

MINUTE ENTRY  
WILKINSON, M.J.  
FEBRUARY 8, 2013

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: POOL PRODUCTS DISTRIBUTION  
MARKET ANTITRUST LITIGATION

MDL NO. 2328

SECTION "R" (2)

CHIEF JUDGE VANCE  
MAG. JUDGE WILKINSON

At the request of counsel, I conducted a telephone conference in this matter on February 8, 2013. Participating were: Russ Herman, Plaintiffs Liaison Counsel; William Gaudet, Defendants Liaison Counsel; Adam Weintraub and Leonard Davis, Liaison Counsel for Direct Purchaser; Ronald Aranoff, Jay Hines and Bob Kaplan, representing Direct Purchaser Plaintiffs; Thomas Brill, representing Indirect Purchaser Plaintiffs; Deanna Cairo, representing defendant PoolCorp; Michael Lockerby, Melinda Levitt and Samantha Griffin, representing defendant Pentair Water, Pool & Spa, Inc.; Rick Hernandez, representing defendant Hayward Industries, Inc.; and Brent Justus, representing defendant Zodiac Pool Systems, Inc.

Pentair has noticed 32 depositions, including Rule 30(b)(6) notices to the other corporate parties and others accompanied by subpoenas and subpoenas duces tecum to

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third parties, to occur at locations around the country between February 26 and April 19, 2013. Plaintiffs' counsel complained that the depositions had been set and subpoenas issued without adequate planning or regard for their schedules. They also suggested that depositions should not be conducted before document production is more advanced.

The court's previously issued scheduling order, Record Doc. No. 183, set a fact discovery deadline and provided for fact discovery, including the noticing of depositions and the service of non-party subpoenas, to commence on January 15, 2013. The subject notices and subpoenas complied with that order. I find, however, that counsel have failed amicably to schedule this fact discovery so that it might be conducted in an orderly fashion.

Accordingly, **IT IS ORDERED** that all 32 of Pentair's deposition notices and subpoenas are QUASHED, subject to the following:

**IT IS FURTHER ORDERED** that no later than **February 22, 2013**, counsel must meet and confer, and all constituencies (direct purchaser plaintiffs, indirect purchaser plaintiffs, and each defendant) must do what Pentair has already done: identify what depositions each knows at present it wishes to take and from what third-parties each seeks to request document production. If more than one constituency seeks document production from the same third-party, they should combine their requests into a single subpoena duces tecum issued on behalf of all so that the third-party is not burdened with more than one subpoena. Counsel must engage in good faith logistical planning concerning this discovery and attempt to agree on a schedule of dates, times and places for the identified depositions

and third-party subpoena duces tecum returns -- on dual tracks, if necessary -- and to submit a proposed schedule to the court no later than **February 28, 2013**. Counsel's proposal will be discussed at the status conference scheduled for March 6, 2013. If counsel cannot agree upon a fact discovery schedule, the court will impose one.

Plaintiffs' liaison counsel reported that the parties have agreed upon a private mediator, former United States District Judge Layn Phillips, who now resides in California. Judge Phillips has provided various dates in May 2013 on which he is available for his first mediation session. Some counsel expressed doubts about ability to discuss settlement at that time. I suggested that counsel should jointly confer with Judge Phillips, express their positions on timing to him, and let him decide when the first session can be beneficially conducted.

Plaintiffs' liaison counsel also advised that he will shortly file a motion and proposed order to replace two members of plaintiff's committee of counsel with Jay Hines, whose curriculum vitae will be attached to the motion for the court's consideration. Defense counsel voiced no objection.

CLERK TO NOTIFY:  
HON. SARAH S. VANCE



JOSEPH C. WILKINSON, JR.  
UNITED STATES MAGISTRATE JUDGE