

**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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**JOINT REPORT REGARDING ISSUES TO BE DISCUSSED AT THE
OCTOBER 21, 2013 STATUS CONFERENCE**

The parties respectfully submit the following list of items for discussion at the October 21, 2013 status conference. The Direct Purchaser Plaintiffs (“DPPs”) and the Indirect Purchaser Plaintiffs (“IPPs”) set forth their report in Section I. The Defendants set forth their report in Section II.

I. Plaintiffs’ Report on the Status of Discovery and Issues to be Addressed at the October 21, 2013 Court Conference

A. Status of Fact Discovery Since the June 20, 2013 Court Conference

i. Discovery From Defendants to DPPs

a. Transaction Data

DPPs and PoolCorp have had ongoing discussions concerning DPPs’ request for transaction data for PoolCorp and General Pool & Spa Supply (“GPS”). GPS is a former rival distributor purchased by PoolCorp during the relevant period and is now a wholly owned subsidiary of PoolCorp. On January 26, 2013, the DPPs made a request for transaction data concerning PoolCorp’s and GPS’s purchases from October 1, 2010, through June 1, 2012. (Attachment A). PoolCorp has contested neither the relevance of nor the DPPs’ need for this

data, nor has PoolCorp set forth any reason that providing such data would be burdensome. On August 22, 2013, PoolCorp instead objected on the ground that the request was not made in the DPPs' original discovery list, served on August 23, 2012, nor addressed by the Court on June 20, 2013. However, the need and relevance of such transaction data was addressed in PTO No. 15 in the Court's discussion of DPPs' request for transaction data "such as purchase and sales information and cost data." ECF No. 174 at 8. In PTO No. 15, dated November 6, 2012, the Court held reasonable the discovery of such transaction data from January 1, 1998, to June 1, 2012, to allow for a "benchmark period before and after the alleged violations as a basis to calculate the impact of the violations and the overcharge damages sustained." *Id.* at 8.

b. Document Production

On June 24, 2013, PoolCorp represented that its production of documents was substantially completed. DPPs last received a production of documents from Hayward on June 23, 2013, and have received no indication that additional productions should be expected from this defendant. On July 29, 2013, Pentair served what it represented was its final production, barring unexpected identification of additional documents; however, an additional small production was received on July 31, 2013. On August 27, 2013, Zodiac served a small supplemental production of documents. No other document productions have since been received.

c. Depositions

The depositions of all Defendant witnesses taken by DPPs to date are listed in the table in Attachment B. In addition, the parties have scheduled the remaining depositions for Defendants PoolCorp, Hayward, and Zodiac. DPPs and counsel for Pentair have agreed on dates for five of the nine remaining depositions of Pentair employees. Thus far, counsel for Pentair has not

provided agreeable dates regarding DPPs' requests to schedule the remaining Pentair depositions.

ii. Discovery From DPPs to Defendants

a. Document Production

DPPs have completed their document production.

b. Depositions

Defendants have taken the depositions of all seven named direct purchaser plaintiffs. No further depositions have been noticed.

iii. Third-Party Discovery

Per the parties' August 30, 2013 submission to the Court, the parties have agreed that Defendants collectively and the DPPs may each take up to ten additional nonparty depositions of witnesses not currently noticed. Document discovery from third parties is ongoing in connection with previously served subpoenas *duces tecum*.

iv. Indirect Purchaser Plaintiffs' Discovery

There are no discovery or items for discussion at the October 21, 2013 status conference relating to IPPs.

a. Document Production

IPPs have completed their production of documents.

b. Depositions

Defendants have taken the depositions of all four named indirect purchaser plaintiffs. No further depositions have been noticed.

c. Document subpoenas to Third Parties

IPPs are continuing to work with third party swimming pool product retailers and pool builders in California, Arizona, Florida, and Missouri who were previously issued document subpoenas.

d. Defendants' Documents

IPPs are continuing to analyze and review documents produced by Pool Corp and the Manufacturer Defendants to the FTC designating documents for merits liability, class motion, and expert damage issues.

