

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: POOL PRODUCTS
DISTRIBUTION MARKET ANTITRUST
LITIGATION

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MDL No. 2328
SECTION: R(2)

This Document Relates To: All Actions

**Judge Vance
Mag. Judge Wilkinson**

STIPULATED PROTECTIVE ORDER

Plaintiffs and Defendants by their respective undersigned counsel stipulate and agree that, upon entry by the Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the following Stipulated Protective Order (the “Order”) shall govern the disclosure of Materials in the Action, including Materials produced by non-parties.

Definitions

1. “Action” means the action captioned *In re: Pool Products Distribution Market Antitrust Litigation*, Case No. 2:12md02328-SSV-JCW (E.D. La.), which is currently pending in the United States District Court for the Eastern District of Louisiana, and includes all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer (including but not limited to “tag-along” actions), and all actions that may be transferred in the future.
2. “Confidential Information” shall refer collectively to all Materials designated “Confidential” or “Highly Confidential.”

3. “Court” or “District Court” shall refer to the United States District Court for the Eastern District of Louisiana and the Honorable Sarah S. Vance, Magistrate Judge Joseph C. Wilkinson, Jr., or their successors.

4. “Disclose” means to show, give, produce, make available, reproduce, communicate, process, paraphrase, summarize, or excerpt, in whole or in part, by any means or medium.

(a) “Disclosing Party” means the Party that Discloses Confidential Information produced by any other Party or Person.

5. “Document” is defined to be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure.

6. “Defendant” means any defendant identified in the Consolidated Amended Complaint to be filed in the Action or any of its parents, subsidiaries or affiliated entities.

7. “Electronically Stored Information (ESI)” is defined to be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure.

8. “Materials” means all Documents, ESI, items, or other information, regardless of the medium or manner generated, stored or maintained (including, among other things, testimony, transcripts, or tangible things), that are produced or generated in disclosures or responses to discovery in the Action, any copies, reproductions, or summaries, and their content.

9. “Parties” means Defendants and Plaintiffs.

10. “Party” means any of the Parties.

11. “Producing Party” means the Party or Person, including non-parties, which has produced Confidential Information or any of a non-party’s parents, subsidiaries or affiliated entities.

12. “Person” means any natural person, partnership, corporation, association, or other legal entity, as well as its parents, subsidiaries, affiliates, board members, officers, employees, agents, attorneys, and representatives.

13. “Plaintiff” means any of the plaintiffs identified in the Consolidated Amended Complaint to be filed in the Action or any of its parents, subsidiaries or affiliated entities.

General Provisions

14. This Order shall be binding on: (a) the Parties; (b) counsel for any of the Parties; (c) any other Person who receives or possesses Materials produced by a Producing Party; and (d) non-parties to the extent they are Producing Parties.

15. To preserve legitimate proprietary and privacy interests and to protect confidential business and trade secret information, some of which may be competitively sensitive, consistent with the public’s right of access to the Court’s records and processes, this Order establishes procedures for Producing Parties’ production of Materials; imposes restrictions upon Persons who may receive Materials produced by Producing Parties; and imposes obligations on Persons receiving such Materials to protect it from unauthorized use or Disclosure. Materials produced by the Producing Parties shall not be used or Disclosed by any Person except as expressly permitted by this Order.

16. The provisions of this Order extend to all information and materials produced by the Producing Parties, regardless of the manner in which they are Disclosed, including, without limitation, Materials, interrogatory answers, responses to requests for admissions, deposition

transcripts, deposition exhibits, and any copies, notes, abstracts, or summaries of the foregoing materials.

Confidential Information

17. A Producing Party may designate all or any part of a Document or ESI produced as “Confidential” or “Highly Confidential,” as described below. Such designations may be made with respect to any information or material, regardless of the manner in which it is Disclosed, including, without limitation, responses to document requests, interrogatory answers, responses to requests for admissions, deposition transcripts, deposition exhibits, and any copies, notes, abstracts, or summaries of the foregoing materials.

(a) “Confidential” Materials shall mean Materials that the Producing Party reasonably believes may reveal a trade secret or other confidential research, development, or financial information that is commercially sensitive or is personal information relating to an identified or identifiable natural Person that is protected from disclosure by statute, regulation, or otherwise is entitled to protection from public disclosure. An “identifiable” person is one who can be identified directly or indirectly, including without limitation, by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural, or social identity. The Producing Party shall affix the following designation on such material: “Confidential – Protected by Court Order.” To the extent that ESI is produced in such form, the Producing Party may designate such Materials as “Confidential” by a cover letter referring generally to such matter and by affixing (where possible) a label on the ESI or its casing indicating such designation.

