

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**

**PRETRIAL ORDER NO. 30**

The Court held a Status Conference on August 14, 2014, at which it addressed the request raised by Direct-Purchaser Plaintiffs ("DPPs") in the Joint Report<sup>1</sup> of the parties that the Court revisit its Order dated July 9, 2014<sup>2</sup> granting defendants' Motion to Strike the Supplemental Report of DPPs' expert, Dr. Gordon Rausser.<sup>3</sup> As indicated in Pretrial Order No. 29<sup>4</sup> and this Court's Order<sup>5</sup> of August 22, 2014, the Court has decided to permit DPPs to submit Dr. Rausser's Supplemental Report, subject to certain conditions and restrictions. Specifically:

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<sup>1</sup> R. Doc. 441.

<sup>2</sup> R. Doc. 432.

<sup>3</sup> R. Doc. 425.

<sup>4</sup> R. Doc. 458.

<sup>5</sup> R. Doc. 463.

1. Defendants' experts shall have until October 14, 2014 to analyze Dr. Rausser's Supplemental Report and to serve written critiques of the Supplemental Report.
2. DPPs' counsel shall make Dr. Rausser available for an additional one-day deposition on October 28, 2014 at a mutually agreeable location to be determined in Washington, D.C.
3. The reasonable expenses incurred by defendants in connection with items 1 and 2 above shall be paid by DPPs' counsel. Such expenses shall include the fees and costs of the defense experts in analyzing the Supplemental Report and in writing their critique, as well as the fees and expenses of defense counsel in assisting the experts, as needed, and in preparing for and taking the deposition of Dr. Rausser. Good faith estimates of the expenses anticipated by the Pool Defendants and the Manufacturer Defendants have been provided to the Court and DPPs' counsel.<sup>6</sup> Ten days prior to defendants' submission to the Court of actual expenses incurred, counsel for the respective defendants shall provide drafts of their respective submissions to DPPs' counsel for review. Counsel for the respective defendants and DPPs shall meet and

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<sup>6</sup> R. Docs. 464 & 465.

confer regarding the payment of the fees and expenses sought. Ten days following the provision of these draft submissions to DPPs' counsel, counsel for the respective defendants shall provide their final submissions to the Court setting forth the actual expenses incurred, incorporating any adjustments agreed to during the meet-and-confer period, and identifying any parts of the submission that are not agreed to and that require the Court's resolution, so that an appropriate Order can be entered regarding payment by DPPs' counsel. 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.

4. All dates established in prior Orders relating to the filing deadlines for briefing on summary judgment, class certification, and *Daubert* motions are hereby vacated, and the following dates shall apply. All briefing remains subject to the page limits set forth in Pretrial Order No. 24.<sup>7</sup>

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<sup>7</sup> R. Doc. 416.

- a. All motions for summary judgment, motions for class certification, and *Daubert* motions shall be filed no later than November 24, 2014.
  - b. All responses to said motions shall be filed no later than February 6, 2015.
  - c. All replies in support of said motions shall be filed no later than March 10, 2015.
5. The dates established in Pretrial Order No. 25<sup>8</sup> for resolving objections to exhibits submitted in connection with summary judgment motions are hereby modified as follows:
  - a. Opposing parties shall provide objections to individually listed documents within 21 days of receipt of a motion for summary judgment or response or reply thereto.
  - b. The two sides shall use the period between March 10, 2015 and April 7, 2015 to attempt to resolve objections.
  - c. The two sides shall submit unresolved objections to the Court, in the format described in Pretrial Order No. 25, by April 14, 2015.
6. DPPs will not be permitted to submit any additional report or other analysis or calculation beyond what is

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<sup>8</sup> R. Doc. 427.

contained in Dr. Rausser's reports submitted to date, except for the summary report called for by paragraph 3(a) of Pretrial Order No. 29. Defendants will not be permitted to submit any additional reports or other analyses or calculations beyond what are contained in the reports of defendants' experts submitted to date and their critiques provided for in paragraph 2(b) of Pretrial Order No. 29. Furthermore, no party shall be permitted to submit any analysis from any expert who has not previously submitted an expert report in accordance with Pretrial Order No. 20.

7. Any experts who have previously submitted expert reports in accordance with Pretrial Order No. 20 are permitted to submit a supplemental affidavit or declaration of no more than 20 pages: (a) in opposition to a *Daubert* motion seeking to disqualify that expert or to exclude any portion of that particular expert's testimony, provided that the affidavit or declaration shall be responsive to the arguments made in the motion; (b) to defend an opinion previously expressed by that particular expert in his or her report(s) or deposition testimony in response to an opposing party's argument(s) in a motion for class certification or for summary judgment; or (c) in support of a *Daubert*

motion, provided that the scope of any such affidavit or declaration shall be based on the opinions expressed by that expert in a prior report or deposition testimony and shall not contain any new opinions, analyses, theories, or conclusions. *See Union Pump Co. v. Centrifugal Tech. Inc.*, 404 F. App'x 899, 909 (5th Cir. 2010) (holding that District Court did not abuse its discretion in limiting expert testimony at trial to scope of expert report and citing duty to disclose expert opinions under F.R.C.P. 26(a)(2)).

New Orleans, Louisiana, this 27th day of August, 2014.



A handwritten signature in black ink, reading "Sarah S. Vance", is written over a horizontal line.

SARAH S. VANCE  
UNITED STATES DISTRICT JUDGE