

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

LAWRENCE E. JAFFE PENSION PLAN, On )	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly )	(Consolidated)
Situated, )	
	) <u>CLASS ACTION</u>
Plaintiff, )	
	) Judge Ronald A. Guzman
vs. )	Magistrate Judge Nan R. Nolan
	)
HOUSEHOLD INTERNATIONAL, INC., et )	
al., )	
	)
Defendants. )	
_____ )	

**THE CLASS' STATUS REPORT FOR THE APRIL 12, 2007**  
**TELEPHONIC STATUS CONFERENCE**

The Class hereby lists the issues that should be addressed at the April 12, 2007 telephonic status conference.

**I. Ernst & Young Work Papers**

The Class has previously provided its views regarding defendants' obligation to produce Ernst & Young LLP ("E&Y") work papers and the related failure to establish a basis for not producing them to the Class. The Class will not reiterate that discussion here in depth but summarize its prior positions on these issues and focus on new developments since the last telephonic status conference on March 30.<sup>1</sup> The new developments are: 1) Judge Guzman's April 9, 2007 Order; 2) the privilege log provided by defendants; 3) defendants' withholding of work papers dated prior to the end of the Class Period (July 30, 1999 through October 11, 2002) in contravention of this Court's February 27 Order; and 4) defendants' provision of a draft final report to the Court for *in camera* review.

**A. The Class' Prior Status Conference Statements**

In its prior status report, the Class explained why this Court cannot accept defendants' categorical assertions of the attorney-client privilege over the E&Y work papers in the absence of a privilege log and evidentiary submissions that take a document-by-document approach as to all the work papers at issue. In those arguments, the Class identified, among other things, the lack of confidential attorney-client communications as a fatal weakness in defendants' blanket assertions. The Class has also raised concerns about the Court's proceeding to an *in camera* review of selected work papers in the absence of a privilege log and evidentiary submissions by defendants.

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<sup>1</sup> The Class' Status Report for the March 30, 2007 Telephonic Status Conference is attached hereto as Exhibit A.

Additionally, the Class has requested a copy of the index of the work papers, which was submitted to the Court *in camera*. Defendants have asserted this index is privileged but have not provided a log entry for it. The Court has issued no ruling with respect to the index.

**B. Privilege Log**

Defendants have provided a privilege log in three installments for one of the categories of the E&Y work papers. The Class has two issues with the privilege log.

First, as indicated above, the privilege log does not include the work papers relating to data sampling and data validation (approximately 250 boxes). In Judge Guzman's recent Order, he affirmed this Court's February 27, 2007 Order based, among other things, upon the understanding that this Court was requiring defendants to prepare a privilege log for each document as to all 425 boxes. April 9, 2007 Order at 1 (discussing February 27, 2007 Order).

Second, defendants' privilege log does not identify any confidential communication upon which to found an attorney-client privilege. Under the *Garner* exception, defendants cannot assert this privilege against the Class with respect to communications that took place prior to August 16, 2002. February 27, 2007 Order at 2. From this, it follows that defendants must point to a confidential communication that took place after this date in order to claim any privilege as to a particular work paper.

Defendants have not done so in the privilege log, which cites only the date appearing on the document's face (which may or may not be the date of first creation) as a basis to assert the privilege. However, this document date indicates nothing about the date of the confidential communication at issue because the work papers at issue are internal E&Y documents that were not shared with anyone at Household International, Inc. ("Household") and thus, do not constitute communications between a client and an attorney. For this reason, the date the E&Y work paper was created does not indicate the date of any confidential communication.

Additionally, the privilege log does not identify the nature of the legal advice sought. As it stands now, the privilege log references only the Court's December 6, 2006 Order as the basis for their privilege. Defendants relied upon pending and potential litigation relating to the Attorneys General ("AG") discussions in May 2002 as the basis for their privilege in the initial motion that led to the December 6, 2006 Order. The AG discussions resulted in a settlement on October 11, 2002, the end of the Class Period. Defendants must modify their privilege log to identify what legal advice, if any, was being sought after the AG settlement.

Defendants must modify their privilege log to show a confidential communication dated after August 16, 2002 as the basis for any privilege vis-à-vis the Class, as well as the nature of the legal advice sought after the AG settlement. If defendants cannot do so, defendants have failed to establish a *prima facie* case of privilege. (The Class notes that a privilege log alone is insufficient to meet defendants' burden with respect to privilege, but must be supplemented by declarations and evidence establishing each element of the privilege and to each document.)

### **C. Document Production**

Defendants committed to a rolling production of the work papers. To date, defendants have produced a single page from these 400 boxes of work papers. In violation of this Court's February 27, 2007 Order, defendants have withheld numerous documents dated prior to October 12, 2002. *See* February 27, 2007 Order at 2 (requiring defendants to produce documents dated prior to the end of the Class Period and referencing defendants' agreement to do so); *see also* April 9, 2007 Order at 1 (requiring defendants to produce documents dated within the Class Period). Examples of withheld documents dated within the Class Period are obvious from defendants' privilege log, including the first page of the first installment. Defendants must produce all documents dated prior to October 12, 2002.

#### **D. Draft Final Report**

Via telephone conference on April 9, the Court requested defendants to provide it with a copy of any final report prepared by Household on an *in camera* basis. Via letter dated April 10, defendants provided this Court with a draft final report dated January 26, 2004. Defendants had not previously identified this document on their privilege log. On October 19, 2006, this Court expressly directed defendants to prepare a privilege log for all E&Y documents within two weeks. October 19, 2006 Hearing Transcript at 101, 112 (directing defendants to prepare a log as to the E&Y communications and giving them two weeks to resolve the E&Y issues). Defendants' failure to identify the draft final report on a privilege log in violation of the Court's orders and in violation of Federal Rule of Civil Procedure 26 warrants a finding of waiver. *Burlington N. & Santa Fe R. Co. v. United States Dist. Court*, 408 F.3d 1142, 1148-49 (9th Cir. 2005); *Universal City Dev. Partners, Ltd. v. Ride & Show Eng'g, Inc.*, 230 F.R.D. 688, 696 (M.D. Fla. 2005).

Additionally, defendants' failure to put this draft final report on their privilege log raises concerns about whether defendants have similarly failed to identify on their privilege log 1) earlier drafts of this final report, 2) any interim reports, 3) any communications between defendants and E&Y concerning these reports, and 4) any internal Household document on these reports.

#### **II. Deposition Issues**

The depositions of John Keller and Chris Bianucci, witnesses for Arthur Andersen LLP ("Andersen") and E&Y, are currently scheduled for April 26 and April 27. Counsel for the witnesses has requested that these depositions be postponed if the E&Y issues are not resolved prior to those dates. Given the current status of the E&Y issues, including the fact that E&Y has not produced its own documents, the Class does not believe the E&Y issues will be resolved prior to those dates. Nonetheless, the Class wishes to proceed with the depositions as scheduled with respect to the services provided by Andersen to Household for two reasons. First, this testimony will enable

the Class' expert to complete the analysis of the Andersen audits. Second, the Class does not want to postpone these depositions until all issues respecting the E&Y documents have been resolved. These issues include those pending before this Court as well as issues relating to E&Y's production of its own documents, which may require motion practice.

### **III. PricewaterhouseCoopers and Jefferson Wells**

During the Class Period, in response to state agency examinations, defendants hired two other outside firms to assess its predatory lending practices, PricewaterhouseCoopers ("PwC") and Jefferson Wells International, Inc. ("Jefferson Wells"). At the last status conference, defendants indicated that they did not believe the Class had previously requested these documents. However, the Class did so in its very first document request, which included the following two requests:

"All documents and communications concerning or relating to Household's lending practices and policies related to loans secured by real property (as described in the Complaint), including, but not limited to, correspondence, analyses, statistics, presentations, training materials, public statements, memoranda and notes."

"All documents and communications concerning or relating to investigations by any state or federal governmental, administrative or regulatory agency, department or other body into Household's lending policies and practices."

*See* Plaintiffs' First Request for Production of Documents to Household Defendants, Request Nos. 1 and 7.

The PwC and Jefferson Wells compliance studies are clearly responsive to both of these requests: 1) they are analyses of Household's lending practices and policies; and 2) they are documents concerning state agency investigations into Household's lending policies and practices. Under the Federal Rules of Civil Procedure, defendants had an obligation to search for and locate responsive documents, including the PwC and Jefferson Wells documents.

Given the situation with E&Y, including defendants' provision of a draft final report that was not identified on defendants' privilege log, the Class continues to be concerned that defendants have

not adequately searched, produced and logged documents responsive to its document requests, including those quoted above.

DATED: April 11, 2007

Respectfully submitted,

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DECLARATION OF SERVICE BY EMAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on April 11, 2007 declarant served by electronic mail and by U.S. Mail to the parties the: **THE CLASS' STATUS REPORT FOR THE APRIL 12, 2007 TELEPHONIC STATUS CONFERENCE**. The parties' email addresses are as follows:

<a href="mailto:TKavaler@cahill.com">TKavaler@cahill.com</a> <a href="mailto:PSloane@cahill.com">PSloane@cahill.com</a> <a href="mailto:PFarren@cahill.com">PFarren@cahill.com</a> <a href="mailto:LBest@cahill.com">LBest@cahill.com</a> <a href="mailto:DOwen@cahill.com">DOwen@cahill.com</a>	<a href="mailto:NEimer@EimerStahl.com">NEimer@EimerStahl.com</a> <a href="mailto:ADeutsch@EimerStahl.com">ADeutsch@EimerStahl.com</a> <a href="mailto:MMiller@MillerLawLLC.com">MMiller@MillerLawLLC.com</a> <a href="mailto:LFanning@MillerLawLLC.com">LFanning@MillerLawLLC.com</a>
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I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of April, 2007, at San Francisco, California.

s/Juvily P. Catig  
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JUVILY P. CATIG