B. Defendants' Proposal to Adjust the Case Management Schedule

In their section II.B (page 5) below, Defendants propose to raise two subjects that would, in effect, amend the case management schedule established by the Court at the December 6, 2012 status conference, and embodied in PTO 16 (later amended as to dates by PTO 18).

First, Defendants seek to change the Court's instruction calling for: (a) the simultaneous exchange of both side's opening expert reports on April 10, 2014 and, for reply reports, on May 12, 2014, and (b) a period until June 9, 2014 for each side to depose the others experts. Defendants propose, instead, for sequential submissions and discovery. The process would begin with service of plaintiffs' expert reports, followed by a period for Defendants to depose plaintiffs' expert. After that, Defendants would serve their expert reports, with a period for plaintiffs to depose Defendants' experts to follow.

Second, Defendants seek to change the concurrent briefing schedule covering all motions for class certification, summary judgment and Daubert challenges, scheduled to begin on August 11, 2014. Here too, Defendants propose sequential filings – class certification motions first, followed thereafter by summary judgment and Daubert motions.

DPPs oppose these proposed amendments. When the Court adopted this schedule at the December 6, 2012 conference, Defendants expressed their preference for sequential proceedings. The Court rejected their view, noting that to proceed in this fashion would unnecessarily extend the case schedule. Defendants now seek to have the Court reconsider the case management schedule, but offer no basis for the Court to revisit its prior decision. Accordingly, the Court should reject Defendants proposed amendments.

II. Defendants' Report on the Issues to be Addressed at the October 20, 2013 Court Conference

A. Transaction Data

With respect to the DPP's "request" for Pool Corporation and GPS purchase data, Pool Corporation refers the Court to the letter from Deana Cairo to Greg Arenson dated August 22, 2013 (Attachment C) that sets forth the sequence events and problem with the manner in which DPPs have "requested" these data. With respect to the DPPs' contention that the Pool Defendants have never articulated a lack of relevance or burden on them in producing these data, the latter is incorrect and the former attempts to shift the burden of discoverability impermissibly to the Pool Defendants. During discussions with DPPs and at the last conference with the Court and the parties, Pool Defendants explained that it takes 2-3 weeks to run these data queries and collect data, during which time, valuable IT resources are diverted from company business. With respect to the "relevance" of these data, DPPs never stated reasons why these data are discoverable, as it is their burden to do -- it is not the Pool Defendants' burden to prove a negative.

B. Proposal to Adjust the Case Management Schedule

Defendants respectfully request that the Court consider certain adjustments to the case management schedule set forth in Pretrial Order No. 18. Specifically:

- The schedule as currently structured requires all of the parties to (1) exchange their expert reports concurrently on April 10, 2014, (2) exchange replies to expert reports on May 12, 2014 and (3) to complete expert depositions by June 9, 2014. Because the work of Defendants' experts is intended to be responsive to that of Plaintiffs' experts, the current schedule presents a conundrum for Defendants' experts, who must speculate about the theories and analyses that Plaintiffs' experts may present. Defendants respectfully submit that Defendants should have an opportunity to review Plaintiffs' expert reports and depose Plaintiffs' experts prior to submitting their own experts' reports. Accordingly, Defendants respectfully request that the Court consider a schedule that allows for the following sequence:
 - Plaintiffs' expert reports
 - Depositions of Plaintiffs' experts
 - Defendants' expert reports
 - Depositions of Defendants' experts
- The current schedule requires all motions for class certification, motions for summary judgment and Daubert motions to be filed concurrently by August 11, 2014, with Oppositions due by October 9, 2014 and Replies due by November 10, 2014. Because of the importance of the issue of class certification, both for clarifying the scope of the case for summary judgment purposes and for informing the potential settlement positions of the parties, Defendants submit that it would be useful to have class certification adjudicated in advance of the merits and damages.

Dated: October 16, 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
Elana Katcher
**KAPLAN FOX &
KILSHEIMER LLP**
850 Third Avenue
New York, NY 10022
212-687-1980

Ronald J. Aranoff
Dana Statsky Smith
Tania T. Taveras
**BERNSTEIN LIEBHARD
LLP**
10 East 40th Street
New York, NY 10016
212-779-1414

Jay L. Himes
Robin A. van der Meulen
**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/ Thomas H. 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

/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@flanaganpartners.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 Regarding Issues to Be Discussed at the October 21, 2013 Status Conference 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 16th day of October, 2013.

/s/ Leonard A. Davis

LEONARD A. DAVIS

Elana Katcher

From: Gregory Arenson
Sent: Saturday, January 26, 2013 3:57 PM
To: 'Cairo, Deana L.'
Cc: Robert Kaplan; Richard J. Kilsheimer; Elana Katcher; Damien Weinstein; 'Ronald J. Aranoff'; Dana S. Smith; 'hsalzman@labaton.com'; 'Himes, Jay L.'; 'Hollywood, Meegan F.'; Russ Herman ; Adam Weintraub
Subject: Pool Products Antitrust Litigation

Deana,

We have (1) questions concerning the transaction data produced to date by Pool Corp. and (2) inquiries concerning further production of transaction data by Pool Corp.

Questions About Transaction Data Produced To Date By Pool Corp.

1. Concerning the information contained in the files “2005 GPS invoice item report,” “2006 GPS invoice item report,” “2007 GPS invoice item report,” “2008 GPS invoice item report,” “2009 GPS invoice item report,” and “2010 GPS invoice item report”:
 - a. Please confirm that these files contain data on sales by General Pool & Spa Supply (“GPS”), which was acquired by Pool Corp. in October 2009.
 - b. What is the geographic coverage of the data in each file? Do these files cover sales only from U.S. branches? Does Pool Corp. maintain similar data for non-U.S. branches? If so, for what geographic regions?
 - c. In the field “GPS branch_description” is the name of the GPS or Pool Corp. branch the one (1) from or at which the sale transaction was made, (2) from which the shipment originated, or (3) something else? If the last, what is it?
 - d. Please provide a further description of the values contained in the field “GPS product description”? For example, please provide the meaning of the acronyms, codes and technical terms in the description “LRS LT400 NG IID Electronic Low NOx Heat”?
 - e. What do negative values in the field “qty_shipped” represent?
 - f. What do the values in the field “cogs_amount” include?

- i. Do the values represent only the procurement cost paid by GPS or Pool Corp. to manufacturers?
 - ii. Do the values include any costs incurred by GPS or Pool Corp. other than procurement costs?
 - g. What do negative values in the field “cogs_amount” represent?
 - h. What do the values in the field “extended_price” represent?
 - i. Are these values net of rebates, discounts and customer credits?
 - ii. If the values are not net of rebates, discounts and customer credits, is information available sufficient to adjust these values for rebates, discounts and customer credits? If so, what additional information would be required?
 - iii. Are these values inclusive of freight charges? If so, do the values in the “freight” field identify the amount of the freight charges included in the “extended_price?”
 - i. What do negative values in the field “extended_price” represent?
 - j. What do the values in the field “carrier_name” represent? For example, what does the value “GPS San Jose” in the field “carrier_name” represent? Please describe each of the values in the field “carrier_name.”
 - k. What do the values “Y” and “N” signify in the field “front_counter”?
 - l. Confirm that the values in the field “freight” represent freight charges associated with each invoice delivery. In what units are the values in the field “freight” measured?
2. Concerning the information contained in the spreadsheets “GPS 2005,” “GPS 2006,” “GPS 2007,” “GPS 2008,” “GPS 2009,” and “GPS 2010 YTD” contained in the file “Specification #8 GPS 2005-10”:
 - a. Please confirm that these spreadsheets contain data on purchases of products from manufacturers by GPS.
 - b. What do the values in the field “CC Name” represent?
 - c. Please confirm that the values in the field “name” represent the manufacturer of the products from which GPS or Pool Corp. purchased the product.

