

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re Polyurethane Foam Antitrust
Litigation

Case No. 1:10 MD 2196

AGENDA FOR JULY 31
RECORD CONFERENCE

This document relates to:
ALL CASES & Case No. 14-mc-34

JUDGE JACK ZOUHARY

This Court will hold a record Status Phone Conference (Court Reporter: Angela Nixon) on **Thursday, July 31, 2014 at 2:00 p.m. (EDT)**, to discuss the following agenda items:

1. Non-party Johnson Control, Inc.'s Motion for Reconsideration (Case No. 14-mc-34, Doc. 14).
2. Update from parties regarding status of mediation(s) and Direct Purchaser Class Notice.
3. Draft Summary Judgment Briefing Guidelines (see attached).
4. Confirmation of new trial month.
5. Retention of Special Master (pursuant to Federal Civil Rule 53(b)(1), *see* attached Order in MDL 2001, and the proposed Special Master's website, <http://www.specialmaster.biz>).

Immediately following the Status Phone Conference, this Court will hold a record Phone Hearing on Mohawk's Motion to Compel Arbitration and Stay Claims as to the Direct Purchaser Class (Docs. 1221, 1270 & 1284). This Court expects only counsel for Mohawk and the Direct Purchaser Class will actively participate in this hearing.

By **July 29, 2014** counsel shall provide, via email (zouhary_chambers@ohnd.uscourts.gov), a roll call, listing counsel who will attend the conference, and call-in information.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

July 24, 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re Polyurethane Foam Antitrust
Litigation

Case No. 1:10 MD 2196

**[DRAFT] SUMMARY JUDGMENT
BRIEFING PROTOCOLS**

This document relates to:
ALL CASES

JUDGE JACK ZOUHARY

This Court will discuss with the Direct Purchaser Class and Defendants the following draft summary judgment briefing protocols at the July 31, 2014 Record Phone Conference (*see* Doc. 1272).

Parties shall brief the motions for summary judgment according the following guidelines:

- Defendants shall have a total of seventy-five (75) pages (combined) for their respective briefs in support of the motions for summary judgment.
- The Direct Purchaser Class shall have a total of fifty (50) pages for their opposition to Defendants' motions for summary judgment.
- Defendants shall have a total of twenty-five (25) pages (combined) for replies in support of their respective motions for summary judgment.

Briefing shall be doubled-spaced (except for block quotes) in Times New Roman font not less than 12 points in size, including footnotes, with margins of not less than one inch. Briefs must contain a tables of content and a table of authorities. Parties shall not make excessive use of footnotes. Defendants shall consolidate briefing where practicable (*e.g.*, each Defendant group need not reiterate the *Matsushita* or Federal Civil Rule 56 standards).

If a party relies on an expert's deposition testimony, the entire deposition transcript shall be made part of the record. By contrast, parties may file excerpts of fact witness deposition transcripts. In addition to their briefs and supporting exhibits, Defendants must file as part of the record an exhibit

table of contents, identifying each exhibit submitted in support of the motions for summary judgment by short title (*e.g.*, “Pace Expert Report,” “Wahrmund Deposition Excerpts”). The parties shall likewise file an exhibit table of contents for the opposition and the replies. See attached example (Exhibit Table of Contents from Defendants’ Opposition to Direct Purchaser Class Motion for Class Certification).

To the extent practicable, parties will file the motions, opposition, and replies, along with all supporting material, so that the filing appears as one ECF entry; that is, the parties should mimic ECF entries 584 (Direct Purchasers’ Motion for Class Certification) and 682 (Defendants’ Opposition to the Direct Purchaser Motion for Class Certification), *not* ECF entries 577–83 (Indirect Purchasers’ Motion for Class Certification).

Parties shall provide Chambers one courtesy copy of briefing and all supporting materials. Courtesy copies shall contain “ECF header” information, which appears on all electronic versions of ECF-filed documents (*see* Doc. 1094). If voluminous, courtesy copies must be spiral bound, not assembled in a three-ring binder.

The Clerk shall strike any filing that fails to conform to these requirements.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

July __, 2014

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re POLYURETHANE FOAM ANTITRUST
LITIGATION

MDL Docket No. 2196
Index No. 10-MD-2196 (JZ)

This document relates to:

ALL DIRECT PURCHASER CLASS CASES

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO DIRECT
PURCHASER (CLASS) PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

INDEX

	Description
	Defendants' Memorandum in Opposition to Direct Purchaser (Class) Plaintiffs' Motion for Class Certification
Exhibit	
A.	Expert Report of Janusz A. Ordover, Ph.D.
B.	Expert Report of Sentinel Applied Analytics
1.	Jeffrey John Leitzinger Deposition Transcript, July 24, 2013
2.	Compilation of Decisions Vacating, Reversing, or Denying Class Certification in Light of <i>Comcast</i>
3.	Vitafoam Inc. and Vitafoam Products Canada (Helen Ebert) 30(b)6 Deposition Transcript, Volume I, January 24, 2012 Vitafoam Inc. and Vitafoam Products Canada (Helen Ebert) 30(b)6 Deposition Transcript, Volume III, January 26, 2012
4.	Tony Vallecoccia Deposition Transcript, August 20, 2013
5.	John Howard Deposition Transcript, August 21, 2013
6.	Dean Brayianis Deposition Transcript, August 15, 2013
7.	Agostino Pasquarelli Deposition Transcript, April 17, 2013 Domenic Sinopoli Deposition Transcript, April 18, 2013
8.	Matthew P. Gordon, Ph.D. Deposition Transcript, July 31, 2013
9.	IBISWorld, IBISWorld Industry Report 32615 Urethane Foam Product Manufacturing in the US, January 2010
10.	Joe York Deposition Transcript, June 11, 2013
11.	Jack Ira Lens Deposition Transcript, July 18, 2013
12.	CC003E0111925 (October 14, 2004 Email)
13.	J. Donald Coleman Deposition Transcript, May 17, 2013

14.	Jeffrey Briney Deposition Transcript, April 2, 2013
15.	Richard Whitling Deposition Transcript, May 7, 2013
16.	LGPL 0000339073 (Leggett & Platt Urethane Products Division Quarterly Operations Analysis 4th Qtr. 2003) LGPL 0000375353 (November 22, 2004 Email)
17.	Marc Vitale Deposition Transcript, May 3, 2013
18.	Stanley Yukevich Deposition Transcript, May 14, 2013
19.	CC002E0703928 (July 7, 2009 Email)
20.	FMX000040694 (March 30, 2001 Email)
21.	CC002E0712255 (June 28, 2008 Email)
22.	Compilation of Documents: Competition Among Defendants
23.	CC004E0113557 (Carpenter Report Dated September 20, 2004)
24.	Compilation of Supporting Deposition Testimony
25.	Edwin Malechek Deposition Transcript, May 15, 2013
26.	Gary Wahrmond Deposition Transcript, April 24, 2013
27.	CC002E0714787 (Carpenter Report Dated August 23, 2008)
28.	CCFM0100000001 (Carpenter Reported Dated May 19, 2007)
29.	HSMC_FOAMMDL000488102 (Hickory Springs Division Strategic Plan, 2010-2013)
30.	Thomas Wilson Deposition Transcript, July 1, 2013
31.	David Henson Deposition Transcript, July 23, 2013
32.	Compilation of Price Increase Letters (HSMC_FOAMMDL003039683, LGPL 0000055351, FTFM1000074, FTFM1000079, FTFM1000094, FTFM10000095,
33.	Compilation of Price Increase Letters (MHK-00005670, CC003E0128143, FTFM1000103, HSMC_FOAMMDL000429674
34.	Hirsch Simon Deposition Transcript, August 14, 2013
35.	Michael Crowell Deposition Transcript, April 3, 2013
36.	Mark Coombs Deposition Transcript, July 25, 2013
37.	J&S Packaging, Inc. (Joseph Robert Scope) 30(b)(6) Deposition Transcript, July 2, 2013
38.	Foamex International Inc./Tempur-Pedic® Supply Agreement (February 7, 2006)
39.	Foamex International Inc./Comfor-Products, Inc. Supply Agreement (February 2007) Foamex International Inc./Spin Master, Inc. Supply Agreement (January 1, 2009)
40.	Carpenter Company/Sealy, Inc. Supply Agreement (January 1, 2002)
41.	Carpenter Company/Sealy, Inc. Supply Agreement (January 1, 2006)
42.	Carpenter Company/Hill-Rom, Inc. Supply Agreement (November 30, 2000) Carpenter Company/La-Z-Boy Incorporated Purchase Agreement (May 10, 2006) Carpenter Company/Select Comfort Corporation Supply Agreement (June 6, 2006) Carpenter Company/Rowe Fine Furniture, Inc. Supply Agreement (June

