

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 5893	DATE	4/9/2007
CASE TITLE	Jaffe vs. Household Int'l Inc., et al.		

DOCKET ENTRY TEXT

For the reasons stated in this Minute Order, the Court overrules the class’s objection to Magistrate Judge Nan R. Nolan’s February 27, 2007 ruling that granted in part, denied in part, and entered and continued in part the class’s motion to compel production of Ernst & Young documents [doc. no. 974], and the Court adopts the ruling in full.

■ [For further details see text below.]

Docketing to mail notices.
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STATEMENT

Under Federal Rule of Civil Procedure 72(a) a magistrate judge “to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written Order setting forth the disposition of the matter.” Fed. R. Civ. P. 72(a). Routine discovery motions are not dispositive. *Adkins v. Mid-Am. Growers, Inc.*, 143 F.R.D. 171, 175 n.3 (N.D. Ill. 1992). The Federal Rules of Civil Procedure grant magistrate judges broad discretion in resolving discovery disputes. *Heyman v. Beatrice Co.*, No. 89 C 7381, 1992 WL 245682, at *2 (N.D. Ill. Sept. 23, 1992). A magistrate judge’s ruling on a nondispositive matter may only be reversed on a finding that the ruling is “clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a); *see* 28 U.S.C. § 636(b)(1).

On February 27, 2007, Magistrate Judge Nolan granted in part, denied in part, and entered and continued in part the class’s motion to compel production of Ernst & Young (“E&Y”) documents. She denied the motion to compel as to any of the 187 E&Y documents that are covered by the attorney-client privilege, either alone or in addition to the work product privilege, and dated after the Class Period, as well as to any of the 187 E&Y documents that do not relate to the Compliance Engagement. She granted the motion to compel as to any of the 187 E&Y documents that are solely covered by the work product privilege. She denied the motion to compel wholesale the 425 boxes of recently discovered E&Y documents, and, because the content of the boxes was unknown, she entered and continued the motion to enable Household to produce a privilege log for each document. To the extent that the boxes contained documents relevant to the Compliance Engagement that are not privileged, she granted the motion to compel.

First, the class argues that Magistrate Judge Nolan improperly reconsidered the post-Class Period argument despite this Court’s purported rejection of that argument and Household’s waiver to raise the argument during the initial briefing. The Court disagrees. Although this Court held that Household had

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waived the issue whether one of the many *Garner* factors had been established, *i.e.*, whether the action was being brought on behalf of a large percentage of shareholders, the issue whether the fiduciary exception applies to privileged material dated after the Class Period and/or created pursuant to engagement letters other than the July 1, 2002 engagement letter had never been addressed by either side. That is because the class represented to this Court that the time frame for which they sought the E&Y documents was toward the end of the three-year Class Period (July 31, 1999 through October 11, 2002). (*See Class's Resp. Household Defs.' Objections Mag. Judge Nolan's 12/6/06 Order 8.*) Thus, neither Magistrate Judge Nolan nor this Court had an occasion to address that precise issue. Accordingly, the Court does not find that Magistrate Judge Nolan's addressing the issue after oral argument was clearly erroneous.

The Court cautions that there is a fine line between vigorously representing the interests of one's client and officiously affronting the capabilities of the judiciary. The class's argument that Nan R. Nolan does not understand her role as a magistrate judge is risible. Failure to avoid such arguments in the future shall result in sanctions. The Court also notes that Magistrate Judge Nolan and her staff have dedicated an inordinate amount of time, energy, and resources to this case in which a scorched earth litigation strategy has been adopted by both sides, which apparently is the only thing upon which the parties can agree.

Second, the class argues that Magistrate Judge Nolan improperly failed to find Household's recent disclosure of over 425 boxes of E&Y work papers to be inexcusable. While the magistrate judge noted that it was disconcerting that Household did not discover such a large volume of documents sooner, she accepted Household's representations that it had just learned that these boxes existed at an offsite storage facility, declined to find that Household had waived any privilege with regard to the documents contained in the boxes, and declined to issue sanctions. The Court does not find any of Magistrate Judge Nolan's findings and conclusions to be clearly erroneous.

The delay is not so egregious in light of the fact that the class never previously requested Household to produce E&Y documents or challenged E&Y's objections to the May 2006 subpoena for production of E&Y documents relating to the Compliance Engagement. Further, it was perfectly reasonable for the magistrate judge to rely on, and accept as true, Landis Best's declaration that Household was, until recently, unaware of the 425 boxes stored offsite at Iron Mountain. In addition, Household made the class aware of the additional 425 boxes shortly after it discovered they existed, and Magistrate Judge Nolan required Household to rectify the situation by producing a privilege log for the 425 boxes of documents within four weeks. It is unknown whether the documents in these boxes are dated during the Class Period such that they would be relevant to the lawsuit. For these reasons, the Court rejects the class's objections and adopts Magistrate Judge's ruling.