

**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' SIXTH 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 sixth 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

In Pretrial Order No. 17, the Court ordered defendants to respond to plaintiffs' questions about the transactional data each has produced by March 13, 2013. Responses were received from each defendant. On April 1, 2013, DPPs transmitted additional follow-up questions and requests resulting from each defendant's response. Responses from all defendants have now been received.

ii. Document Production

The defendants have been producing documents on a rolling basis. On May 28, 2013, the Court approved the parties' stipulated extension of the deadline to complete the defendants' rolling production of documents until June 24, 2013.

iii. Depositions

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

b. Discovery From DPPs to Defendants

i. Document Production

DPPs have made several productions, consisting of both hard copy documents and ESI, in the last month, including:

- A Plus Pools Corp. (APLUS_0005484-0007079)
- Liquid Art Enterprises d/b/a/ Carl Boucher, The Pool PhD (LIQART_00000001-0004470)
- Oasis Pool Service, Inc. (OASIS_00000001-0033737)
- Pro Pool Services (PROPOOL_0004947-0005260)
- Thatcher Pools, Inc. (THATCHER_0007675-0012980)
- Aqua Clear Pools & Decks (AQUA_0002558-0003200)

DPPs will continue to make subsequent productions in the coming weeks. On May 28, 2013, the Court approved the parties' stipulated extension of the deadline to complete the DPPs' rolling production of documents until June 24, 2013.

ii. Depositions

DPPs have produced five of the seven named direct purchaser plaintiffs for depositions. The depositions of A Plus Pools and Liquid Art are to be rescheduled, and DPPs have July 18, 2013 and July 12, 2013, respectively, for the depositions of these remaining plaintiffs.

As set forth in the plaintiffs' May 2, 2013 status report, counsel for IPPs have indicated an intention to discover "downstream" information at the two remaining depositions of named Direct Purchaser Plaintiffs. In PTO No. 15, this Court ruled that such information is non-discoverable in the context of the action brought by the DPPs against the defendants. However, the IPPs maintain that downstream information is relevant and discoverable as to the IPPs' own claims against defendants. IPPs and DPPs are amenable to entering into a stipulation that would allow the IPPs to proceed with their questioning but only in the indirect purchaser litigation. This would be accomplished by the use of a separate transcript with a caption that comports with the procedure contemplated by Pretrial Order No. 6, which specifies that "when a pleading is intended to apply to fewer than all of the cases, this Court's docket number for each individual case to which the document number relates shall appear immediately after the words 'This Document Relates To.'" The DPPs and IPPs proposed a stipulation to this effect to the Defendants (Attachment B), but they declined to enter into such a stipulation. This matter remains unresolved.

II. Status Report by the IPPs

The IPPs are continuing to cooperate and support the efforts of counsel for the DPPs on discovery and deposition matters. The Class representative for Arizona had his deposition taken on May 24th in Phoenix. The IPPs intend to file a motion for leave to amend to substitute a class representative for the State of Florida. IPP counsel are participating in and monitoring by internet video the parties' currently scheduled depositions. The IPPs continue to review and analyze documents produced by the Defendants. There are no other discovery issues relating to the IPPs at this time.

III. Status Report on Third-Party Discovery

On May 9, 2013, the Court granted the Federal Trade Commission's ("FTC") request for a temporary stay of third-party discovery. Dkt. No. 234. On May 10, 2013, DPPs sent a copy of the Court's Order to each third party that had been served by the DPPs with a subpoena *duces tecum*, and requested that no further action on the subpoenas be taken until further notice. On May 22, 2013, the FTC filed a motion for a protective order that would broadly prohibit both current and future discovery that might reveal communications between the FTC and third parties, which the FTC claims are protected by an "informant's privilege." Dkt. No. 246. On May 29, 2013, the DPPs filed their opposition to the FTC's request for a protective order objecting to its unprecedented attempt to shield from future discovery broad categories of documents untied to any present request. Dkt. Nos. 257-59 (under seal).¹ The DPPs have proposed a compromise in which DPPs would agree to withdraw the current requests against which the FTC has asserted its privilege claims, and which would provide a mechanism for the FTC to monitor future discovery. Future objections would be dealt with as they arise under this approach. Negotiations with the FTC are ongoing, and the DPPs are hopeful that the issue can be resolved without further intervention from the Court.

¹ On today's date, the FTC notified all parties of its intention to request the Court's leave to file a reply memorandum.

Dated: June 3, 2013

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Liaison for Indirect Purchaser Class Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Plaintiffs' Sixth 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 June, 2013.

/s/ Leonard A. Davis _____

LEONARD A. DAVIS

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

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	*	MAG. JUDGE
	*	WILKINSON
All Actions	*	

PRETRIAL ORDER NO. _____

WHEREAS, Pretrial Order No. 1 consolidates all cases pending before the Court thereby making discovery taken in the consolidated cases applicable to all cases and

WHEREAS, Pretrial No. 1 establishes in ¶6 a Master Docket File which is the above caption and provides that “when a pleading is intended to apply to fewer than all of the cases, this Court’s docket number for each individual case to which the document number relates shall appear immediately after the words ‘This Document Relates To’”.

WHEREAS, the Parties are commencing depositions and

WHEREAS, the Indirect Purchaser Plaintiffs may ask questions, which may be relevant to the Indirect Purchaser cases but not relevant to the Direct Purchaser Plaintiffs’ cases, and

WHEREAS, the Indirect Purchaser Plaintiffs may seek to otherwise obtain discovery.

NOW THEREFORE:

1. During a deposition when the Indirect Purchaser Plaintiffs ask any questions, the transcript of the questioning shall end and a new transcript shall be begin with the caption

**IN RE: POOL PRODUCTS DISTRIBUTION
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THIS DOCUMENT RELATES ONLY TO:

**Kistler, Et al. v. Pool Corporation, Et al,
Case No. 2:12-md-01284**

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MDL NO. 2328

SECTION R/2

**JUDGE VANCE
MAG. JUDGE
WILKINSON**

2. Any testimony adduced in response to questions in the Indirect Purchaser cases shall be deemed only taken in that case.

3. Any other discovery taken by the Indirect Purchaser Plaintiffs or otherwise taken in the Indirect Purchaser case shall be issued with the caption set forth in paragraph 1 and shall be deemed to be taken only in the Indirect Purchaser case.

New Orleans, Louisiana this ____day of April, 2013.

Sarah S. Vance
United States District Judge