

**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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**PLAINTIFFS' NINTH STATUS REPORT ON FACT DISCOVERY PURSUANT TO
PRETRIAL ORDER NO. 17**

Pursuant to the Court's Pretrial Order Number 17, entered on March 7, 2013, direct purchaser plaintiffs ("DPPs") and indirect purchaser plaintiffs ("IPPs") hereby submit their Ninth Status Report on the status of fact discovery. The DPPs' report on the status of discovery is included as Section I, the IPPs' report is included as Section II, and a report on the status of third-party discovery is included as Section III.

I. Status Report by the DPPs

a. Discovery From Defendants to DPPs

i. Transaction Data

On June 3, 2013, DPPs served a third set of questions on PoolCorp concerning PoolCorp's transaction data. On June 20, 2013, the Court ordered PoolCorp to produce transaction data documents in response to these questions "as promptly as possible." Pretrial Order No. 18 at ¶ 17. On July 11, 2013, PoolCorp served its responses and a DVD containing Pool corporation transactional data labeled with control numbers POOLMDL-031-0000001 – 02. On August 1, 2013, DPPS served four sets of follow-up questions seeking clarification of items that were

produced on the July 11 DVD. For example, the fourth questions sought to determine the correct interpretations for the values in each of two identically labeled columns under five tabs on the DVD. Contrary to previous practice concerning the informal exchange of such clarifying questions and answers, on August 22, 2013, PoolCorp declined to respond to those questions and instead proposed a deposition be held. Because the questions posed could be easily and quickly responded to by a knowledgeable PoolCorp employee by less formal means, DPPs believe it would be inefficient and a waste of the parties' time and resources to travel and attend a presumably very brief deposition.

In addition, DPPs and PoolCorp have had a continuing dispute 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. 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. The parties may request the Court’s intervention in this matter.

On June 28, 2013, DPPs served a third set of questions on Zodiac concerning Zodiac’s transaction data. On August 13, 2013, Zodiac served responses to those questions.

ii. Document Production

On June 24, 2013, PoolCorp represented that its production of documents has been substantially completed. DPP last received a production of documents from Hayward on June 23, 2013, and has 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.

iii. Depositions

The depositions of all defendant witnesses taken by DPPs to date are listed in the table in Attachment A.

The parties have reached an agreement on the numerical limits for future depositions of each defendant, and have set forth that agreement in a letter to the Court submitted on August 30, 2013. *See* ECF No. 320 (Attachment B).

b. Discovery From DPPs to Defendants

i. Document Production

DPPs have completed their document production.

ii. Depositions

Defendants have taken the depositions of all seven named direct purchaser plaintiffs.

Per the parties' August 30, 2013 submission to the Court, the parties have agreed that defendants collectively may take up to ten cumulative depositions of the DPP class representatives. *See* ECF No. 320 (Attachment B).

II. Status Report by the IPPs

The IPP class representative for the State of Florida, Mr. Peter Mougey, was deposed by defendants on August 29th in Pensacola, Florida. All IPP class representatives have now been deposed by defendants. The IPPs are conducting an additional search for documents (receipts) on behalf of the California class representative and any documents discovered will be produced to the parties. The IPPs continue to review and analyze documents produced by PoolCorp and the Manufacturer Defendants. The IPPs are participating in person and monitoring by internet video the depositions currently scheduled on the parties' deposition calendar. The IPPs are cooperating with the DPPs on deposition and documents issues which have arisen since the last status report. The IPPs are slowly receiving financial documents from the 17 third party swimming pool product retailers and pool builders who were issued document subpoenas and are forwarding same to the parties. There are no discovery matters or issues relating to the IPPs at this time.

III. Status Report on Third-Party Discovery

To date, thirteen non-party witnesses have been deposed pursuant to the subpoenas served by the Manufacturer Defendants, and the parties are currently negotiating dates for additional witnesses. In addition, DPPs are continuing to pursue document productions in connection with their previously served subpoenas *duces tecum*.

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 nonparties depositions of witnesses not currently noticed. *See* ECF No. 320 (Attachment B).

Dated: September 3, 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
**KAPLAN FOX &
KILSHEIMER LLP**
850 Third Avenue
New York, NY 10022
212-687-1980

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

Jay L. Himes
**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/ Tom 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

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Plaintiffs' Ninth Status Report on Fact Discovery Pursuant to Pretrial Order No. 17 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 3rd day of September, 2013.