(b) “Highly Confidential” Materials shall mean Materials that the Producing Party reasonably believes contains or reflects trade secrets, “know-how,” customer information,

financial and marketing information, or other competitively sensitive commercial information (including, but not limited to, e.g., cost information, pricing, or sales information), the disclosure of which to another Party or non-party would create a substantial risk of causing the Producing Party to suffer a significant competitive or commercial disadvantage. The Producing Party shall affix the following designation on such material: “Highly Confidential – Protected by Court Order.” To the extent that ESI is produced in such form, the Producing Party may designate such Materials as “Highly Confidential” by a cover letter referring generally to such matter and by affixing (where possible) a label on the ESI or its casing indicating such designation.

18. The following procedures shall govern any challenges to a Producing Party’s confidentiality designations:

(a) If a Party reasonably believes that material should not have been designated “Confidential” or “Highly Confidential,” it must provide the Producing Party with a written objection that identifies the material at issue and states the basis for the objection. The Producing Party must respond in writing within ten (10) business days, or within such additional time as is reasonable and is agreed to by counsel or ordered by the Court.

(b) If a Party is not satisfied by the Producing Party’s response, it may move the Court to lift or change the confidentiality designation, as may be appropriate. It shall be the Producing Party’s responsibility on any such motion to demonstrate the appropriateness of its confidentiality designation.

(c) Until the Court makes a final ruling, the original confidentiality designation shall remain in effect. If, in a final ruling, the Court orders that the Materials were not appropriately designated, the original designation shall remain in effect for ten (10) business days after the Court’s order, during which time the Producing Party shall re-designate and

reproduce the Materials as appropriate. Other Persons that received the mis-designated Materials at issue shall promptly return all copies of such Materials to the Producing Party or certify their destruction.

Disclosure of Confidential Information

19. Each Person to whom Confidential Information is Disclosed, except those Persons identified in paragraph nos. 20(b), (c), (d), (f), (g), (j) and (k) and 21(a), (d), (e), (g), (h), (j) and (k) shall, before receiving any Confidential Information as set forth in this paragraph, agree in writing to be bound by this Order by signing a Declaration in the form annexed hereto as Exhibit A. Such Declarations shall be maintained by counsel for the Disclosing Party.

20. Subject to the other restrictions in this Order, Materials designated as “Confidential” may be Disclosed only to:

- (a) The Parties in the Action and any employees of the Parties who are actively involved in the prosecution or defense of claims in the Action;
- (b) The Court and appropriate court personnel;
- (c) Outside counsel for any Party who are retained to assist the party in question in the prosecution or defense of claims in the Action;
- (d) Members of the legal, paralegal, secretarial or clerical staff of such counsel who are assisting in or responsible for working on the claims in the Action;
- (e) In-house counsel for any Party specifically assigned by the party in question to provide or assist in providing legal advice on the prosecution or defense of claims in the Action;
- (f) Any Person who was either an author or recipient of the material prior to the intended Disclosure in the Action, or who either is identified in the material or who is

reasonably believed to have (or to have had) job responsibilities at the Producing Party for the subject matter of the material, provided, however, that: (A) such Disclosure shall be only during the course of an interview, deposition, hearing, or trial in the Action concerning the claims in the Action; and (B) Counsel for the Disclosing Party shall undertake reasonable efforts not to Disclose any unrelated proprietary, personal, or commercially sensitive information during the course of an interview, deposition, hearing, or trial in the Action concerning the claims in the Action;

(g) Current employees of the Producing Party;

(h) Any other Person authorized to receive such information by prior written consent of the Producing Party or prior order of this Court;

(i) Consulting or testifying experts retained by Parties for assistance in the prosecution or defense of claims in the Action;

(j) Private arbitrators and mediators involved in resolving disputes over claims in the Action; and

(k) Litigation support personnel involved in the Action, including court reporters, court videographers, Persons providing data management and analysis services, and copy vendors.

