, imposition of adverse inferences or other dire consequences.

Before any devices, tangible things, documents, and other records that are reasonably calculated to lead to admissible evidence are destroyed, altered, or erased, counsel shall confer to resolve questions as to whether the information should be preserved. If counsel are unable to agree, any party may apply to this Court for clarification or relief from this Order upon reasonable notice.

12. *Filing of Discovery Requests.* In accordance with Rule 5(d) of the Federal Rules of Civil Procedure, discovery requests and responses are not to be filed with the Clerk nor sent to the Judge's Chambers, except when specifically ordered by the Court to the extent needed in connection with a motion.

13. *Liaison Counsel.* The Court will appoint a liaison counsel for plaintiffs and for defendants, respectively, who will be charged with essentially administrative functions. By May 16, 2012, counsel for the plaintiffs and defendants shall, to the extent they have not already done so, confer and seek consensus on the selection of a candidate for liaison counsel for each group. Proposals for liaison counsel shall be submitted to the Court no later than May 23, 2012. Appointment of liaison counsel

shall be made by the Court after full consideration of the proposals.

Liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison group and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group and perform other tasks determined by the Court. Liaison counsel shall be required to maintain complete files with copies of all documents served upon them and shall make such files available to parties within their liaison group upon request. Liaison counsel are also authorized to receive orders and notices from the Judicial Panel on Multidistrict Litigation pursuant to Rule 4.1(d) of the Panel's *Rules of Procedure* or from the transferee court on behalf of all parties within their liaison group and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group. The expenses incurred in performing the services of liaison counsel shall be shared equally by all members of the liaison group in a manner agreeable to the parties or set by the Court failing such agreement.

At the first conference, liaison counsel and/or the parties should be prepared to discuss any additional needs for an organizational structure or any additional matters consistent with the efficient handling of this matter.

14. *Plaintiffs' Steering Committee.* It is the Court's intention to appoint a Plaintiffs' Steering Committee ("PSC") to conduct and coordinate the discovery stage of this litigation with the defendant's representatives or committee.

Applications/nominations for the PSC positions must be filed with the Eastern District of Louisiana's Clerk's Office either electronically or on paper (original and one copy) on or before May 16, 2012. Notice must also be served upon counsel named in the attached list on the day of filing. The main criteria for membership on the PSC will be: (a) willingness and availability to commit to a time-consuming project; (b) ability to work cooperatively with others; (c) professional experience in this type of litigation; and (d) willingness to commit the necessary resources to pursue this matter. Applications/nominations should succinctly address each of the above criteria, as well as any other relevant matters, including any agreements among counsel bearing on service on committees or relating to fees or costs. No submissions longer than four (4) pages will be considered. The Court will consider only attorneys who have filed a civil action in this litigation.

Objections may be made to the appointment of a proposed applicant/nominee. Nevertheless, the Court will entertain only written objections to any application/nomination. These must be filed with the Clerk of Court either electronically or on paper

(original and one copy) on or before May 23, 2012. The objections, if there are any, must be short, yet thorough, and must be supported by necessary documentation. As with the application/nomination, any objection must be served on all counsel appearing on the attached list on the day of filing.

The PSC will have the following responsibilities:

Discovery

- (1) Initiate, coordinate, and conduct all pretrial discovery on behalf of plaintiffs in all of the actions that are consolidated in this proceeding.
- (2) Develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all plaintiffs.
- (3) Cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial discovery of relevant issues. Similar requests, notices, and subpoenas may be caused to be issued by the PSC upon written request by an individual attorney in order to assist him/her in the preparation of the pretrial stages of his/her client's particular claims.

- (4) Conduct all discovery in a coordinated and consolidated manner on behalf and for the benefit of all plaintiffs. No attorney for a plaintiff may be excluded from attending the examination of witnesses and other proceedings. Such attorney may suggest questions to be posed to deponents through the designated PSC members provided that such questions are not repetitious.

