

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  
\*  
\* SECTION R/2  
\*  
\*  
\* Judge Vance  
\* Mag. Judge Wilkinson  
\*  
\*

---

**JOINT REPORT PURSUANT TO MAGISTRATE JUDGE WILKINSON'S  
FEBRUARY 27, 2013 ORDER**

Pursuant to the Honorable Magistrate Judge Wilkinson's February 27, 2013 Order [Record Doc. No. 197], the parties hereby submit a single report that combines the three separate reports that were to be submitted to the Court this week. Part I contains the parties' bi-weekly status reports on fact discovery, originally due on February 26, 2013. *See* pp. 1- 10. Part II contains the parties' joint submission regarding issues to be discussed at the March 6, 2013 status conference, originally due on February 27, 2013. *See* pp. 10 - 12. Part III contains the parties' proposed deposition schedule and third-party subpoena *duces tecum* returns, originally due on February 28, 2013. *See* pp. 12 to 15.

**I. THIRD BI-WEEKLY STATUS REPORTS**

**A. Direct Purchaser Plaintiffs ("DPPs")**

**i. Discovery From Defendants to Direct Purchaser Plaintiffs**

**a. PoolCorp Defendants**

DPPs and PoolCorp have agreed upon a list of 50 custodians. As part of the agreement, the searches of the documents of three of these custodians will be limited to electronically stored

information. PoolCorp will search for documents from these custodians that are responsive to DPPs' discovery requests. In addition, the parties have agreed on ten custodians from whom diaries and calendars will be produced.

On January 26, 2013, DPPs also requested PoolCorp to provide specific information concerning its transaction database in the hope that the information could be provided informally without the need for a Rule 30(b)(6) deposition. Although PoolCorp had initially indicated that it would take part in an informal process, it has since raised concerns that the topics can be construed to overlap with a Rule 30(b)(6) deposition that DPPs intend to take on topics related to PoolCorp's pricing policies and acquisitions. On February 22, 2013, DPPs shared proposed edits to their draft 30(b)(6) notice with PoolCorp, in an attempt to alleviate PoolCorp's concerns regarding overlapping topics. DPPs are awaiting a response from PoolCorp.

In addition to a Rule 30(b)(6) deposition on pricing and acquisitions, on February 13, 2013, DPPs provided PoolCorp with the names of ten proposed "first-wave" deponents from PoolCorp, which DPPs intend to take prior to June 30, 2013. PoolCorp has provided dates for seven of these individual witnesses, which are reflected in the parties proposed deposition schedule (Part III below), but it has not yet provided proposed dates for the remaining three individual witnesses (Don Keller, Dale O'Dell, and Rick Postoll) or the 30(b)(6) deposition, and it has rejected two sets of proposed dates offered by DPPs. DPPs have told PoolCorp that they wish to take the 30(b)(6) deposition toward the beginning of the deposition schedule and do not wish to wait until toward the end of the first wave to take all three individual depositions.

**b. Hayward Industries, Inc.**

DPPs are still awaiting Hayward's response to the series of questions propounded regarding the transactional data that Hayward already produced and the transactional data still to

be produced by Hayward in response to the DPPs' discovery requests. By email on February 20, 2013, counsel for Hayward stated that they anticipate Hayward will provide responses to these questions prior to the status conference with the Court on March 6, 2013.

On February 13, 2013, DPPs provided counsel for Hayward with a list of Hayward employees to be included in DPPs "first wave" of requested deponents. The parties have agreed on a deposition schedule for this first wave of depositions.

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

DPPs are still awaiting Pentair's response to the series of questions propounded concerning the transactional data that Pentair produced to the FTC and the further transactional data to be produced by Pentair in response to DPPs' discovery requests in this case.

On February 14, 2013, DPPs provided counsel for Pentair with a list of current and former Pentair employees included in DPPs' "first wave" of deponents. DPPs believe the parties are close to an agreement for both sides' proposed depositions during this phase of the discovery.

On February 19, 2013, DPPs and Pentair held a third meet-and-confer regarding the list of custodians whose documents are to be searched. On February 22, 2013, counsel for Pentair sent correspondence confirming that DPPs and Pentair are close to full agreement on the custodian list. Decisions on several Pentair custodians who have left the company have been deferred pending a further investigation of Pentair's IT system and document policies. The decisions on two high ranking officers have also been deferred pending a further showing of need for those custodians at a later time.

**d. Zodiac Pool Systems, Inc.**

DPPs are still awaiting Zodiac's response to the series of questions propounded concerning the transactional data that Zodiac produced to the FTC (and therefore to DPPs) and

which concern the further transactional data to be produced by Zodiac in response to the DPPs' discovery requests in this case. (These questions are described further in DPP's Second Bi-Weekly Status Report, Dkt. No. 194, filed Feb. 12, 2013.).

On February 13, 2013, DPPs provided counsel for Zodiac with a list of nine present and former Zodiac employees included in DPPs "first wave" of deponents. The parties have since conferred to work out a schedule for both sides' proposed depositions during this phase of the discovery.

## **ii. Discovery From DPPs to Defendants**

On February 26, 2013, counsel for Direct Purchaser Plaintiffs produced to Defendants productions from four of the seven Named Plaintiffs including: A Plus Pools Corp. (APLUS\_00000001 – 0005483); Pro Pool Services (PROPOOL\_0000001 – 0004946); SPS Services, LLC (SPS\_0000001 – 0001255); and, Thatcher Pools, Inc. (THATCHER\_0000001 – 0007674). The production from SPS Services, LLC constitutes the entire production from this Plaintiff. DPPs anticipate that further productions from the Named Plaintiffs will continue to be produced on a rolling basis.