/s/ Leonard A. Davis _____
LEONARD A. DAVIS

ATTACHMENT A

Attachment A

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 A

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

ATTACHMENT B

August 30, 2013

Via ECF

The Honorable Sarah S. Vance
U.S. District Court for the Eastern District of Louisiana
500 Poydras Street
Room C255
New Orleans, LA 70130

The Honorable Joseph C. Wilkinson, Jr.
U.S. District Court for the Eastern District of Louisiana
500 Poydras Street
Room B409
New Orleans, LA 70130

Re: *In re: Pool Products Distribution Market Antitrust Litigation*,
No. 1:12-md-02328 (SSV) (JCW)

Dear Judge Vance and Magistrate Judge Wilkinson:

Pursuant to Pretrial Order No. 18, Liaison Counsel hereby submits the following agreed-upon numerical limits on party and non-party depositions. These proposed limits are exclusive of any previously noticed party or third party depositions:

Party Depositions¹

- The Parties agree that the Pool Defendants and the Manufacturer Defendants (collectively, the “Defendants”) may take up to 10 cumulative party depositions of the Direct Purchaser Plaintiffs (DPPs) class representatives;
- With respect to the DPPs’ depositions of the Defendants’ party witnesses, the Parties have agreed to the following limits:
 - The Pool Defendants: 9 depositions. Of the 9 depositions, one may be a Rule 30(b)(6) deposition covering the authenticity and admissibility of documents and issues concerning transaction data (a previously noticed topic). Two are placeholders for Pool Defendants’ personnel whom DPPs may identify during the course of

¹ The Parties have agreed that “party” depositions include both current employees of the Defendants as well as former employees of the Defendants who are being deposed primarily regarding their former employment with one of the Defendants.

depositions yet to be taken in the case, about which the parties will meet and confer once a deponent is identified to determine whether such a deposition is necessary, and, if the parties cannot agree, then the deposition will not proceed unless the Court finds that good cause exists for the deposition.

- Hayward: 7 depositions plus either a stipulation on the admissibility and authenticity of documents or, if the parties cannot agree on an appropriate stipulation, a 30(b)(6) deposition of an appropriate Hayward employee(s) on the admissibility and authenticity of documents.
- Zodiac: A maximum of 8 depositions plus either a stipulation on the admissibility and authenticity of documents or, if the parties cannot agree on an appropriate stipulation, a 30(b)(6) deposition of an appropriate Zodiac employee on the admissibility and authenticity of documents. One of the 8 depositions will be reserved for the case where an individual's significance becomes apparent during the second wave of depositions; subject to Zodiac's right to apply to the Court for relief seeking to preclude the deposition. DPPs will defer noticing another one of the depositions pending the Court's ruling on the motion to dismiss, or November 20, 2013, whichever comes first, and may ultimately forego that deposition pursuant to an agreement between the parties.
- Pentair: 9 depositions, including the deposition of a previously listed Pentair employee. DPPs also had listed as selected deponents two senior executive from Pentair's corporate parent entity and Pentair explained that it would not agree to those depositions. As a way of compromise, the parties have agreed that the depositions of the two Pentair parent company executives will be deferred at this time pending a later showing of need, and that if DPPs' later elect to pursue deposing these individuals, Pentair retains all rights to challenge the propriety and necessity of those depositions. Additionally, a 30(b)(6) deposition of an appropriate Pentair employee(s) is deferred at this time in the event the parties cannot agree on an appropriate stipulation on the admissibility and authenticity of documents. The parties agree that any such 30(b)(6) deposition may take place, without objection, after the close of fact discovery and that, in any case, the deposition would be scheduled no sooner than after the Court rules on any Motion for Summary Judgment submitted by defendants.

Non-Party Depositions

- The Direct Purchaser Plaintiffs may take up to 10 non-party depositions.
- The Defendants may take up to 10 non-party depositions.

Counsel for Indirect Purchaser Plaintiffs has been contacted and is in agreement.

Date: August 30, 2013

Respectfully submitted,

/s/ Russ M. Herman

Russ M. Herman
HERMAN, HERMAN & KATZ, LLC
820 O'Keefe Avenue
New Orleans, LA 70113
Tel: 504-581-4892
Email: rherman@hhklawfirm.com

/s/ Camilo Kosy Salas, III

Camilo Kosy Salas, III
SALAS & CO., LC
650 Poydras Street
New Orleans, LA 70130
Tel: 504-799-3080
Email: csalas@salaslaw.com

Liaison Counsel for the Direct Purchaser Plaintiffs and the Class

/s/ William B. Gaudet

William B. Gaudet
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

Liaison Counsel for the Pool Defendants

/s/ Wayne J. Lee

Wayne J. Lee
**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

Liaison Counsel for the Manufacturer Defendants