	2010)
43.	CC002E0304342 (April 9, 2010 Email)
44.	AF_00000339 Adams Foam Rubber Co., Inc. Letter
45.	Compilation of Price Increase Letters (FMX000041691, CC00400500437, FMXX000040889, CC00400500435, HSMC_FoamMDL003039704, FX00567973, CC00400500424)
46.	Carpenter Company and E.R. Carpenter, L.P. (Paul Richard Davidson, Jr.) 30(b)(6) Deposition Transcript, February 17, 2012
47.	Kenneth Thompsen Deposition Transcript, May 13, 2013
48.	Adams Foam Rubber Co., Inc. (Lonny G. Gold) 30(b)(6) Deposition Transcript, August 14, 2013
49.	Alex M. Gelbard Deposition Transcript, August 9, 2013
50.	Benno Ray Nielsen Deposition Transcript, August 22, 2013
51.	Defendants' Summary Exhibit of Legitimate Business Relationships Among Defendants
52.	Defendants' Summary Exhibit of Plaintiffs' Purchasing Transactional Data

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: WHIRLPOOL CORP. FRONT-)	CASE NO. 1:08-WP-65000
LOADING WASHER PRODUCTS)	(MDL 2001)
LIABILITY LITIGATION)	
)	JUDGE CHRISTOPHER A. BOYKO
)	
)	<u>SHOW CAUSE ORDER</u>

CHRISTOPHER A. BOYKO, J.:

This Multidistrict Litigation was assigned to the Honorable James Gwin of this Court in December of 2008, and then transferred to the undersigned in December of 2012. The parties have litigated the case strenuously since its inception, including twice presenting arguments to the Sixth Circuit Court of Appeals regarding this Court's order certifying a liability class of Ohio residents.

More recently, the Court scheduled the first bellwether trial to begin in October of 2014. Since entry of the Trial Order, the parties have filed a plethora of motions, including: (1) Plaintiffs' Motion to Modify the Class Definition; (2) Defendants' Motion to Decertify the Class; (3) two Cross-Motions for Summary Judgment; and (4) a total of fourteen Motions to Exclude Expert Testimony, some of which may require *Daubert* hearings.

Each one of these Motions presents difficult factual and legal issues. Furthermore, the parties are sure to seek before trial numerous additional rulings on other complicated matters. The

number and complexity of the issues the parties have raised and will raise in the next few months are overwhelming, especially in light of the accelerated trial schedule proposed by the parties and adopted by the Court.

When faced with such circumstances, MDL Courts frequently obtain assistance through appointment of a Special Master. For example, two other MDL transferee Judges of this Court appointed Special Master David R. Cohen to assist them with matters ranging from fact and expert discovery, pretrial motion practice, post-trial motions, settlement negotiation, and claims administration. See *In re Welding Rod Products Liab. Litig.*, 2004 WL 3711622 (N.D. Ohio, Nov. 10, 2004) (appointment order signed by Judge Kathleen O'Malley in MDL no. 1535); *In re Oral Sodium Phosphate Solution-Based Prods. Liab. Litig.*, 2009 WL 2601395 (N.D. Ohio, Aug. 24, 2009) (appointment order signed by Judge Ann Aldrich in MDL no. 2066; appointment later extended by Judge Dan Polster).

Given the massive and complicated workload the parties have recently generated, the Court is strongly inclined to: (1) appoint David R. Cohen¹ as Special Master in this case, and (2) direct him to provide recommended rulings on some or all of the pending pretrial motions, as well as other issues that may arise before trial. The Court would like to receive the parties' consent to this appointment, pursuant to Fed. R. Civ. P. 53(a)(1)(A); however, it appears present circumstances may make this appointment appropriate even without party consent, pursuant to Fed. R. Civ. P.

¹ Mr. Cohen's contact information is: David R. Cohen Co. LPA, 24400 Chagrin Blvd., Suite 300, Cleveland, OH 44122; 216-831-0001; david@specialmaster.biz; www.SpecialMaster.biz.

53(a)(1)(C).² Mr. Cohen shall file an affidavit directed to his experience and any potential conflicts. Mr. Cohen shall file his affidavit no later than June 25, 2014.

Accordingly, the Court now orders the parties to **SHOW CAUSE** in writing why the Court should not appoint David R. Cohen as Special Master in this case, to perform the duties outlined above.³ Briefs in answer to this show cause order shall be filed on or before 5:00 p.m. on July 3, 2014. No response or reply briefs are permitted.

IT IS SO ORDERED.

s/ Christopher A. Boyko
CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE

Dated: June 24, 2014

² Rule 53(a)(1)(A) states the Court may appoint a Special Master to “perform duties consented to by the parties.” Rule 53(a)(1)(C) adds the Court may appoint a Special Master to “address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district,” even without party consent.

³ “Before appointing a master, the Court must give the parties notice and an opportunity to be heard.” Fed. R. Civ. P. 53(b)(1).