Counsel for Direct Purchaser Plaintiffs and counsel for PoolCorp corresponded regarding the Direct Purchaser Plaintiff's outstanding custodian list. Direct Purchaser Plaintiffs are now in agreement with PoolCorp regarding their custodians that will be searched. These custodians are:

### **❖ A Plus Pools Corp.**

- Alan Pearl, owner, Pompano Beach, FL
- Rachel Heart, office manager, Pompano Beach, FL
- Amy Thayer, former employee, Pompano Beach, FL

### **❖ Aqua Clear Pools & Decks**

- Donald McClelland, owner, Midland, NC

❖ **Liquid Art Enterprises d/b/a Carl Boucher, The Pool PhD**

- Carl Boucher, owner, Encinitas, CA
- Carl Boucher, II, second-in-command, Encinitas, CA

❖ **Oasis Pool Service, Inc.**

- Paul Broussard, president, Shreveport, LA
- Jacob Broussard, vice president, Shreveport, LA
- Tina Broussard, secretary, Shreveport, LA

❖ **Pro Pool Services**

- Randall Murawski, owner, Wonder Lake, IL

❖ **SPS Services, LLC**

- Wesley Whitfield, manager, Mandeville, LA

❖ **Thatcher Pools, Inc.**

- Dick Thatcher, owner/president, Rochester, MN
- Ellie Thatcher, owner, Rochester, MN
- Brad Thatcher, owner, Rochester, MN
- Sam Barck, office manager (former employee), Rochester, MN
- Heather Funk, office manager (former employee), Rochester, MN
- Noira Ismoilova, former employee as of September 2012, Rochester, MN

**B. Status Report by the Indirect Purchaser Plaintiffs (“IPPs”)**

IPPs’ counsel are cooperating with and supporting the efforts of counsel for DPPs. IPPs are working with the parties to schedule the depositions of the four class representatives. 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.

### **C. Defendants' Status Reports**

#### **Pool Defendants' Report**

##### Custodians

The parties have reached agreement on the Pool Defendants' custodian list. The Pool Defendants will be producing 50 custodians, at least a dozen of whom were not FTC custodians. The company is in the process of capturing email, hard drives and hard copy for all custodians. We anticipate that all e-mail will be collected by the end of this week. Pool Defendants will then begin reviewing e-mail after it is processed and search terms are agreed upon.

The parties have also reached agreement with respect to the custodians Direct Purchaser Plaintiffs will search for documents.

##### Data and Document Review and Production

Pool produced transaction data for 2010-2012 this week, as well as additional customer information DPP's requested. The DPPs indicated an interest in using predictive coding, but Defendants were not in favor of using this methodology because of the long lead time (8-10 weeks) necessary before any document production can begin. Pool Defendants will employ search terms and intend to use the same terms that were used in the FTC investigation.

The Pool Defendants are reviewing hard copy documents located in Covington from the FTC custodians to determine if there are any responsive records that need to be produced from the extended date period. We anticipate starting to produce those records in the next two weeks.

### Depositions

The parties have been working hard to schedule a large number of depositions prior to the end of June. The DPPs provided Pool and the other defendants with a “first wave” list of requested deponents they wanted to take prior to June 30. In the case of the Pool Defendants, the list included ten employees and a 30(b)(6) deposition. As to two of the witnesses, Pool cleared and offered dates in mid-March and early May, respectively, only to be told by DPPs that they would not be ready to depose those two witnesses that early. Pool Defendants thus were forced to move those witnesses to later in the schedule in June (again, at DPPs’ insistence). Pool is working to schedule in three witnesses who cannot be offered in March or April and will advise Plaintiffs as soon as possible in regard to their availability.

Pool Defendants and DPPs are discussing the scope of the draft 30(b)(6) notice to exclude IT and business data topics and working to secure a date for the deposition once the designees are identified.

### **Hayward – Document Discovery**

Pursuant to the Court’s December 7, 2012 Pretrial Order #16, (D.E. 183), Defendant Hayward Industries, Inc. (“Hayward”) provides the following report on the status of fact discovery.

Hayward is in the process of interviewing and collecting electronic and hardcopy documents from the nineteen Hayward custodians agreed upon by the parties. Hayward has informed Plaintiffs that it intends to use search terms to locate responsive, non-privileged electronic documents from these custodians. Pentair has circulated a preliminary list of draft search terms to the other Manufacturer Defendants, and Hayward will be providing comments to the same. After all of the Manufacturer Defendants’ comments have been incorporated, the list

of search terms will be provided to Plaintiffs' counsel for further review and comment. Hayward will begin its attorney review and production of documents to Plaintiffs immediately after the Parties reach agreement on the search terms to be used.

Hayward continues to work on the extensive list of detailed questions about the transactional data that Hayward previously produced to the FTC in 2010, and subsequently produced to the Plaintiffs in July and August of 2012. Hayward anticipates providing a response to most if not all of the questions prior to March 6, 2013.

In accordance with Magistrate Judge Wilkinson's instructions during the telephonic conference held on February 8, 2013, counsel for the Parties have been negotiating a proposed order governing the issuance of subpoenas and taking of depositions in this case. The Parties have identified approximately 73 "first wave" depositions that they wish to conduct before the end of June 2013. Hayward and the Plaintiffs have agreed on deposition dates for each the seven Hayward witnesses that the Plaintiffs seek to depose as part of this "first wave" of depositions. Hayward has not yet noticed any depositions or served any nonparty subpoenas, but anticipates doing so in the near future after the parties' current negotiations and joint scheduling have concluded.

**Pentair – Document Discovery**

Defendant Pentair and counsel for both sets of plaintiffs have had additional telephonic meet and confer discussions and/or exchanges of letters and now have come to an agreement as to the identity of document custodians for purposes of producing documents in response to the document topics previously approved by the Court.