- d. Please confirm that the values in the field “item_description” represent a description of a product. Is there a direct correspondence between the values in the “item_description” field of the spreadsheets in the “Specification #8 GPS 2005-10” file and the values in the field “GPS product description” in the GPS invoice item report files? If so, what is the correspondence?
 - e. Can GPS’s or Pool Corp.’s purchases of products be accurately linked to the sale of the same products by matching the values in the fields “item_description” and “received_date” in a spreadsheet in the “Specification #8 GPS 2005-10” file to the values in the fields “GPS product description” and “invoice_date” in a GPS invoice item report file? If not, is there any other method to accurately link Pool Corp.’s or GPS’s purchases with its sales of products?
 - f. What do the values in the “unit_price” field represent?
 - i. Are these values net of rebates, discounts and customer credits?
 - ii. If the values are not net of rebates, discounts and customer credits, is information available sufficient to adjust these values for rebates, discounts and customer credits? If so, what additional information would be required?
 - iii. Are these values inclusive of freight charges? If so, do the values in the “freight_amount” field identify the amount of the freight charges included in the “unit_price?”
 - g. Please confirm that the values in the field “freight_amount” represent freight charges associated with each invoice delivery. In what units are the values in the field “freight_amount” measured?
3. Concerning the information contained in the files “OH_EXTRACT_2006,” “OH_EXTRACT_2007,” “OH_EXTRACT_2008,” “OH_EXTRACT_2009,” and “OH_EXTRACT_2010”:
- a. Please confirm that these files contain data on sales by Pool Corp. that are separate from sales by GPS.
 - b. Please provide a heading for each field in the OH_EXTRACT files.
 - c. Please provide a description of the contents of each field in the OH_EXTRACT files.

4. Concerning the “Price Source Descriptions” file that accompanied the OH_EXTRACT files:
 - a. What do the values in the “PRICE SOURCE DESCRIPTIONS” field represent?
 - b. How, if at all, does the “Price Source Descriptions” file relate to the OH_EXTRACT files?
5. Concerning the information contained in the files “RECEIVE_EXTRACT_2006,” “RECEIVE_EXTRACT_2007,” “RECEIVE_EXTRACT_2008,” “RECEIVE_EXTRACT_2009,” “RECEIVE_EXTRACT_2010,” “RECEIVE_EXTRACT2_2005,” and “RECEIVE_EXTRACT_SPP”:
 - a. Please confirm that these files contain data on purchases of products from manufacturers by Pool Corp. that are separate from purchases of products from manufacturers by GPS.
 - b. Please provide a heading for each field in the RECEIVE_EXTRACT files?
 - c. Please provide a description of the contents of each field in the RECEIVE_EXTRACT files?
 - d. Is the data contained in the “RECEIVE_EXTRACT_SPP” file different in product scope, geographic scope, sales channel or in any other way from the data contained in the other RECEIVE_EXTRACT files, each of which is specific to a particular year? If so, please describe each way it differs.
 - e. Does the acronym “SPP” in the filename “RECEIVE_EXTRACT_SPP” refer to Superior Pool Products, LLC? If not, then to what, if anything, does it refer?
 - f. Is there a method by which the purchases of products shown in the RECEIVE_EXTRACT files can be accurately linked to the sale of the same products shown in the OH_EXTRACT files? If so, please provide a description of that method.

Inquiries Concerning Additional Transaction Data From Pool Corp.

5. The following items were requested as part of the Direct Purchaser Plaintiffs’ Categories of Documents and Information for Discovery served on August 23, 2012, but they do not appear to be contained in the GPS invoice item report files, the OH_EXTRACT files, or the RECEIVE_EXTRACT files. If any item is contained in these files, please identify the field or fields in which it may be found. If an item is not contained in these files, please tell us whether Pool Corp. maintains the information and whether it can be produced with links to corresponding records in these files.

