

**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.)	
_____)	

**LEAD PLAINTIFFS' OPPOSITION TO FURTHER EXTENSION OF DEFENDANTS'
TIME TO DISCLOSE THEIR EXPERT WITNESS REPORTS**

Defendants' request for an additional extension of time to prepare their expert reports should be denied. Under the Court's June 29, 2007 Order, defendants were given two months (from August 15 to October 15) to submit their expert reports. Defendants then requested and received an extension of three weeks from lead plaintiffs – the maximum possible given the January 14, 2008 status conference before Judge Guzman. Now they come to the Court requesting yet another five weeks. Enough is enough. The Court should deny defendants' request.

Defendants' request for time beyond this nearly three months is yet another tactic to stall the progress of this case towards trial. Normally, defendants have only one month after plaintiffs' expert reports to prepare and submit rebuttal expert reports. Fed. R. Civ. P. 26(a)(2)(C). However, here defendants wanted more time and the Court obliged by giving them two months to submit their reports, *i.e.* double what they normally get.¹ Lead plaintiffs accepted this initial delay and agreed to a further delay of three weeks when defendants asked for a two-month extension in September.

No further extension is warranted based on lead plaintiffs' August 15 expert submissions, which number only three. The contents of these expert reports were no mystery to defendants. Indeed, in that portion of the January 24, 2007 transcript, which defendants attach as Exhibit C to their memorandum, the colloquy between the Court and counsel reveals both the subject matter of lead plaintiffs' expert reports and defense counsel's awareness that "a lot of [lead plaintiffs'] claims are based upon expert testimony." Defs' Brief, Exhibit C at 112 (statement of Ms. Best); *see also* Exhibits A and B attached hereto, respectively the table of contents for the reports of Harris L. Devor (lead plaintiffs' accounting expert) and of Catherine A. Ghiglieri (lead plaintiffs' industry expert).

¹ Defendants never acknowledge that they initially were given two months and instead, suggest misleadingly that they only had 45 days. *See* Memorandum in Support of the Household Defendants' Motion for an Extension of Time to Disclosure Their Expert Witness Reports ("Defs' Brief") at 2.

Although defendants point to the volume of deposition testimony and exhibits cited in lead plaintiffs' expert reports, this volume doesn't warrant more time. The vast majority of the depositions were completed in 2006, giving defendants and their experts at least ten months to analyze the testimony and exhibits.² Additionally, nearly all the documents used in the depositions (and the expert reports) are defendants' own documents.³ Moreover, defendants and their experts did not need lead plaintiffs' experts to point out the damaging documents – lead plaintiffs' interrogatory responses had already done so. Thus, defendants and their experts had sufficient time to prepare.

The underlying reason for defendants' motion becomes clear when one looks at the expert statements submitted by defendants as Exhibit A to their brief and as a Supplemental Exhibit filed today. These statements show that defendants retained their experts in mid-summer of this year. *See* Defs' Brief, Ex. A (statement of M. Bajaj indicating he was hired on June 20, 2007) and Supplemental Exhibit (statement of R. Litan indicating he was hired in July, 2007). However, as indicated above, defendants knew in January that this case was expert-intensive. By delaying their retention of experts until just before and even after the Court's June 29 adoption of the expert schedule, defendants essentially created the excuse for delay they now offer the Court, *i.e.* that their experts aren't ready because the mass of material they still need to review. However, defendants should not be rewarded for this conduct and the Court should not let them out of this self-made

² There were normally three or more defense counsel at every deposition affording defenants the time and opportunity to analyze the deposition testimony well before the expert discovery stage.

³ Defendants point to the amount of "non-case specific" material produced by lead plaintiffs' experts. Pursuant to the parties' stipulation, these materials include (and are largely composed of) prior reports and articles of these experts. Thus, these materials are relevant for the upcoming depositions and not defendants' expert reports.

situation, particularly where not one of their experts says they could not complete their report by November 5 if required to do so. *See* Defs' Brief, Ex. A. and Supplemental Exhibit.

Indeed, all their experts really say in their statements is that they would like more time (and what expert would not like more time). Defendants' experts don't say what efforts they have made to meet the October 15 initial deadline nor the subsequent November 5 date. Nor do they state what remains to be done at this juncture. This silence leaves defendants with no basis to assert that their experts' best efforts were insufficient or that they could not finish by November 5.

Significantly and contrary to defendants' claims, any extension will prejudice lead plaintiffs both substantively and financially. Witness memories and availability are already an issue in this four-year old case and will be exacerbated by further delay. Further, there are real financial impacts from delay that a defendant financial institution well knows. A delay of only three months in a case of this magnitude results in a wealth transfer of tens of millions of dollars in interest from the Class to defendants even assuming an interest rate of only 5%. Defendants like to blame lead plaintiffs for causing delay, but the truth is much if not all the delay has resulted from defendants' various "inadvertent" productions (such as the federal regulatory materials and the state regulatory materials) and defendants' tardy "discovery" of new documents (the Robin Allcock boxes and the Ernst & Young LLP work papers).

Additionally, adoption of the proposed extension will result in lead plaintiffs' experts having to prepare their rebuttal reports over the two winter holidays.⁴ This burden is magnified if defendants drop more than four expert reports on lead plaintiffs on December 10 as they intimate intend to do. Defs' Brief at 1 n.1. To the extent that defendants offer experts in addition to the four who submitted statements, they should notify the Court (and lead plaintiffs) of this intention.

⁴ Lead plaintiffs reserve the right to request additional time for rebuttal reports should they need it.

Duplicative experts would nullify the need for an additional extension. Indeed, there is already duplication in that Mr. LaSusa and Mr. Litan are both addressing Ms. Ghiglieri's report. Further, defendants can and should submit the reports of any additional experts on November 5 as these experts have provided no reason for additional time.

Extending the schedule will also prejudice lead plaintiffs for making the necessary efforts to meet the expert deadlines. Defendants note that lead plaintiffs' experts have been preparing their reports for months. Defendants suggest that this diligence and timely preparation is a sin to justify their own conduct since defendants had the exact same opportunity to prepare. They would rather claim the Court's schedule was not "even-handed," Defs' Brief at 1, than acknowledge they failed to act in a timely fashion.

Significantly, defendants convinced Judge Guzman to defer the prior October 2 status conference until January 14, 2008 because expert discovery would not be completed by October 2. Defendants made no statement then that expert discovery could not be completed by that date, indeed by suggesting January 14, defendants represented to Judge Guzman their good faith belief that expert discovery would be complete by that date.

As a final argument, defendants half-heartedly contend they need more time based on the Court's recent October 17, 2007 Order respecting damages. This argument applies only to defendants' damage expert – who doesn't even mention this issue in his statement to the Court. In any event, this expert should already have analyzed these damage issues given defendants' argument that Rule 26(a)(1)(C) requires disclosure on these issues from the parties. Finally, to preclude this arguments, lead plaintiffs will provide a response to the Court's October 17, 2007 Order **today**.

In sum, the Court should deny any further extensions of defendants' time to submit their expert reports. They have already had ample time, indeed almost three months since lead plaintiffs

submitted their expert reports. Further, any additional extension would result in prejudice to lead plaintiffs and the Class they represent.

Respectfully submitted,

DATED: October 24, 2007

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DECLARATION OF SERVICE BY E-MAIL 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 October 24, 2007 declarant served by electronic mail and by U.S. Mail to the parties: **LEAD PLAINTIFFS' OPPOSITION TO FURTHER EXTENSION OF DEFENDANTS' TIME TO DISCLOSE THEIR EXPERT WITNESS REPORTS.** The parties' email addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of October, 2007, at San Francisco, California.

s/ Juvily P. Catig

JUVILY P. CATIG