21. Subject to the other restrictions in this Order, Materials designated as “Highly Confidential” may be Disclosed only to:

(a) The Court and appropriate court personnel;

(b) In-house counsel for each Party specifically assigned by the Party in question to provide or assist in providing legal advice on the prosecution of claims in the Action,

except that such in-house counsel are prohibited from sharing the Materials with any other company employees;

(c) For any Party that has no in-house counsel, an officer of the Party assigned to provide or assist in providing advice on the prosecution of claims in the Action and to no other employees of the Party, subject to the following provisions:

(1) Contemporaneous with informing Defendants which plaintiffs will appear in the amended complaint, Plaintiffs also will identify each person selected as a person who may receive disclosure under this subpart (c) (a “21(c) Recipient”);

(2) Within ten days of identification, Defendants may inform Plaintiffs that they object to any 21(c) Recipient receiving Materials designated as Highly Confidential; and

(3) If, after objection, the Parties cannot agree on a substitute 21(c) Recipient, Defendants may apply to the Court for appropriate relief and will, on any such motion, have the burden of showing cause for rejecting the 21(c) Recipient objected to.

(d) Outside counsel for any Party who are retained to assist the Party in the prosecution or defense of claims in the Action;

(e) Members of the legal, paralegal, secretarial or clerical staff of outside counsel for any Party who are assisting in or responsible for working on the claims in the Action;

(f) Consulting or testifying experts retained by Parties for assistance in the prosecution or defense of claims in the Action;

(g) Litigation support personnel involved in the Action, including court reporters, court videographers, Persons providing data management and analysis services, and copy vendors;

(h) Any Person who was an author or recipient of the material prior to the intended Disclosure in the Action or who is identified in the material, provided, however, that: (A) such Disclosure shall be only during the course of an interview, deposition, hearing, or trial in the Action concerning the claims in the Action; and (B) Counsel for the Disclosing Party shall undertake reasonable efforts not to Disclose any unrelated proprietary, personal, or commercially sensitive information during the course of an interview, deposition, hearing, or trial in the Action concerning the claims in the Action;

(i) Any other Person authorized to receive such information by prior written consent of the Producing Party or prior order of this Court;

(j) The Producing Party's current employees; and

(k) Private arbitrators and mediators involved in resolving disputes over claims in the Action.

22. No pleading or motion papers will be sealed. If Confidential Information must be filed (whether contained in source documents or in portions of a pleading or motion paper), it will be filed in an appendix to the pleading or motion paper that refers to it, with an accompanying motion and order to seal in compliance with Local Civil Rule 5.6, as to the appendix only. In filing papers pursuant to this paragraph, the parties will not seek to file under seal any more of the papers than is reasonably necessary to protect Confidential Information from disclosure. References in pleadings or motion papers filed in the public file must be sufficiently abstract so as not to disclose the Confidential Information.

**Disclosure of Confidential Information During Interviews,
Depositions, and Pre-Trial Proceedings**

23. No Person shall Disclose Confidential Information during the course of any interview, deposition, or pre-trial proceeding in the Action, except under the terms authorized in

this Order. In no event shall any interviewee, deponent, or witness retain copies of material designated as Confidential Information. Deponents may keep a copy of their deposition transcript on the condition that they sign Exhibit A.

24. The Producing Party may designate any or all deposition testimony given in the Action as “Confidential” or “Highly Confidential.” If so requested, the reporter shall separately bind the portion(s) of the transcript containing Confidential Information and any related exhibits, and shall mark each page of such portion(s) and exhibits, as appropriate, as “Confidential – Protected By Court Order” or “Highly Confidential – Protected By Court Order.” Any Document designated as Confidential Information that is introduced as an exhibit in any deposition in the Action shall be labeled in a similar fashion, as appropriate. Additionally, within thirty (30) days after receiving a deposition transcript, the Producing Party may request that a portion of the transcript be marked as Confidential Information as described above. Until the expiration of thirty (30) days after the Producing Party receives a deposition transcript, the entire deposition transcript will be treated as “Highly Confidential” under this Order, unless otherwise agreed by the Parties. Thereafter, any portion of the transcript not designated as Confidential Information shall not be so treated. Any other media containing portions of the deposition designated “Confidential” or “Highly Confidential,” including, but not limited to, videotapes or computer ASCII-type disks, also shall be clearly labeled by the reporter as such.

Miscellaneous

25. The failure to designate information in accordance with this Stipulation shall not preclude a party from seeking to impose such a designation. In the event a party discovers that it inadvertently produced Confidential Information without marking it in accordance with this Stipulation, that party may provide written notice to the receiving party that the material should be treated as Confidential Information. Upon receipt of such notice, the receiving party shall treat such information as Confidential Information and upon receipt of properly marked material, shall return or destroy the unmarked copies.