- a. customer address;
 - b. ship-to name and address;
 - c. point shipped from;
 - d. date shipped;
 - e. discounts, credits, debits, rebates, or other adjustments;
 - f. party paying shipment costs.
6. Does Pool Corp. maintain the following information?
- a. Information to accurately link sales of products to a Pool Corp. customer that are sold to that customer under a single sales agreement or purchase order (sometimes referred to as a “bundle” of products);
 - b. The brand of each product sold by Pool Corp. in each transaction;
 - c. Any information not otherwise contained in the transaction data produced to date regarding product characteristics for each transaction;
 - d. Whether a sales transaction is a spot transaction or is made under a contractual agreement, and, if the latter, an identifier for the contract;
 - e. Whether the customer is a pool builder, a pool retail store, a pool service and repair company, or other type of business operation;
 - f. The credit rating recorded by Pool Corp. or GPS for each customer;
 - g. The location where the purchase order was taken for each sales transaction, if not the Pool Corp. or GPS branch recorded in the transaction data produced to date;
 - h. Whether or not the purchase order relating to the sales transaction between Pool Corp. or GPS and the customer was conducted as an on-line transaction.
7. The transaction data which Pool Corp. has produced is through October 29, 2010 in the GPS invoice item report files, through September 30, 2010 in the “Specification #8 GPS 2005-10” file, and through September 30, 2010 in the OH_EXTRACT files and the RECEIVE_EXTRACT files. The Court has directed that transaction data be produced through June 1, 2012. Please produce any transaction data for

2010 that has not been produced to date, and please produce transaction data for 2011 and for January 1 through June 1, 2012, and advise us when it shall be produced.

8. The data described above in paragraphs 1, 2 and 5 begins in January 2005. Does Pool Corp. have sales data in the same format, or in any other format, either stored electronically or in paper form, for the period January 1, 1998, through December 31, 2004, or any portion of that time?
9. The data described above in paragraphs 3 and 4 begins in 2006. Please confirm that all of this type of data that is available has been produced for 2006, and, if it has not, then please produce any missing data for that year. Does Pool Corp. have this type of data in the same format or in any other format, either stored electronically or in paper form, for the period January 1, 1998, through December 31, 2005, or any portion of that time?

We appreciate your consideration of these matters and would like to schedule a call to discuss.

Greg

Gregory K. Arenson
Kaplan Fox & Kilsheimer LLP
850 Third Ave, 14th Floor
New York, NY 10022
Tel. (212) 687-1980
Fax. (212) 687-7714
E-mail: garenson@kaplanfox.com

Attachment B

Depositions of Defendant Witnesses Taken by DPPs			
<u>Date</u>	<u>Deponent Name</u>	<u>Company Affiliation</u>	<u>Deposition Location</u>
March 19, 2013	Jon Damaska	Zodiac	Chicago, IL
March 20, 2013	Scott Bushey	Zodiac	Chicago, IL
April 3, 2013	Pentair 30(b)(6) on Code of Conduct	Pentair	Raleigh, NC
April 4, 2013	Pentair 30(b)(6) on Corporate Structure & HR	Pentair	Raleigh, NC
April 16, 2013	Enrique Gomez	Zodiac	Miami, FL
April 17, 2013	David Albee	Hayward	Newark, NJ
April 18, 2013	Doug Bragg	Hayward	Newark, NJ
April 18, 2013	Pentair 30(b)(6) on IT	Pentair	Raleigh, NC
April 19, 2013	Stephen Markowitz	Zodiac	Philadelphia, PA
April 23, 2013	Craig Goodson	Zodiac	Atlanta, GA
May 2, 2013	Pool Corp. 30(b)(6) on Pricing & Acquisitions	PoolCorp	New Orleans, LA
May 3, 2013	Melanie Housey	PoolCorp	New Orleans, LA
May 7, 2013	Robert Nichols	Hayward	Newark, NJ
May 8, 2013	Bill Cook	PoolCorp	New Orleans, LA
May 8, 2013	Paul Walter	Pentair	Las Vegas, NV
May 9, 2013	Darren Coleman	Pentair	Las Vegas, NV
May 10, 2013	Fred Manno	Hayward	Newark, NJ
May 15, 2013	John Oster	Pentair	Indianapolis, IN
May 15, 2013	Paul Snopek	Pentair	Indianapolis, IN
May 16, 2013	Scott Cummings	Pentair	Indianapolis, IN
May 22, 2013	John Hulme	PoolCorp	Boston, MA
May 23, 2013	Dan Porter	Pentair	Houston, TX
May 23, 2013	Jon Cannon	Pentair	Houston, TX
May 29, 2013	Greg Kahle	Pentair	Atlanta, GA
May 30, 2013	Mike Echols	Pentair	Atlanta, GA
June 4, 2013	William Witmarsh	Hayward	Newark, NJ
June 19, 2013	Thomas Canaday	PoolCorp	New Orleans, LA
June 25, 2013	Dale O'Dell	PoolCorp	New Orleans, LA

Attachment B

June 26, 2013	Tom Dissinger	Hayward	Newark, NJ
June 26, 2013	Rick Postoll	PoolCorp	New Orleans, LA
July 9, 2013	David Nibler	Zodiac	San Diego, CA
July 10, 2013	Barry Greenwald	Zodiac	San Diego, CA
July 11, 2013	Anthony Prudhomme	Zodiac	Los Angeles, CA
August 6, 2013	Jody Smith	Zodiac	Portland, OR



DLA Piper LLP (US)
500 Eighth Street, NW
Washington, DC 20004
www.dlapiper.com

Deana L. Cairo
deana.cairo@dlapiper.com
T 202.799.4523
F 202.799.5523

August 22, 2013

VIA ELECTRONIC MAIL

Gregory Arenson, Esq.
Kaplan Fox & Kilsheimer LLP
850 Third Avenue, 14th Floor
New York, New York 10022

**Re: *In re Pool Products Distribution Market Antitrust Litigation, 2:12-MD-02328 (SSV)*
(JCW)**

Dear Greg:

We are in receipt of your letter dated August 1st. With regard to the questions that you raise about those data that Pool Corporation produced on July 11th, we believe that because there have been continuing questions about the nature of those data over the past year, it would be the most efficient and useful for you to get your questions answered via a deposition. We are happy to discuss scheduling such a deposition at a mutually convenient time for both Plaintiffs and Pool Corporation.

With respect to your “demand” that we produce purchase data for October 1, 2010 through June 1, 2012, your “request” is not proper or timely and it has not been outstanding for seven months as you assert. As you know, this Court ordered the parties to exchange “wish lists” of categories of documents and data that were subject to an extensive meet-and-confer process with all parties and raised in a discovery conference with the Court in October 2012. A request for purchase data never appeared on your wish list, nor was it raised at the October discovery conference. That conference culminated in an Order, and purchase data is not a part of that Order.

More recently, you served formal document requests pursuant to Fed. R. Civ. Pro. 26 that the Court largely disallowed, and the Court reiterated to the parties that there were to be no requests for documents or data that were not approved by the Court in advance. The request for purchase data was not even in those (improper) requests.

You also made several requests for data in an email dated June 3, 2013. That email, among other things, requested that we produce the purchase data. The June 3rd email containing your request was provided by me to the Court in anticipation of our June 20th status conference, and you provided all other correspondence related to the transaction data. At the conference in Chambers on June 20th prior to the conference, the Court asked your colleagues about the data

Gregory Arenson, Esq.

Page Two

Direct Purchaser Plaintiffs were seeking, and your colleagues did not raise the purchase data, despite being given ample opportunity to do so.

These multiple requests for data and questions outside the process set out by the Court are not justified and reflect exactly the concerns we raised with the Court in chambers on June 20th -- that this is a process whereby Plaintiffs are attempting to get discovery to which they are not entitled and to exact "death by a thousand paper cuts" by continuing to impose undue burdens on Pool Corporation.

Sincerely,

A handwritten signature in black ink, appearing to read "Deana L. Cairo". The signature is written in a cursive, flowing style.

Deana L. Cairo

cc: Russ M. Herman, Esq.
Thomas Brill, Esq.
Ronald J. Aranoff, Esq.
Jay Himes, Esq.
Brent Justus, Esq.
Richard Hernandez, Esq.
Melinda Levitt, Esq.
Michael Lockerby, Esq.
Wayne Lee, Esq.
Robert N. Kaplan, Esq.
Elana Katcher, Esq.
William Gaudet, Esq.