

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: POOL PRODUCTS)
DISTRIBUTION MARKET ANTITRUST)
LITIGATION)
_____)

MDL No. 2328
SECTION: R(2)

Chief Judge Vance
Mag. Judge Wilkinson

This Document Relates to: All Cases

DEFENDANTS’ SEVENTH REPORT ON THE STATUS OF FACT DISCOVERY

Pursuant to the Court’s March 7, 2013 Pretrial Order No. 17, ECF No. 200, Defendants Hayward Industries, Inc. (“Hayward”), Pentair Water Pool and Spa, Inc. (“Pentair”), Zodiac Pool Systems, Inc. (“Zodiac” and, collectively with Hayward and Pentair, the “Manufacturer Defendants”), Pool Corporation (“Pool Corp.”), SCP Distributors LLC (“SCP”), and Superior Pool Products LLC (“SPP” and, collectively with Pool Corp. and SCP, the “Pool Defendants”), by counsel, submit the following report on the status of fact discovery.

I. POOL DEFENDANTS’ REPORT

A. Document Production

Pool Defendants completed their production by the June 24th deadline. Pool Defendants produced over 195,834 documents and approximately 722,485 pages in addition to the FTC production made last summer. Pool is working on its privilege log and does not anticipate any difficulty meeting the July 24, 2013 deadline.

B. Data Production

Pool Defendants have been working on gathering the customer and vendor rebate information that the Court ordered it to produce at the June 20, 2013 status conference. Pool Defendants anticipate producing the information by late next week.

C. Depositions

Pool Defendants agree with the list of the depositions taken to date as set forth below in Section II. B.

II. MANUFACTURER DEFENDANTS' REPORT**A. Document Production**

Hayward has completed its document review and production consisting of 1,121,054 pages pursuant to Pretrial Order No. 18, dated June 21, 2013. Hayward is working on its privilege log and anticipates meeting the July 24, 2013 deadline. Zodiac has completed its document review and production to Plaintiffs totaling 405,447 pages pursuant to Pretrial Order No. 18, dated June 21, 2013. Pentair has continued to make regular rolling productions of both hard-copy and electronic documents to Plaintiffs and, thus far, has produced over 785,000 pages of electronic documents, a number which actually understates the volume of documents produced because large electronic documents, such as Excel spreadsheets that would number more than 100 pages if Tiffed, have only been produced in native format. Pentair's document production and review is ongoing and will be completed in accordance with the Court's instructions during the in-chambers status conference held on June 20, 2013.

B. Depositions

Following the status hearing on March 6, 2013, the parties began taking depositions, which, to date, have included the following:

Date	Deponent	Affiliation
3/8/2013	SPS Services, Ltd.	Direct Purchaser Plaintiff
3/15/2013	Aqua Clear Pools & Decks	Direct Purchaser Plaintiff
3/19/2013	John Damaska	Zodiac
3/20/2013	Scott Bushey	Zodiac
3/21/2013	Pro Pools Services	Direct Purchaser Plaintiff
3/22/2013	Jean Bove	Indirect Purchaser Plaintiff

3/28/2013	Thatcher Pools	Direct Purchaser Plaintiff
4/1/2013	James Hilton, Sr.	Third Party
4/3/2013	30(b)(6) - Code of Conduct	Pentair
4/4/2013	30(b)(6) - Corporate Structure & HR	Pentair
4/4/2013	Oasis Pool Services	Direct Purchaser Plaintiff
4/8/2013	David Coulter	Third Party
4/9/2013	Bill Haas	Third Party
4/15/2013	Eric Watters	Third Party
4/16/2013	Enrique Gomez	Zodiac
4/17/2013	David Albee	Hayward
4/18/2013	Doug Bragg	Hayward
4/18/2013	30(b)(6) – IT	Pentair
4/19/2013	Stephen Markowitz	Zodiac
4/19/2013	John Salvo	Third Party
4/23/2013	Craig Goodson	Zodiac
4/29/2013	Robert Snodgrass	Third Party
5/2/2013	30(b)(6) - Pricing and Acquisitions	Pool Corp.
5/3/2013	Melanie Housey	Pool Corp.
5/7/2013	Robert Nichols	Hayward
5/8/2013	Paul Walter	Pentair
5/8/2013	Bill Cook	Pool Corp.
5/9/2013	Darren Coleman	Pentair
5/10/2013	Fred Manno	Hayward
5/15/2013	John Oster	Pentair
5/15/2013	Paul Snopek	Pentair
5/16/2013	Scott Cummings	Pentair
5/22/2013	John Hulme	Pool Corp.
5/23/2013	Don Porter	Pentair
5/23/2013	Jon Cannon	Pentair
5/24/2013	Kevin Kistler	Indirect Purchaser Plaintiff
5/29/2013	Greg Kahle	Pentair
5/30/2013	Mike Echols	Pentair
6/4/2013	William Whitmarsh	Hayward
6/11/2013	Donna Williams	Pool Corp.
6/19/2013	Tom Canaday	Pool Corp.
6/25/2013	Dale O'Dell	Pool Corp.
6/26/2013	Rick Postoll	Pool Corp.
6/26/2013	Tom Dissinger	Hayward

Plaintiffs have cancelled a number of party depositions. Specifically, they have cancelled four Pool Corp. depositions scheduled for June and one Hayward deposition scheduled for June.

1. Re-Scheduling of Previously Noticed Third Party Depositions

Pursuant to Pretrial Order No. 18, dated June 20, 2013, the Court ordered that “[t]he parties shall meet and confer regarding a numerical limit on party and non-party depositions. By August 15, 2013, liaison counsel shall submit a letter to the Court with the agreed upon limits, or if the parties cannot agree, each side’s proposed limits and a brief explanation of its position. Before the Court sets a limit, no new depositions shall be noticed, **but previously noticed depositions shall proceed.**” (emphasis added). The Manufacturer Defendants have attempted to re-notice the depositions of several third parties that were previously postponed as a result of the FTC’s efforts to intervene in this matter. Plaintiffs have taken the position that these previously noticed third party depositions may not be re-noticed prior to the Court setting the deposition limits referenced in Pretrial Order No. 18. The Manufacturer Defendants contend that Plaintiffs are misreading Pretrial Order No. 18 and that any previously noticed third party depositions that were cancelled as a result of the FTC’s efforts to intervene in this matter may be re-noticed and taken, and are not subject to the Court’s setting of deposition limits as set forth in Pretrial Order No. 18. The Manufacturer Defendants request that the Court clarify its ruling in Pretrial Order No. 18 as to these previously noticed third party depositions that were postponed as a result of the FTC’s efforts to intervene in this matter.

C. Transactional Data

As previously reported, on April 1, 2013 and June 3, 2013, the Manufacturer Defendants received follow-up questions from Plaintiffs regarding their respective transactional data.

Pentair and Hayward have answered all such questions and have provided follow-up

transactional data to Plaintiffs. Zodiac has also answered all such questions and has provided follow-up transactional data to Plaintiffs but last week received three additional questions regarding data that has already been produced by Zodiac.

Dated: July 2, 2013

/s/ Wayne J. Lee

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2013, a copy of the foregoing Defendants' Seventh Report on the Status of Fact Discovery was served upon all parties by electronically uploading the same to LexisNexis File & Serve in accordance with Pretrial Order No. 8 in this case.

/s/ Wayne J. Lee _____