

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

In re: POOL PRODUCTS DISTRIBUTION	*	MDL Docket No. 2328
MARKET ANTITRUST LITIGATION	*	
	*	SECTION R(2)
	*	
	*	JUDGE VANCE
	*	
This document relates to All Cases	*	MAG. JUDGE WILKINSON
	*	

JOINT REPORT FOR JANUARY 8, 2015 STATUS CONFERENCE

Pursuant to Pretrial Order No. 32 (R. Doc. 493), the parties respectfully submit this Joint Report listing the motions filed on November 24, 2014 and identifying all issues for discussion at the January 8, 2015 status conference.

I. The Parties’ November 24, 2014 Motions

Consistent with the Court’s prior Orders, on November 24, 2014, the parties filed the following motions:

- DPPs’ Motion for Class Certification and Appointment of Class Counsel
- IPPs’ Motion for Class Certification and Appointment of Class Counsel
- DPPs' three motions to exclude certain portions of the testimony of Defendants’ experts:
 - Dr. John Johnson
 - Dr. Vandy Howell
 - Dr. Michael Keeley
- IPPs’ motion to exclude, in part, the testimony of Defendants’ expert Dr. Kenneth Elzinga
- Defendants’ joint motion for summary judgment on claims of a vertical conspiracy between PoolCorp and Pentair

- Defendant PoolCorp's motions for summary judgment on claims of vertical conspiracy between PoolCorp and Hayward
- Defendant PoolCorp's motions for summary judgment on claims of vertical conspiracy between PoolCorp and Zodiac
- Defendants' joint motion for summary judgment on the DPPs' horizontal conspiracy claims
- Defendant PoolCorp's motion for summary judgment on the DPPs' attempted monopolization claim and the IPPs' analogous state law claims
- Defendants' *Daubert* motion to exclude the testimony of the DPPs' expert Dr. Gordon Rausser
- Defendants' *Daubert* motion to exclude the testimony of the IPPs' expert Dr. Keith Leffler.

II. Plaintiffs' Issues to be Addressed at the Status Conference

A. Direct Purchaser Plaintiffs

DPPs' Position Regarding Defendants Submissions of Attorneys' Fees and Expert Costs Pursuant to Pretrial Order No. 30

The DPPs dispute the reasonableness of the fees and costs sought by Defendants in connection with the additional expert analyses and associated work undertaken to respond to Dr. Rausser's Supplemental Report, which this Court in its Order of August 22, 2014 (R. Doc. 463) and Pretrial Order No. 30 (R. Doc. 472) permitted DPPs to submit. The following table summarizes the submissions by Defendants:

	Aug	Sep	Oct	Oct 1-10	Oct 11-31	Nov	Total
PoolCorp							
Edgeworth ¹		237,202.00				115,137.50	352,339.50
Attorneys		4,977.60	12,900.20			8,575.40	26,453.20
Pentair							
Cornerstone	25,299.24	108,562.75		44,234.50	75,517.29	6,525.44	260,139.22
Attorneys	4,679.50	5,950.00	29,882.00			26,396.57	66,908.07 ²
Zodiac							
Cornerstone	31,678.51	110,447.75		44,234.50			186,360.76 ³
Total							892,200.75

DPPs believe that the time spent by Defendants experts and attorneys, both individually and in the aggregate, is excessive, and that expert work is duplicative and overlapping.

Further, Cornerstone's time records, submitted by counsel for Pentair and Zodiac to DPPs as part of their draft submissions, fail to satisfy Pretrial Order No. 30. Pretrial Order No. 30 provides that the "Defendants' submissions concerning the amount of actual expenses incurred for which they seek reimbursement from plaintiffs must include verified, contemporaneous reports of all experts and lawyers reflecting the date, time spent, *and nature of the services performed.*" (R. Doc. 472) (emphasis added). DPPs believe that the descriptions provided by Cornerstone in its invoices (such as "work on case issues," "reviewed data and documents,"

¹ Sep. entry covers Aug-Sep. Nov. entry covers Oct-Nov.

² Pentair's draft declaration sums the total attorney' fees and expenses for August through November 2014 as \$67,236.07. However, the sum of the individual monthly totals for August through November 2014 equals \$66,908.67. DPPs use the lower figure in this table.

³ During the meet-and-confer on January 5, 2015, Zodiac's attorney stated that its submission would be approximately \$8,200 less to conform to Pentair's numbers for Cornerstone in August and September. DPPs have not reduced the total in this table by the \$8,264.27 difference.