Pentair continues to work on the extensive list of detailed questions posed by Direct Purchaser Plaintiffs' counsel relating to various electronic spreadsheets containing transactional



data that Pentair had produced to the FTC in 2010, and which then were produced to the Direct Purchaser Plaintiffs during the summer of 2012.

Pentair has informed Direct Purchaser Plaintiffs' counsel that it has developed a preliminary list of draft document "search terms" and is seeking from the other defendants any comments or suggested changes/additions to that list. Once all comments have been incorporated, Pentair (along with the other defendants) will provide that list to Direct Purchaser Plaintiffs' counsel for further review and comment.

**Pentair – Depositions**

On February 14, 2013, Direct Purchaser Plaintiffs sent to Pentair's counsel a list of Pentair employees (and one former employee) whom Direct Purchaser Plaintiffs seek to depose as part of a "first wave" of depositions to take place prior to June 30, 2013. Pentair has confirmed the availability of all present employees, has agreed to deposition dates for each, and will attempt to locate the one former employee to confirm his deposition.

**Zodiac – Document Discovery**

Zodiac, along with the other Defendants, has informed Plaintiffs that it intends to use search terms to locate responsive, non-privileged electronic documents collected from the agreed-upon list of custodians. Zodiac is working with the other Defendants to compile a list of search terms that will be provided to Plaintiffs' counsel for further review and comment. Zodiac will begin its attorney review and production of documents that require the use of search terms (i.e., emails and certain other electronic documents) immediately after the Parties reach agreement on the search terms to be used.

As previously reported, Zodiac's counsel began collecting documents from 30 current and former Zodiac employees during the week of February 4, 2013. Collection activities are ongoing, as is the review of documents that can be efficiently reviewed without search terms.

Zodiac anticipates that it soon will begin production of these documents. Zodiac also is continuing to work on the list of questions contained in Plaintiffs' January 31, 2013 letter relating to Zodiac's previously produced transactional data.

### **Zodiac – Depositions**

In accordance with Magistrate Judge Wilkinson's February 8, 2013 Minute Entry, ECF No. 195, counsel for the Parties have been negotiating a proposed order governing the taking of depositions in this case, and have been jointly developing a schedule for the approximately 73 "first wave" depositions that they plan to conduct before the end of June 2013. The Parties have agreed on deposition dates for the seven current Zodiac employees included in this "first wave," and Zodiac is attempting to coordinate the depositions of two former Zodiac employees. Zodiac has not yet noticed any depositions or served any nonparty subpoenas, but anticipates doing so in the near future after the Parties' current negotiations have concluded.

## **II. JOINT SUBMISSION REGARDING ITEMS TO BE DISCUSSED AT MARCH 6, 2013 STATUS CONFERENCE**

The parties respectfully submit the following list of items for discussion at the March 6, 2013 status conference. The parties' counsel intend to provide the Court with updates related to the items listed below and ask the Court for guidance regarding issues which the parties have been unable to resolve despite good faith efforts.

### **A. Status of the Deposition Schedule**

1. The parties have reached an agreement on a schedule for a large number of first wave depositions through June 2013. The schedule to which the parties have agreed, subject to the availability of third-party witnesses and their counsel, is attached as **Exhibit A**. As of the time of this filing, however, there still remain some "first wave" party depositions to be scheduled.

B. Proposed Pretrial Order re: Deposition and Subpoena Guidelines (**Exhibit B**)

1. Issues agreed
2. Issue for Court resolution: allocating third-party examination time for depositions (absent agreement of the parties or Order of the Court for a particular witness).
  - i. Plaintiffs propose that examination time at third-party depositions be divided equally, 50% to the Direct and Indirect Purchaser Plaintiffs, divided how they wish, and 50% to Defendants to be allocated as they desire among themselves.
  - ii. Defendants propose that examination time at third-party depositions be divided 1/3 to Plaintiffs, 1/3 to the PoolCorp Defendants, and 1/3 to the Manufacturer Defendants.

C. Parties' Document Productions

1. Status of Direct Purchaser Plaintiffs' productions
2. Status of Indirect Purchaser Plaintiffs' productions
3. Status of Defendants' productions
  - a. Outstanding transactional data questions submitted to Defendants in late January.
4. Search Terms: The parties have all agreed on custodians from whom to search for documents. The Direct Purchaser Plaintiffs suggested using predictive coding to aid in the search for documents. Defendants rejected that approach and instead suggested using search terms. No search terms have yet been agreed upon, but the parties agree to negotiate same in good faith and will advise the Court of the status of that effort.

D. Status of Third-Party Subpoenas

E. Status of Mediation Efforts

1. All parties have agreed to use former U.S. District Judge Layn Phillips, currently at Irell & Manella LLP in Newport Beach, California as a mediator for this action. Judge Phillips has provided various dates in May 2013 on which he is available for his first mediation session. Some counsel expressed doubts as to whether such discussions would be useful so soon. As the Court recommended, the parties intend to jointly confer with Judge Phillips, express their positions on timing to him, and let him decide when the first session might be beneficially conducted.

**III. PROPOSED DEPOSITION SCHEDULE AND THIRD-PARTY SUBPOENA  
DUCES TECUM RETURNS**

Pursuant to the Court's February 8, 2013 Order, the parties have identified the depositions each knows at present it wishes to take by June 30, 2013 and from what third parties each seeks to request document production by June 30, 2013. Counsel have further engaged in good faith logistical planning concerning this discovery and attempted to agree on a schedule of dates, times and places for the identified depositions and third-party subpoena *duces tecum* returns. These discussions have resulted in a Proposed Pretrial Order on Deposition and Subpoena Guidelines, which accompanies this Report as **Exhibit B**.

A calendar of agreed dates and locations for depositions the parties wish to take between March 1 and June 30, 2013 accompanies this Report as **Exhibit A**, with black font indicating deposition dates upon which the parties have reached agreement, subject to the availability of the third-party witnesses, and orange font indicating deposition dates that are the subject of continued negotiations. In addition, PoolCorp has committed to obtaining available dates in this time period for the depositions of three additional individual witnesses (Dale O'Dell, Rick

Postoll, and Don Keller), and a deposition under Rule 30(b)(6) on the topics of pricing and acquisitions.

The parties have agreed that for individual third-party witnesses from whom one or more parties seek both testimony and documents, the return date for any requested documents will be set for at least 15 calendar days prior to the noticed deposition date, in accordance with Section II.D. of the attached Proposed Pretrial Order on Deposition and Subpoena Guidelines. Unless otherwise agreed, the return date for production of documents will thus be 15 calendar days prior to the date of the deposition set forth in the calendar that accompanies this Report as Exhibit A.

Similarly, the parties have agreed that when one or more parties seek documents from an entity associated with an individual from whom deposition testimony is sought, the return date for the entity's documents will be set for at least 15 calendar days prior to the noticed deposition date. The following table sets forth the resulting schedule:

<b>Individual Witness(es)</b>	<b>Noticed Deposition Date</b>	<b>Associated Entity</b>	<b><i>Duces Tecum</i> Return Date</b>
James Hilton Sr. & James Hilton Jr.	April 1-2, 2013	Hilton Distributors, LLC	March 15, 2013
Robert Snodgrass	April 4, 2013	Mareva	March 20, 2013
N. Douglas Learn	April 23, 2013	Gulfcoast Pool Supply LLC	April 8, 2013
Steve Byrd	May 9, 2013	Shoreline Pool Manufacturers, Inc.	April 24, 2013
Josh Epstein	May 14, 2013	Jet Line Products, Inc.	April 29, 2013
Mike Wallace	June 4, 2013	ATX Pool & Spa Supply, LLC	May 20, 2013
Bill Knox	June 5, 2013	WEK & Associates, Inc.	May 21, 2013
Skip Bradley & Terry Maurer	June 5-6, 2013	Cardinal Systems LLC	May 21, 2013
Mark Laven	June 12, 2013 (proposed)	Latham	May 28, 2013
Bill Shuherk	June 13, 2013	BT2 Inc.	May 29, 2013
Thomas Epple, Timothy Saxer, &	June 20-21, 2013	Trivector Manufacturing Inc.	June 5, 2013

<b>Individual Witness(es)</b>	<b>Noticed Deposition Date</b>	<b>Associated Entity</b>	<b><i>Duces Tecum</i> Return Date</b>
David Dent			
John Gwaltney	June 24, 2013	Pool Source LLC	June 7, 2013
Greg Howard	June 28, 2013	Carecraft	June 13, 2013

The parties have agreed that the return date for subpoenas *duces tecum* that DPPs intend to serve on 31 individuals and entities unaccompanied by an associated request for deposition testimony will be May 1, 2013. DPPs have notified all parties of their intention to serve such subpoenas upon the following third parties:

**Manufacturers:** (i) A.O. Smith Electrical Products Co.; (ii) Aquastar Pool Products, Inc.; (iii) Brenntag Mid-South, Inc.; (iv) CL Industries; (v) Hallosource Inc.; (vi) Haviland Consumer Products, Inc.; (vii) Inter-Fab; (viii) Mapei; (ix) PPG Industries, Inc.; (x) Raypak, Inc.; (xi) S.R. Smith, LLC; (xii) Southern Grouts & Mortars, Inc.; (xiii) Tara Manufacturing, Inc.; and (xiv) Wilbar International, Inc.

**Distributors:** (i) Baystate Pool Supplies Inc.; (ii) Pool Water Products; (iii) WW Adcock Inc.; (iv) Pool & Electrical Products; (v) Imperial Pools Inc.; (vi) HornerExpress; (vii) Florida Water Products Inc.; (viii) Quality Pools; (ix) Aqua Gon; (x) Associated Leisure; (xi) Five County; (xii) Vak Pak; (xiii) Pioneer Pools; and (xiv) American Pool Supply.

**Manufacturer Representatives:** (i) Duhamell Associates, Inc., and (ii) Stellar Sales, LLC.

**Buying Group:** Aquatech Corporation.

Dated: February 28, 2013

/s/ Russ M. Herman

Russ M. Herman  
**HERMAN, HERMAN & KATZ, LLC**  
820 O'Keefe Avenue  
New Orleans, LA 70113  
504-581-4892

/s/ Camilo Kossy Salas, III

Camilo Kossy Salas, III  
**SALAS & CO., LC**  
650 Poydras St.  
New Orleans, LA 70130  
504-799-3080

Robert N. Kaplan  
Gregory K. Arenson  
**KAPLAN FOX &  
KILSHEIMER LLP**  
850 Third Avenue  
New York, NY 10022  
212-687-1980

Ronald J. Aranoff  
Dana Statsky Smith  
**BERNSTEIN LIEBHARD  
LLP**  
10 East 40<sup>th</sup> Street  
New York, NY 10016  
212-779-1414

Jay L. Himes<sup>1</sup>  
**LABATON SUCHAROW  
LLP**  
140 Broadway  
New York, NY 10005  
212-907-0700

**Liaison Counsel and Executive Committee Counsel  
for the Direct Purchaser Plaintiffs and the Class**

/s/ Tom Brill

Thomas H. Brill  
Law Office of Thomas H. Brill  
8012 State Line Road, Suite 102  
Leawood, Kansas 66208  
913-677-2004

**Liaison for Indirect Purchaser Class Plaintiff**

---

<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.

