

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:

PENTAIR'S FIRST BIWEEKLY DISCOVERY STATUS REPORT

Pursuant to Pretrial Order #16 (R. Doc. 183), Pentair Water Pool and Spa, Inc. ("Pentair") submits the following report on the status of fact discovery between Pentair and the plaintiffs.

A. Status of Pentair's Production

Defendant Pentair and counsel for both sets of plaintiffs have made some initial progress relating to discovery in this matter, although, as described below, some core issues remain to be resolved relating to the number and identity of custodians from whom documents are to be produced. However, on January 16, 2013, Pentair did make an initial production of documents to plaintiffs.

Regarding custodians, on December 17, 2012, Pentair supplied counsel for both direct and indirect purchaser plaintiffs with the names of the five Pentair custodians it believes

would likely have the most relevant and responsive documents given the categories of document discovery topics previously approved by the Court. In a letter of December 26, 2012, counsel for the direct purchaser plaintiffs responded and requested that Pentair search for and produce documents from a total of 26 custodians. Pentair responded by letter on December 28, 2012, explaining that it believes that plaintiffs' position places an undue burden on Pentair and that no justification has been provided in support of including such an extensive list of custodians, but emphasizing that Pentair was willing to work cooperatively with plaintiffs' counsel to resolve these issues and to reach a resolution that represents an appropriately proportional balance between the parties' interests and the needs of the case. Pentair also offered to include an additional seven custodians so as to respond to specific discovery topics about which these custodians had particular knowledge (*e.g.* communications with named plaintiffs).

On January 3, 2013, counsel for the parties engaged in their first meet and confer discussion about their discovery disputes. Pentair has responded to some of plaintiffs' counsels' questions by subsequent emails, and a follow-up meet and confer telephone conference is in the process of being scheduled.

Despite the on-going discovery issues to be resolved, Pentair nonetheless produced documents to plaintiffs on January 16, 2013 – *i.e.*, copies of all product catalogues from 1999 through 2012 – thereby responding in full to one of the Court approved discovery topics. (Because of a technical problem with the production disc, Pentair provided replacement discs to plaintiffs on January 25, 2013.)

B. Status of Plaintiffs' Production

Pursuant to the Court's issuance of discovery rulings in Pretrial Order No. 15 (Rec Doc. 174), the parties submitted an Amended Joint Report on Discovery Obligations (Rec Doc. No. 184). The respective individual direct purchaser and indirect purchaser plaintiffs have

identified the custodians they intend to search for production of documents consistent with the foregoing. Pentair has not asked the plaintiffs to modify the list of custodians. However, no responsive documents or information have been produced by any plaintiff to date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Biweekly Discovery Status Report has been served upon all parties by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 8.

/s/ Samantha Griffin