“reviewed case materials,” “synthesized data and documents,” or “worked on analysis requested by counsel”) do not provide a complete picture of the work purportedly performed by Cornerstone in response to Dr. Rausser’s Supplemental Report, and, therefore, those submissions fail to satisfy Pretrial Order No. 30.

PoolCorp filed its fees and costs submission with the Court on December 22, 2014 (R. Doc. 546). Zodiac and Pentair have each provided the DPPs with a draft submission to be filed with the Court in the near future. On December 29, 2014, before receiving a draft submission on behalf of Pentair, the DPPs sent Defendants a letter outlining their various reasons for disputing the amount of fees and costs sought. On December 30, 2014, the DPPs filed a copy of that letter with the Court. (R. Doc. 549). On January 5, 2015, the parties met and conferred to determine if the dispute could be resolved. However, this matter remains unresolved, and the parties anticipate raising it with the Court.

DPPs’ Objections to Defendants’ Summary Judgment Exhibits and Testimony

On the matter of DPPs’ objections to documents submitted by Defendants on their summary judgment motions, referred to in Defendants’ section of this Report, Pretrial Order No. 30 provides that objections must be made “within 21 days of receipt of a motion for summary judgment or response or reply thereto.” PTO 30, ¶ 5(a). Pretrial Order No. 30 further provides that “The two sides shall use the period between March 10, 2015 and April 7, 2015 to attempt to resolve objections.” PTO 30, ¶ 5(b). Accordingly, after Defendants on November 24 served their five motions for summary judgment and two statements of undisputed facts (totaling 59 pages), DPPs served their objections within the prescribed 21-day period.

On December 19, counsel for Pentair sent an email seeking to begin a process of meeting and conferring on DPPs’ objections. DPPs responded as follows:

“In PTO No. 30, the Court ordered that “[t]he two sides shall use the period between March 10, 2015 and April 7, 2015 to attempt to resolve objections.” D.E. 472 at p. 4. The Court set this meet and confer period to begin after the summary judgment briefing had concluded and after each side had had the opportunity to make objections to the supporting materials that accompanied the main briefs by the other. We believe the parties should follow the Court’s Order, and that your email is, therefore, premature.”

Status of Mediation

Consistent with the Court’s prior instructions, the DPPs, IPPs, and remaining Defendants have been in contact with Judge Layn Phillips’s office to schedule a further mediation session. That session is scheduled to take place in New York on April 9, 2015.

II. Indirect Purchaser Plaintiffs

The Indirect Purchaser Plaintiffs (“IPPs”) have no current issues or updates. The IPPs are working with Judge Layn Phillips regarding settlement discussions with Pentair. IPPs support the Direct Purchasers regarding their objections to attorneys’ fees in connection with the Defendants’ billings on Dr. Rausser’s work.

III. Defendants’ Issues to be Addressed at the Status Conference

Attorneys’ Fees and Expenses Relating to Dr. Rausser’s Supplemental Report

Defendants submit that the fees and expenses incurred by the respective Defendants in responding to the Supplemental Report of Dr. Rausser are not “excessive.” They are entirely consistent with the projections proffered at the time when DPPs requested that the Court reconsider its Order striking the Supplemental Report. To the extent that there are any similarities in the respective experts’ critiques, that is simply a function of the fact that they are commenting on the same Supplemental Report and does not represent “duplication.”

DPPs’ Objections to Defendants’ Summary Judgment Exhibits

PoolCorp and Pentair foresee a dispute arising regarding the volume and scope of the DPPs’ objections to the exhibits cited in PoolCorp’s and Pentair’s respective motions for

summary judgment. On December 15, 2014, the DPPs sent Defendants a 45-page spreadsheet of objections to exhibits. On December 19, 2014, counsel for Pentair sent the DPPs' counsel an email seeking preliminary clarification about the nature of the objections asserted to a small sample of only eleven documents. The DPPs refused to respond substantively to this email, maintaining that pursuant to Pretrial Order No. 30 (R. Doc. 472), no discussions concerning objections are to take place until March 10-April 15, 2015. Pentair maintains that, in light of the voluminous objections made and the questions that it has about the basis for a few sample objections, there is no reason that discussion should not begin as soon as possible in hopes of avoiding the need to bring the matter to the Court for resolution. Accordingly, Pentair may raise this issue at the upcoming status conference to seek guidance from the Court.

Dated: January 6, 2015

Respectfully submitted,

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