/s/ David H. Bamberger  
David H. Bamberger  
Deana L. Cairo  
DLA Piper LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004  
Tel: (202) 799-4000  
Fax: (202) 799-5000  
Email: david.bamberger@dlapiper.com  
Email: deana.cairo@dlapiper.com

/s/ William B. Gaudet  
William B. Gaudet (La Bar. No. 1374)  
ADAMS & REESE LLP  
One Shell Square  
701 Poydras Street, Suite 4500  
New Orleans, LA 70139  
Tel: (504) 581-3234  
Fax: (504) 566-0210  
Email: william.gaudet@arlaw.com

**Counsel for PoolCorp Defendants**

/s/ Richard Hernandez  
Richard Hernandez  
Thomas J. Goodwin  
McCARTER & ENGLISH, LLP  
100 Mulberry Street  
Four Gateway Center  
Newark, New Jersey 07102  
Tel: (973) 848-8615  
Fax: (973) 297-6615  
Email: rhernandez@mccarter.com  
Email: tgoodwin@mccarter.com

/s/ Thomas M. Flanagan  
Thomas M. Flanagan (LA Bar No. 19569)  
Flanagan Partners LLP  
201 St. Charles Ave., Suite 2405  
New Orleans, Louisiana 70170  
Tel: (504) 569-0236  
Fax: (504) 592-0251  
Email: tflanagan@flanagpartners.com

**Counsel for Defendant Hayward Industries, Inc.**

/s/ Michael J. Lockerby  
Michael J. Lockerby  
Melinda F. Levitt  
FOLEY & LARDNER LLP  
Washington Harbour  
3000 K Street, N.W., Suite 600  
Washington, D.C. 20007-5143  
Tel: (202) 672-5300  
Fax: (202) 672-5399  
Email: mlockerby@foley.com  
Email: mlevitt@foley.com

/s/ Wayne J. Lee  
Wayne J. Lee (LA Bar No. 7916)  
STONE PIGMAN WALTHER WITTMANN  
L.L.C.  
546 Carondelet Street  
New Orleans, Louisiana 70130  
Tel: (504) 581-3200  
Fax: (504) 581-3361  
Email: wlee@stonepigman.com

**Counsel for Defendant Pentair Water Pool and Spa, Inc.**



/s/ J. Brent Justus

Howard Feller  
J. Brent Justus  
MCGUIREWOODS LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219-4030  
Tel: (804) 775-1000  
Fax: (804) 775-1061  
Email: hfeller@mcguirewoods.com  
Email: bjustus@mcguirewoods.com

/s/ Neil C. Abramson

Neil C. Abramson (LA Bar No. 21436)  
LISKOW & LEWIS  
701 Poydras Street, Suite 5000  
New Orleans, Louisiana 70139  
Tel. (504) 581-7979  
Fax (504) 556-4108  
Email: nabramson@liskow.com

**Counsel for Defendant Zodiac Pool Systems, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing Joint Report Pursuant to Magistrate Judge Wilkinson's February 27, 2013 Order 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 28<sup>th</sup> day of February, 2013.

/s/ Leonard A. Davis

LEONARD A. DAVIS

# **EXHIBIT “A”**

DEPOSITION SCHEDULE<sup>1</sup>

March 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
24	25	26	27	28	1	2
3	4	5	6 10 a.m. CST Status Conference EDLA New Orleans, LA	7	8 DPP SPS Services, Ltd. New Orleans, LA	9
10	11 PT counsel N/A	12 PT counsel N/A	13 PT counsel N/A	14 PT counsel N/A	15 DPP Aqua Clear Pools & Decks (11 am EDT) Charlotte, NC	16
17	18	19 John Damaska (Z) Chicago, IL	20 Scott Bushey (Z) Chicago, IL	21 DPP Pro Pool Services Chicago, IL	22 IPP Jean Bove Los Angeles, CA	23
24	25 <i>First Passover Seder</i>	26 <i>Second Passover Seder</i>	27 30(b)(6) Structure & Conduct Code (PT) (2) Raleigh, NC	28 DPP Thatcher Pools Rochester, MN  30(b)(6) IT & HR (PT)(2) Raleigh, NC	29 <i>Good Friday</i>	30
31 <i>Easter</i>	1	2	3	4	5	6

<sup>1</sup> Direct Purchaser Plaintiffs have requested and Pool Corporation is working to schedule a Rule 30(b)(6) deposition on pricing and acquisitions and depositions of three Pool Corporation employees (Dale O'Dell, Don Keller, and Rick Postoll).

N.B.: All third-party deposition dates are subject to confirmation of availability of third-party witnesses and counsel (if any).

## April 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
31	1 3 <sup>rd</sup> Party James Hilton, Sr. Baton Rouge, LA	2 3 <sup>rd</sup> Party James Hilton, Jr. Baton Rouge, LA	3	4 3 <sup>rd</sup> Party Robert Snodgrass Pensacola, FL DPP Oasis Pool Svcs Shreveport, LA	5 3 <sup>rd</sup> Party John Salvo Tallahassee, FL	6
7	8 3 <sup>rd</sup> Party David Coulter Atlanta, GA	9 3 <sup>rd</sup> Party Bill Haas Washington, DC	10 <i>ABA Antitrust § Spring Meeting</i>	11 <i>ABA Antitrust § Spring Meeting</i>	12 <i>ABA Antitrust § Spring Meeting</i>	13
14	15 Craig Goodson (Z) Miami, FL	16 Enrique Gomez (Z) Miami, FL  Jim Fisher (PT) Miami, FL	17 PC counsel N/A  David Albee (HW) Newark, NJ  3 <sup>rd</sup> Party Eric Watters Tampa, FL	18 Doug Bragg (HW) Newark, NJ	19 Stephen Markowitz (Z) Philadelphia, PA	20
21	22 IPP Lorraine O'Brien Miami, FL	23 3 <sup>rd</sup> Party N. Douglas Learn Naples, FL	24 3 <sup>rd</sup> Party Kate Thielscher Orlando, FL	25 DPP A Plus Pools Ft. Lauderdale, FL	26 PC counsel N/A	27
28	29 PT counsel N/A	30 PT counsel N/A	1	2	3	4

N.B.: All third-party deposition dates are subject to confirmation of availability of third-party witnesses and counsel (if any).

## May 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
28	29	30	1 PT counsel N/A	2 PT counsel N/A	3 PT counsel N/A	4
5	6 PT counsel N/A <i>3<sup>rd</sup> Party Shelly King New Orleans, LA</i>	7 PT counsel N/A Robert Nichols (HW) Newark, NJ	8 Bill Cook (PC) New Orleans, LA Darren Coleman (PT) Las Vegas, NV or Denver, CO	9 3 <sup>rd</sup> Party Steve Byrd Jackson, MS Paul Walter (PT) Las Vegas, NV or Denver, CO	10 IPP Ryan Williams Kansas City, MO Fred Manno (HW) Newark, NJ	11
12 <i>Mother's Day</i>	13 3 <sup>rd</sup> Party Perry Dytrt Phoenix, AZ	14 3 <sup>rd</sup> Party Josh Epstein Newark, NJ	15 PC counsel N/A <i>John Oster (PT) Indianapolis, IN</i>	16 PC counsel N/A <i>Paul Snopek (PT) Indianapolis, IN</i>	17 PC counsel N/A <i>Scott Cummings (PT) Indianapolis, IN</i>	18
19	20 PT counsel N/A	21 PT counsel N/A	22 PT counsel N/A John Hulme (PC) Boston, MA	23 Don Porter (PT) & Jon Cannon (PT) Houston, TX	24 IPP Kevin Kistler Phoenix, AZ Don Porter (PT) & Jon Cannon (PT) Houston, TX	25
26	27 <i>Memorial Day</i>	28	29 3 <sup>rd</sup> Party Aaron Krankora San Diego, CA Greg Kahle (PT) Atlanta, GA	30 David Nibler (Z) San Diego, CA Mike Echols (PT) Atlanta, GA	31 Barry Greenwald (Z) San Diego, CA	1

Orange font indicates REQUESTING CONFIRMATION OF COUNSEL AVAILABILITY.

Orange font + yellow highlighting indicates REQUESTING CONFIRMATION OF COUNSEL AND WITNESS AVAILABILITY.

N.B.: All third-party deposition dates are subject to confirmation of availability of third-party witnesses and counsel (if any).

## June 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
26	27	28	29	30	31	1
2	3 3 <sup>rd</sup> -Party Harold Lohf Chicago, IL  3 <sup>rd</sup> -Party Tim Ruesch Milwaukee, WI	4 William Witmarsh (HW) Newark, NJ  3 <sup>rd</sup> -Party Mike Wallace San Antonio, TX	5 3 <sup>rd</sup> -Party Bill Knox San Antonio, TX  3 <sup>rd</sup> -Party Skip Bradley Philadelphia, PA	6 PT counsel N/A  Thomas Evans (HW)  3 <sup>rd</sup> -Party Terry Mauer Philadelphia, PA	7 PT counsel N/A	8
9	10 PT counsel N/A  Melanie Housey (PC) New Orleans, LA	11 PT counsel N/A  Donna Williams (PC) New Orleans, LA	12 3 <sup>rd</sup> -Party Mark Laven Albany, NY  Matt Huntley (PT) Albany, NY	13 3 <sup>rd</sup> -Party Bill Shuherk Minneapolis, MN  Tom Dissinger (HW) Newark, NJ	14 3 <sup>rd</sup> -Party David Castator Cincinnati, OH	15
16 <i>Father's Day</i>	17 Tommy Canaday (PC) New Orleans, LA	18 Tom Burba (PC) New Orleans, LA	19 Scotty Frantz (PC) New Orleans, LA  Eugenio H. Quiroz (PT) Tucson, AZ	20 3 <sup>rd</sup> -Party Thomas Epple Fort Wayne, IN	21 3 <sup>rd</sup> -Parties Timothy Saxer & David Dent Fort Wayne, IN	22
23	24 Jody Smith (Z) Atlanta, GA  3 <sup>rd</sup> -Party John Gwaltney Nashville, TN	25 Anthony Prudhomme (Z) Los Angeles, CA	26 Chris Parrish (PT) Los Angeles, CA	27 DPP Liquid Art Enterprises San Diego, CA	28 3 <sup>rd</sup> Party Greg Howard San Diego, CA	29
30	1	2	3	4	5	6

Orange font indicates REQUESTING CONFIRMATION OF COUNSEL AVAILABILITY.

Orange font + yellow highlighting indicates REQUESTING CONFIRMATION OF COUNSEL AND WITNESS AVAILABILITY.

