

**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' FIRST 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 first bi-weekly report on the status of fact discovery. The DPPs' report on the status of discovery is included as Section I, and the IPPs' report is included as Section II.<sup>1</sup>

**I. Status Report by the DPPs**

**a. Discovery From Defendants to DPPs**

**i. PoolCorp Defendants**

On December 17, 2012, PoolCorp served a list of 35 custodians (and two administrative assistants) whose documents would be searched in connection with the upcoming production. These 35 custodians are a subset of the custodians that produced documents to the FTC. On December 24, 2012, DPPs served a list of 81 additional proposed custodians. These additional custodians were raised for discussion with PoolCorp because they either (i) previously produced

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<sup>1</sup>It is the DPPs' understanding that one or more defendants prefer each party to report to the Court separately rather than in a single submission covering both plaintiffs and defendants.

documents in the FTC litigation, (ii) were disclosed as potential witnesses in the parties' initial disclosures, or (iii) were identified through organization charts or documents previously produced as likely sources of responsive information. Since that date, the parties have engaged in a series of meet-and-confer discussions in order to reach agreement on a final list of custodians. These efforts have included four meet-and-confer sessions by telephone, as well as multiple letters and emails.

Through those ongoing communications, PoolCorp has agreed to add the following seven additional custodians to PoolCorp's original list: (1) Rae Motahari; (2) Shay Oliphant; (3) Bill Hoglund; (4) John Bartolic; (5) Mike O'Neil; (6) Chris Wilson; and (7) John Murphy. DPPs understand that only limited documents exist for O'Neil, Wilson and Murphy, who are former employees who departed PoolCorp prior to the implementation of a document hold in connection with the FTC investigation.

The parties have not yet exhausted the meet-and-confer process regarding twelve additional proposed custodians, including eleven regional managers and one branch manager, but 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. PoolCorp is currently reviewing this proposal and has committed to replying to DPPs with either an acceptance or a counterproposal.

DPPs have also requested Pool Corp to provide specific information concerning its transaction database with the hope that the information can be provided informally without the

need for a 30(b)(6) deposition. PoolCorphas not indicated yet whether it will provide this information and, if so, in what form or by what methodology.

**ii. Hayward Industries, Inc.**

On December 17, 2012, Hayward provided counsel for DPPs with a list of nine custodians. In response, on December 26, 2012, counsel for DPPs requested an additional twenty-seven custodians. Hayward responded on December 28, 2012, by adding another six custodians to their list, bringing the total custodians as of that date to fifteen.

Since that time, the parties have engaged in a series of meet and confer sessions, including two conferences and several follow-up emails and phone calls. During the course of these negotiations, Hayward explained the job descriptions and roles of many of the requested custodians and the parties agreed that many of these personnel should not be pursued. Hayward has agreed to the addition of four more custodians, and the parties have finalized a custodian list of nineteen custodians. The parties are still negotiating the scope of the document search to be completed, and DPPs anticipate that another meet-and-confer session will be held on this topic.

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

On December 17, 2012, Pentair initially identified five custodians whose documents they would agree to search. On December 26, 2012, the DPPs served a list of 26 additional custodians from whom the DPPs seek relevant documents. Many of these additional custodians held high leadership positions with Pentair, while others operated as managers in regions relevant to this litigation. DPPs believe all have knowledge regarding Pentair's policies, procedures, and dealings with Pool Corporation and customers. On December 28, 2012, Pentair notified the DPPs that it would not agree to add DPPs' requested custodians, except for six,

which would be limited to targeted searches reflecting communications with the named plaintiffs.

On January 3, 2013, the DPPs conducted a meet-and-confer with Pentair. Pentair maintained that it would be overly burdensome and expensive for it to conduct full document searches for all the DPPs' proposed custodians, although it would add custodians for good reasons. The DPPs and Pentair agreed at that time to reconvene on this issue. Beginning on January 18, 2013, the DPPs have attempted to schedule a subsequent phone conference with Pentair, and have suggested several proposed times and dates; however, a mutual meeting could not be scheduled to take place prior to the filing of this report. The scheduled follow-up meet and confer between DPPs and Pentair is now set for Friday, February 1, 2013 at 3:00PM EST.