Hearings and Meetings

- (1) Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court. Initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matter(s) pertaining to pretrial proceedings.
- (2) Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.
- (3) Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the Court, subject of course to the right of any plaintiff's counsel to present non-repetitive individual or different positions.

Miscellaneous

- (1) Submit and argue any motions presented to the Court or Magistrate Judge on behalf of the PSC, as well as oppose, when necessary, any motions submitted by the defendants or other parties that involve matters within the sphere of the responsibilities of the PSC.
- (2) Negotiate and enter into stipulations with Defendants regarding this litigation. All of the stipulations entered into by the PSC, except for strictly administrative details such as scheduling, must be submitted to the Court for approval and will not be binding until the Court has ratified the stipulation. Any attorney not in agreement with a non-administrative stipulation shall file with the Court a written objection thereto within ten (10) days after he/she knows or should have reasonably become aware of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party.

- (3) Explore, develop, and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.
- (4) Maintain adequate files of all pretrial matters and have them available, under reasonable terms and conditions, for examination by plaintiffs or their attorneys.
- (5) Prepare periodic status reports summarizing the PSC's work and progress. These reports shall be submitted to the Plaintiff's Liaison Counsel who will promptly distribute copies to the other plaintiffs' attorneys.
- (6) Perform any task necessary and proper for the PSC to accomplish its responsibilities as defined by the Court's orders.
- (7) Perform such other functions as may be expressly authorized by further orders of this Court.
- (8) Reimbursement for costs and/or fees for services will be set at a time and in a manner established by the Court after due notice to all counsel and after a hearing. Counsel shall maintain contemporaneous records that show the name of the attorney, the time spent on each discrete

activity, the nature of the work performed, and any applicable hourly rates.

15. *MDL 2328 Website.* A website for MDL 2328 has been created and can be accessed by going to this Court's website located at www.laed.uscourts.gov and clicking on the button for Mass Litigation. The MDL 2328 website may also be accessed directly by going to www.laed.uscourts.gov/pool/pool.htm. The website will contain forms, court orders, minute entries, a calendar of upcoming events, and other relevant information.

16. *Communication with the Court.* Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel.

New Orleans, Louisiana, this 25th day of April, 2012



SARAH S. VANCE

UNITED STATES DISTRICT JUDGE

ATTACHMENT A

TRANSFERRED ACTIONS

Central District of California

Coral Swimming Pool Supplies Co., Inc. v. Pool Corporation, et al., C.A. No. 8:11-01866

Southern District of Florida

A Plus Pools Corp. v. Pool Corporation, et al., C.A. No. 1:11-24270

Bayside Pool & Spa Corp. v. SCP Distributors LLC, et al., C.A. No. 1:11-24282

Eastern District of Louisiana

Aqua Clear Pools & Decks v. Pool Corporation, et al., C.A. No. 2:11-02921

Preferred Pool Inc. v. Pool Corporation, et al., C.A. No. 2:11-03015

ATTACHMENT B

MDL No. 2328

In Re: Pool Products Distribution Market Antitrust Litigation
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(Plaintiff)

Handy Works Plus, LLC

(Plaintiff)

True Blue Contracting, Inc.

(Plaintiff)

representing **Preferred Pool Inc**

(Movant)

Kool Blue Pools & Spas, Inc.

(Plaintiff)

Splash Swimming Pool & Spa, Inc.

(Plaintiff)

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Liquid Art Enterprises

(Plaintiff)

Gressco, Inc.

(Plaintiff)

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Superior Pool Products LLC
(Defendant)

ATTACHMENT C

Agenda for Initial Conference

1. Appointment of Liaison Counsel
2. Service of Papers
3. Pretrial Schedule
 - (a) Consolidated Complaint, Amendment of Pleadings, Joinder of Parties
 - (b) Motion Practice: Deadlines, Hearings, and Briefs
 - (c) Discovery Plan and Schedule
 - (d) Class Certification: Briefs and Hearing
4. Role of Magistrate Judge
5. Document Issues
6. Other Matters
7. Next Conference