# **EXHIBIT “B”**

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

In re: POOL PRODUCTS DISTRIBUTION \* MDL Docket No. 2328  
MARKET ANTITRUST LITIGATION \*  
\* SECTION R/2  
\*  
THIS DOCUMENT RELATES TO ALL \* JUDGE VANCE  
CASES \* MAG. JUDGE WILKINSON  
\*  
\* \* \* \* \*

PRETRIAL ORDER NO. \_\_\_\_\_  
(Deposition and Subpoena Guidelines)

This Order shall govern (1) cases transferred to this Court by the Judicial Panel on Multidistrict Litigation, pursuant to its Order of April 17, 2012; (2) any tag-along actions subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.4 of the Rules of Procedure of that Panel; and (3) all related cases originally filed in this Court or transferred or removed to this Court.

**I. GENERAL PROVISIONS**

**A. Timing**

Depositions in cases may commence immediately.

**B. Cooperation**

Counsel are expected to cooperate with and be courteous to each other and deponents in both scheduling and conducting depositions.

**C. Attendance**

1. Who May Be Present. Unless otherwise ordered under Fed. R.

Civ. P. 26(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, the parties or the representative of a deponent, in-house counsel for any party, court reporters, videographers, the



deponent, a disclosed expert or any member of the expert's staff, and counsel for the deponent. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the categories set forth in the preceding sentence. While the deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under an MDL - 2328 Revised Stipulated Protective Order [Rec. Doc. 139], dated August 3, 2012, shall be excluded from the deposition. Any portion of the deposition transcript containing confidential information shall be sealed so as not to waive confidentiality.

2. Unnecessary Attendance. Unnecessary attendance by plaintiffs' counsel is discouraged and may not be compensated in any fee application to the Court. Plaintiffs' counsel who have only marginal interest in a proposed deposition or who expect their interests to be adequately represented by other counsel should elect not to attend.

3. Notice of Intent to Attend a Deposition. In order for counsel to make arrangements for adequate deposition space, counsel who intend to attend a deposition noticed in this MDL should advise the e-mail distribution list for all counsel set up for this purpose not fewer than three (3) business days prior to the deposition. Notices pursuant to this section shall be given via e-mail.

## II. CONDUCT OF DEPOSITIONS

### A. **Examination**

Questioning should primarily be by only one attorney for each party. Counsel who have individual or divergent positions may examine a deponent limited to matters not previously covered. This limitation shall be strictly construed against the examining attorney.

**B. Duration**

Counsel should consult prior to a deposition to agree upon the time required to depose a particular witness. Absent agreement of the parties or order of this Court based on a showing of good cause, the length of depositions shall be controlled by Fed. R. Civ. P. 30(d)(2). Absent agreement of the parties or Order of this Court, examination time for non-party witnesses shall be divided as follows: [**Plaintiff's Version**: 50% to the Direct and Indirect Purchaser Plaintiffs to be allocated as they desire among themselves, and 50% to the Defendants to be allocated as they desire among themselves **OR** [**Defendants' Version**: 1/3 for the Pool Defendants, 1/3 for Manufacturer Defendants and 1/3 for Plaintiffs.]

**C. Scheduling**

Absent extraordinary circumstances, counsel should consult in advance with opposing counsel and counsel for proposed deponents in an effort to schedule depositions at mutually convenient times and locations. Counsel are expected to cooperate and coordinate the scheduling of depositions. Unless otherwise agreed upon by the parties, witnesses shall be deposed within 100 miles of where they reside or work.

Although the parties will try to avoid multi-tracking of depositions, there may be multi-tracking of depositions. The parties shall meet and confer on the establishment of a reasonable schedule for the multi-tracking of those depositions. To the extent that the parties cannot agree on a proposed schedule for such multi-tracking, the parties shall file with the Court separate proposed schedules.

**D. Notices and Subpoenas**

The parties shall meet and confer to establish a reasonable return date for any subpoena, including for testimony and production of documents. The parties shall endeavor to

schedule any testimony on a date convenient for the parties and the deponent. Counsel are expected to cooperate and coordinate the scheduling of depositions.

Any party that desires to subpoena a non-party shall circulate (the “circulating party”) to the other parties a draft of the subpoena, including any duces tecum. The other parties shall, within seven (7) calendar days of receipt of the draft subpoena, provide comments to the circulating party, including any additions or suggested amendments to the duces tecum. A duces tecum to non-parties shall include a single set of definitions and instructions. A party who has circulated a draft duces tecum shall not be required to revise the specific document requests it previously circulated. Recipients of the draft duces tecum may add document requests as they deem appropriate, which shall be included in the duces tecum that is served.

The parties are expected to refrain from making cumulative, duplicative, or inconsistent document requests. If a party has objections to any of the documents, categories of documents, definitions or instructions provided in subpoenas to third parties, that party should note in writing its objections, and the parties should seek to resolve the objections before the subpoena is served. Any objection not resolved before service is preserved for further consideration after service, and if not then resolved in a meet and confer process may be presented for a hearing with Magistrate Judge Wilkinson.

Only a single subpoena shall issue which shall be enforceable by any one or more parties. Meet and confer sessions (or other negotiations) with a subpoenaed person regarding any matter arising from the subpoena, including any subpoenas previously issued, shall be conducted jointly with attorneys for all sides and the subpoenaed person represented. All objections that any party may have are reserved and may be presented to the Court by appropriate motion. The combined subpoena shall indicate which party is requesting which documents or subjects of

testimony are being requested by which party. The circulating party is responsible for service of the subpoena.

The return date for production of documents shall be set at least fifteen (15) calendar days prior to the scheduled date of any deposition of a non-party so that parties shall be provided ample opportunity to receive and review documents to be produced by any non-party pursuant to a duces tecum. Documents to be produced by a non-party pursuant to a duces tecum shall be provided by the producing entity fully in advance of the deposition date either to Liaison Counsel or their designees through an .ftp site. Liaison Counsel shall immediately make available to all other parties copies of all documents produced from any non-party so that all parties have access to the materials timely in advance of any scheduled deposition.

The circulating attorney is responsible for arranging the office location (subject to agreement as to the city location) in which the deposition is to be taken and for the court reporter and reporting service used for the deposition.

**E. Deposition Day**

Subject to the witness's availability, a deposition day shall commence no earlier than 8:00 a.m. local time and terminate no later than 6:30 p.m. local time. Modest variations in this schedule may be made by agreement of counsel who noticed the deposition and counsel for the witness.

**F. Depositions of Non-Party Witnesses Who Have Knowledge of the Facts**

An officer, director, or managing agent of a corporation, a government official or any other non-party witness served with a notice of a deposition or subpoena shall be provided a copy of this Pre-Trial Order at the time it is served. Any objections to a notice of deposition or subpoena shall be filed with this Court at least fifteen (15) days prior to the scheduled date of any

deposition. The right of the responding witness to seek a protective order or other appropriate relief during or following the deposition is reserved.

**G. Objections and Directions Not to Answer**

1. Counsel shall comply with Fed. R. Civ. P. 30(d)(1). When a privilege is claimed, the witness should nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement, unless such information is itself privileged. Any objection made at a deposition shall be deemed to have been made on behalf of all other parties. All objections, except those as to form and privilege, are reserved until trial or other use of the depositions.

2. Counsel shall refrain from engaging in colloquy during deposition. The phrase "objection as to form" or similar language shall be sufficient to preserve all objections as to form until the deposition is sought to be used. If requested, the objecting party shall provide a sufficient explanation for the objection to allow the deposing party to rephrase the question.

3. Counsel shall not make objections or statements which might suggest an answer to a witness.

4. Counsel shall not direct or request that a witness refuse to answer a question, unless that counsel has objected to the question on the ground that the question seeks privileged information, information that the court has ordered may not be discovered, or a deponent seeks to present a motion to the court for termination of the depositions on the ground

that it is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass or oppress the party or deponent.

5. Private consultations between deponents and their attorneys during the actual taking of the deposition are improper, except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the Court for good cause shown, conferences may be held during normal recesses, adjournments, or if there is a break in the normal course of interrogation and no questions are pending.

#### **H. Telephonic and Internet Participation**

Telephonic and Internet Participation. Telephone and Internet facilities shall be provided, where practicable, so that parties wishing to participate in the depositions by telephone or Internet may do so. However, technical or Internet difficulties with telephonic or Internet participation shall not constitute grounds for continuing the deposition or for rendering a deposition inadmissible that would otherwise be admissible in evidence. Counsel attending a deposition in person may terminate telephonic or Internet participation in a deposition if technical problems with the telephonic or Internet facilities create disruptions in the deposition.

#### **I. Disputes During Depositions**

Disputes between or among the parties should be addressed to this Court rather than the District Court in the District in which the deposition is being conducted. Disputes arising during depositions that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require rescheduling of the deposition, or might result in the need to conduct a supplemental deposition, shall be presented to the Magistrate Judge, Joseph C. Wilkinson, Jr., or his designee, by telephone (504-589-7630).

If the Magistrate Judge is not available, the deposition shall continue with full reservation of rights of the examiner for a ruling at the earliest possible time. Nothing in this Order shall deny counsel the right to suspend a deposition pursuant to Fed. R. Civ. P. 30 (d)(4), file an appropriate motion with the Court at the conclusion of the deposition, and appear personally before the Court.

**J. Documents Used in Connection with Depositions**

1. Marking of Deposition Exhibits. All documents previously produced and used as deposition exhibits shall be identified by referring to the unique alpha-numeric identifiers appearing on the documents or in the name of the document, in the case of native files.

2. Objections to Documents. Objections to the relevance or admissibility of documents used as deposition exhibits are not waived, and are reserved for later ruling by the Court or by the trial judge.

**K. Video Depositions**

By so indicating in its notice of a deposition, a party, at its expense, may record a deposition by videotape or digitally-recorded video pursuant to Fed. R. Civ. P. 30(b)(2) subject to the following rules:

1. Real-time Feed. All video depositions will be stenographically recorded by a court reporter with "real-time feed" transcription capabilities.

2. Video Operator. The operator(s) of the video recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

3. Attendance. Each witness, attorney, and other person attending the deposition live or by telephone or the Internet shall be identified on the record at the commencement of the deposition.

4. Standards. Unless physically incapacitated, the deponent shall be seated at a table except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent. Only the deponent and any exhibits or demonstrative aids used in the examination will be video recorded. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent.

**L. Telephone Depositions**

By indicating in its notice of deposition that it wishes to conduct the deposition by telephone, a party shall be deemed to have moved for such an order under Fed. R. Civ. P. 30(b)(7). Unless an objection is filed and served within ten (10) calendar days after such notice is received, the Court shall be deemed to have granted the motion. Other parties may examine the deponent telephonically or in person. However, all persons present with the deponent shall be identified in the deposition and shall not by word, sign, or otherwise coach or suggest answers to the deponent. The court reporter shall be in the same room with the deponent.

**III. FEDERAL RULES OF CIVIL PROCEDURE APPLICABLE**

Unless specifically modified herein, nothing in this order shall be construed to abrogate the Federal Rules of Civil Procedure.



A copy of this Pre-Trial Order shall be attached to any Notice of Deposition or subpoena issued to a third-party so that the third-party shall have an opportunity to review this Order and comply with the orders of the Court, in particular with respect to production of documents and attendance at depositions. All Notices of Depositions and subpoenas shall reference this Pre-Trial Order.

New Orleans, Louisiana, this \_\_\_\_ day of \_\_\_\_\_, 2013.

---

SARAH S. VANCE  
UNITED STATES DISTRICT JUDGE