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

On December 17, 2012, Zodiac identified 12 custodians whose documents would be searched in connection with its upcoming document production. These 12 custodians are a subset of the custodians that produced documents to the FTC. On December 26, 2012, DPPs identified 69 additional proposed custodians. In doing so, DPPs took into account the small size of Zodiac's production to the FTC compared to the productions of the other Manufacturer Defendants. By DPPs' count, Zodiac produced roughly 800 documents whereas the productions of Hayward and Pentair were approximately 67,000 and 155,000 documents, respectively.

Since late December, the parties had two telephonic meet-and-confer discussions, and have exchanged follow-up emails, in an effort to reach an agreed-upon list of custodians. During these telephone conferences and email exchanges, Zodiac also provided information regarding the company's retention policies for emails, computer records other than emails, and non-electronic documents and regarding the company's litigation hold practices in this case.

Through the parties' communications, Zodiac agreed to add six additional custodians. Of the remaining additional individuals that DPPs identified, nine were employed by Zodiac as executive assistants to other officers or employees. Zodiac agreed that its searches of custodian officers and employees will include records, if any, that their executive assistants may also have.

In addition, Zodiac advised DPPs that four of the additional individuals that DPPs identified, all of whom held leadership positions at Zodiac, left the company more than two years prior to the filing of DPPs' Consolidated Amended Complaint and Zodiac's resulting implementation of a litigation hold, and that email communications for these individuals no longer exist.<sup>2</sup> However, Zodiac determined that there are computer network folders for three of these individuals, and Zodiac will include those folders in its document search. Zodiac has similarly agreed that identifiable network folders will be searched for all agreed-upon custodians.

Forty-nine individuals whom DPPs initially identified held positions as Territory Sales Managers ("TSMs"). Zodiac's counsel provided information regarding the duties and responsibilities of TSMs and further identified 22 of the individuals as no longer employed by Zodiac. Of those 22, 15 individuals ceased their employment more than two years prior to the date that Zodiac implemented a litigation hold on TSMs.<sup>3</sup> Thus, email for those 15 TSMs apparently have been deleted. DPPs have requested that Zodiac add eight additional TSMs as

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<sup>2</sup> As expressed to DPPs and as set out in Zodiac's document retention materials: (a) Zodiac maintains a rolling two-year document retention policy for emails, which apparently is implemented by an email system setting that automatically deletes emails. Therefore, emails created more than two years before the start of a litigation hold will no longer exist in Zodiac's email system; and (b) For non-email records, Zodiac's retention policy requires individuals to certify on a yearly basis their compliance with Zodiac's retention periods, which vary depending on document categories.

<sup>3</sup> As expressed to DPPs: (a) Zodiac implemented a litigation hold at the outset of the litigation that encompassed only those individuals listed in Defendant Zodiac Pool Systems, Inc.'s Initial Disclosures Pursuant to Pretrial Order #10 (Aug. 6, 2012), and not TSMs generally; and (b) After DPPs identified various TSMs on December 26, 2012, Zodiac expanded its hold to include those individuals.

custodians whose documents will be included in Zodiac's search. Zodiac is considering this request.

Finally, DPPs agreed to drop one individual who, after discussion, seemed unlikely to have generated relevant information

**b. Discovery From DPPs to Defendants**

Seven plaintiffs will be producing documents in connection with their role as named DPPs in this litigation. On December 17, 2012, DPPs produced a list of 14 custodians to defendants. The manufacturer defendants raised no objection to the custodians. PoolCorp requested the addition of three custodians from three different named DPPs. Counsel for DPPs met and conferred with PoolCorp regarding these three additions. We anticipate that the parties will reach agreement shortly.

The seven named DPPs have begun the process of gathering both electronic and paper documents. DPPs anticipate that they will begin productions on a rolling basis in the near future.

**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.

Dated: January 29, 2013

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**Liaison for Indirect Purchaser Class Plaintiff**

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing Plaintiffs' First 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 29<sup>th</sup> day of January, 2013.

/s/ Leonard A. Davis  
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