26. Any Person who has received Materials subject to this Order who receives a request or subpoena for production or Disclosure of such material shall immediately give written notice to the Producing Party's outside counsel identifying the information sought and providing a copy of the request or subpoena. The Person subject to the request or subpoena shall not produce or Disclose the requested material unless: (a) the Producing Party consents in writing; (b) the Producing Party fails to seek relief from the subpoena or request within thirty (30) days of receiving notice; or (c) notwithstanding the Producing Party's request for relief, production or Disclosure is ordered by a court of competent jurisdiction.

27. To the extent that any Person creates, develops, or otherwise establishes on any digital or analog machine-readable device, recording media, computers, discs, networks, or tapes any information, files, databases, or programs that contain Confidential Information, that Person and/or its counsel must take all necessary steps to insure that access to that device or media is restricted to those Persons who, by the terms of this Order, are permitted to receive such Confidential Information.

28. This Order shall apply to non-parties who are obliged to provide discovery by deposition, production of documents or otherwise in the Action, if such non-party requests protection of this Order as to the non-party's Confidential Information and complies with the provisions of this Order. Any information produced by a non-party in this litigation will be designated "Highly Confidential" materials for thirty (30) days if not so designated by the producing non-party, to allow any other Party or non-party to the litigation to seek the protections of this Order for any of its own Confidential Information contained therein. Any such designations must be made within thirty (30) days and must otherwise comply with the provisions of this Order.

29. Within ninety (90) days of the date that final judgment has been rendered with respect to the claims against all Defendants in the Action, Persons who received Confidential Information governed by this Order shall destroy all Confidential Information and provide a written certification of such destruction to the Producing Parties, except that outside counsel may retain a copy of any pleading or attorney work product, court order, or deposition, hearing or trial transcript, including any exhibits, that contain Confidential Information, which shall continue to be treated as such in accordance with the terms of this Order. Notwithstanding the foregoing, Plaintiffs' Counsel may retain Materials necessary for the administration of any class settlements in the Action and the distribution of funds to class members. Within sixty days after the final distribution of funds to class members, including all appeals, any such Materials or materials shall be destroyed or retained as described above.

30. Nothing in this Order shall be construed to require any Party to commit any act, including the transmittal or Disclosure of any information, that would violate any federal, state, or local law.

31. Nothing in this Order shall prohibit any Party from seeking further protection for Materials produced either by stipulation among the Parties or by application to the Court.

32. Nothing in this Order shall restrict the use by a Party of its own Materials.

33. In accordance with Local Civil Rule 5.6(H), nothing in this Order shall require hearing or trial exhibits, including Materials previously filed under seal, or trial or hearing transcripts to be filed under seal.

34. This Order is without prejudice to a Party's right to assert the attorney-client privilege, attorney work-product protection, or any other privilege or objection.

35. Neither this Order nor the Disclosure of Materials shall be deemed a concession or determination of the relevance, materiality, or admissibility of Materials governed by or Disclosed under this Order.

36. This Order shall survive the termination of the Action and shall continue in full force and effect until otherwise ordered by the Court. The Court shall retain jurisdiction to enforce or modify this Order.

37. Parties, counsel and others subject to this Order are advised that the failure to comply with this Order may be considered contempt of court and/or sanctionable conduct.

Dated: June 15, 2012

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DONE AND ORDERED this 25th day of
June, 2012.



SARAH S. VANCE
United States District Judge

EXHIBIT A

IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION – MDL No. 2328, Case No. 2:12mdl02328-SSV-JCW

I hereby acknowledge that I, [name], [position of employment], am about to receive Confidential Information supplied by a Producing Party in *In re: Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328, Case No. 2:12mdl02328-SSV-JCW. I certify my understanding that such information will be provided to me pursuant to the terms and restrictions of the Court's Order of _____, 2012, and that I have been given a copy of and have read this Order and agree to be bound by its terms. I understand, agree, and represent that such materials, or any notes, copies, or other records that may be made regarding any such matter, shall not be Disclosed to any Persons, used, or otherwise Processed except as provided in that Order. I am in a position and able and willing to comply with that Order. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated:

(Type or Print)

Name:

Signature

Title:

Address:

Phone: