

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,)	
)	CLASS ACTION
Plaintiff,)	
)	Judge Ronald A. Guzman
- against -)	Magistrate Judge Nan R. Nolan
)	
Household International, Inc., et al.,)	
)	
Defendants.)	
)	

DEFENDANTS' STATUS REPORT FOR THE MARCH 27, 2008
STATUS CONFERENCE WITH JUDGE GUZMAN

Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
(212) 701-3000

Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Ave.
Suite 1100
Chicago, Illinois 60604
(312) 660-7600

*Attorneys for Defendants Household
International, Inc., Household Finance
Corporation, William F. Aldinger,
David A. Schoenholz, Gary Gilmer and
J.A. Vozar*

The Household Defendants respectfully submit this Status Report in advance of the March 27, 2008 Status Conference.

1. Mediation

The parties have agreed to resume the mediation of this dispute before Judge Layn Phillips, a former United States District Judge for the Western District of Oklahoma. The mediation will proceed in New York City on May 20, 2008, with substantive submissions due from both sides one week in advance.

Contrary to the inaccurate account in Plaintiffs' status report, Defendants did not "approach[] lead plaintiffs to discuss settlement". Rather, both parties responded favorably to Judge Phillips' inquiry as to whether this would be a good time to resume the mediation that commenced on May 23, 2005, adjourned, and was always expected to continue after the development of a more detailed record.¹ We are constrained to correct the record on this point to dispel Plaintiffs' insinuation that the resumption of the long-adjourned mediation is some foolish digression on Defendants' part that need not interfere with what Plaintiffs seek to portray as the "normal" progress of this case — as evidenced by their habitual reference to this status conference as the "trial setting conference".² Defendants intend to approach the mediation seriously

¹ Our understanding is that Plaintiffs' counsel professed the view that this would be a "good time" to resume the long-adjourned mediation — a proposition with which we agree.

² Plaintiffs' talismanic invocation of the mantra that no case will settle unless the parties face an imminent trial date underestimates the professionalism and good faith of the mediation participants — including Judge Phillips — and overlooks the challenge of setting a provisional trial date without reference to the timing and outcome of potentially case-ending or issue-narrowing motions should the mediation fail.

and in good faith, and assume that, notwithstanding their posturing, Plaintiffs' counsel will discharge their ethical duty to do likewise.

2. Proposal for a Partial Stay of Proceedings

In order to allow the parties to devote their full efforts and resources over the next seven weeks to effective preparation for the mediation, and to spare the Court from what may prove to be unnecessary administrative and substantive effort, Defendants believe that it would be appropriate for proceedings in this matter — other than the completion of certain expert discovery and related issues currently pending before Magistrate Judge Nolan — to be stayed pending completion of the mediation process. In particular, because the Court should not be asked to evaluate Defendants' forthcoming summary judgment motion before knowing whether the action will proceed, and because the mediation may well eliminate Defendants' need to move for summary judgment, it makes no sense to propose (as Plaintiffs do in their Status Report) that Defendants complete their initial briefing and compliance with the rigorous demands of Local Rule 56.1 before the mediation resumes. We respectfully suggest the Court instead set a control date early in June for a report on the status or outcome of the mediation and, if necessary, for a conference to discuss an efficient schedule for the summary judgment motion and other necessary pretrial proceedings.

Plaintiffs' ritualistic suggestion that a trial date be set immediately is likewise premature, for several reasons. First, of course, is the hope that the mediation will succeed in resolving this action. In addition, the need for and the timing and scope of any trial in this matter will depend on numerous other contingencies not presently before this Court. These include (i) the disposition of Defendants' forthcoming summary judgment motion (which, *inter alia* will renew their showing that all of Plaintiffs' claims are time barred, now with additional support

from expert discovery and further admissions by Plaintiffs), (ii) the timing and outcome of Defendants' likely motions to exclude certain expert testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), with related hearings as needed, and (iii) the resolution of potentially dispositive *in limine* motions, including for the exclusion of evidence as to which Plaintiffs failed to provide discovery. Defendants understand that the Court will have to take these and other contingencies into consideration in setting a potential trial date, but it has no need to undertake that burden this week, when there is at least some possibility that the mediation will eliminate the need for any further proceedings other than those necessary to approve a settlement.

It bears noting in this regard that through no fault of Defendants, expert discovery has still not been concluded, so that the case remains under the supervision of Magistrate Judge Nolan through at least April, 22, 2008, the date of her next status conference with the parties. (The expert-related issues still pending before Judge Nolan are summarized below.) Accordingly, it is premature to establish a summary judgment briefing schedule, set a trial date or establish other theoretical post-mediation deadlines at this time.

Defendants will be prepared to discuss a pre-trial schedule at the March 27 conference, if that is the Court's desire. However, we respectfully suggest that the more efficient and less adversarial course is to address these matters as needed after the mediation, and following the conclusion of the further proceedings currently scheduled by Magistrate Judge Nolan.³

³ As Judge Nolan wisely observed, "I know you want to get to trial, but I am not going to blow this case after five years of this for another month here or another month there. We are going to do it the right way." Tr 11/20/07, at 16.

3. Status of Expert Discovery Proceedings Before Judge Nolan

The parties have completed the exchange of Rule 26 reports prepared by their respective retained expert witnesses, including rebuttal reports and one sur-rebuttal report authorized by Judge Nolan, and the depositions of all but one of these proposed witnesses have been concluded, with the final deposition being conducted today (March 25). However, certain expert-related matters are still pending before Judge Nolan, as summarized below. In view of the pendency of some of these matters, Judge Nolan *sua sponte* adjourned her previously scheduled March 27, 2008 status conference to April 22, 2008.

(1) Plaintiffs failed to mention in their Status Report that Defendants have filed a motion to redress Plaintiffs' disclosure to one of their expert witnesses, and the publication in the latter's expert report, of an inadvertently produced document that Judge Nolan and this Court have held to be privileged. The motion was necessitated by Plaintiffs' insistence that these disclosures were permissible because the Court's privilege and non-waiver rulings did not expressly instruct Plaintiffs to return the document to Defendants or discontinue its use. Plaintiffs have moved to strike Defendants' motion or in the alternative for an evidentiary hearing. Judge Nolan has established a briefing schedule for these motions that will run through April 8, 2008.

(2) In addition, following Plaintiffs' March 10, 2008 amendment of their notice concerning expert testimony to identify non-retained witnesses whose testimony may be based on specialized knowledge within the meaning of Federal Rule of Evidence 701 and this Court's ruling in *Sunstar v. Alberto-Culver Company, Inc.*, 2006 U.S. Dist LEXIS 85678 (N.D. Ill., Nov. 16, 2006), Judge Nolan gave Defendants leave to depose one such witness, a former state regulator, who had not previously been deposed in this action. Pursuant to subpoena, the

deposition of that witness is scheduled to proceed on April 9, 2008. (To the extent that additional issues with respect to the application of Rule 701 and *Sunstar* cannot be resolved by the parties, Judge Nolan has instructed the parties to raise them before this Court at the appropriate time.)

(3) Also, the parties are following up on several unresolved compliance issues pertaining to the expert depositions that Defendants hope can be resolved without the need for Judge Nolan's intervention.

Dated: March 25, 2008
Chicago, Illinois

Respectfully submitted,

Eimer Stahl Klevorn & Solberg LLP

By: /s/ Adam B. Deutsch

Adam B. Deutsch (#6236959)
Nathan P. Eimer (#00735353)

224 South Michigan Ave.
Suite 1100
Chicago, Illinois 60604
(312) 660-7600

and

Cahill Gordon & Reindel LLP

Thomas J. Kavalier
Peter Sloane
Patricia Farren
Susan Buckley
Landis C. Best
David R. Owen

80 Pine Street
New York, New York 10005
(212) 701-3000

Attorneys for Defendants Household
International, Inc., Household Finance
Corporation, William F. Aldinger, David A.
Schoenholz, Gary Gilmer and J.A. Vozar

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on March 25, 2008, he caused to be served copies of **Defendants' Status Report for the March 27, 2008 Status Conference with Judge Guzman** to the parties listed below via the manner stated.

/s/ Adam B. Deutsch

Adam B. Deutsch

Via Email

Azra Z. Mehdi
D. Cameron Baker
Spence Burkholz
COUGHLIN STOIA GELLER RUDMAN
& ROBBINS LLP
100 Pine Street, Suite 2600
San Francisco, CA 94111
(415) 288-4545

Via Email

Marvin A. Miller
Lori A. Fanning
MILLER LAW LLC
115 South LaSalle Street
Suite 2910
Chicago, IL 60606
(312) 332-3400
(312) 676-2676 (fax)