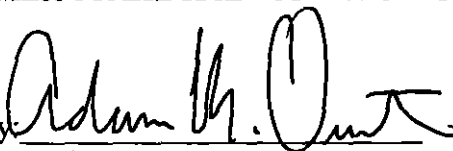




Dated: December 15, 2003

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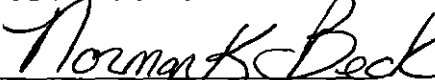
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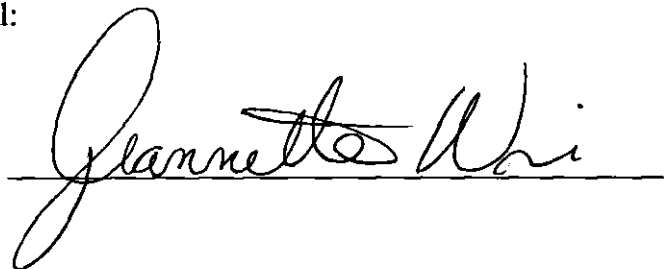
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that she served true and correct copies of the foregoing Notice of Motion upon the individuals listed on the attached Service List this 15th day of December via facsimile and U.S. mail:

A handwritten signature in cursive script, reading "Jannette Ari", is written over a horizontal line. The signature is fluid and appears to be in black ink.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**FILED**

DEC 15 2003

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

LAWRENCE E. JAFFE PENSION PLAN,  
on Behalf of Itself and All Others Similarly  
Situated,

Plaintiff,

v.

HOUSEHOLD INTERNATIONAL, INC., et al.

Defendants.

Lead Case No. 02-C-5893  
(Consolidated)

DOCKETED

DEC 19 2003

Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

**MOTION FOR LEAVE TO CITE RECENT AUTHORITY IN SUPPORT OF THE  
HOUSEHOLD DEFENDANTS' MOTION TO DISMISS THE CORRECTED AMENDED  
CONSOLIDATED CLASS ACTION COMPLAINT**

In further support of their pending Motion to Dismiss the Corrected Amended Consolidated Class Action Complaint, the Household Defendants respectfully bring to the Court's attention a recent decision issued by the United States District Court for the Southern District of New York, In re WorldCom, Inc. Securities Litigation, No. 02 Civ. 3288(DLC), 03 Civ. 6592, 2003 WL 22738546 (S.D.N.Y. Nov. 21, 2003).<sup>1</sup>

This decision provides additional support to the Household Defendants' argument that the statute of limitations and repose for claims raised under Section 11 and 12(a)(2) of the

<sup>1</sup> The In re WorldCom decision was issued on November 21, 2003, four months after the Household Defendants filed their reply brief in support of their motion to dismiss on July 21, 2003. For the Court's convenience, a copy of the In re WorldCom decision is attached hereto as Exhibit A.

127

Securities Act of 1933 are governed by § 13 of the Securities Act, 15 U.S.C. § 77m, and not by the extended statute of limitations period in Section 804 of the Sarbanes-Oxley Act, 28 U.S.C. § 1658. See Household Defendants' Opening Br. at 40-42; Household Defendants' Reply Br. at 27-29.

#### **I. THE IN RE WORLDCOM DECISION**

Two of the plaintiffs in this consolidated action alleged that WorldCom had used improper accounting practices as early as 1998, such that its reported assets, net worth and cash flow were artificially inflated and that SEC filings incorporated into the registration statements and offering memoranda used in connection with four bond offerings between August 1998 and May 2001 were materially false and misleading in violation of Sections 11 and 12(a)(2) of the Securities Act. In re WorldCom, 2003 WL 22738546, at \*2-3. The underwriters of the bond offerings at issue moved to dismiss the plaintiffs' complaint as time-barred pursuant to Section 13's one-year statute of limitation and three-year statute of repose, arguing that the extended statute of limitations created by Sarbanes-Oxley did not apply. Id. at \*4.

In analyzing the underwriter defendants' motion to dismiss, the court first recognized that the only two decisions to have addressed this issue had found Sarbanes-Oxley's extended statute of limitations inapplicable to claims under Sections 11 and 12(a)(2). In re WorldCom, 2003 WL 22738546, at \*6 (citing In re Merrill Lynch & Co. Research Sec. Litig., 272 F. Supp. 2d 243, 265 (S.D.N.Y. 2003); Friedman v. Rayovac Corp., 2003 U.S. Dist. LEXIS 13135, at \*27-28 (W.D. Wis. May 29, 2003)). The court observed that "[t]heir conclusion [was]

compelled by the text of Sarbanes-Oxley, the text of other securities statutes, relevant precedent, and the legislative history of Sarbanes-Oxley.” Id.

The court then undertook its own analysis of the issue. The court found that the language of Section 804 of the Sarbanes-Oxley Act only extended the statute of limitations for securities claims involving “fraud, deceit, manipulation, or contrivance,” and that plaintiffs’ claims (under Sections 11 and 12(a)(2)) could not be so characterized. In re WorldCom, 2003 WL 22738546, at \*6. First, the court noted that plaintiffs’ complaint “repeatedly disavows” that its claims sound in fraud. Id. at \*6. Second, the court rejected the plaintiffs’ argument that the alleged accounting improprieties involved a sufficient use of a “contrivance” to bring them within the scope of Sarbanes-Oxley’s statutory language. The court reasoned that the Sarbanes-Oxley Act’s use of the terms “deceit,” “manipulation,” and “contrivance” contemplated actual securities fraud because the language directly mimics the language of Section 10(b) and Rule 10b-5. Id. at \*7. Further, while Sarbanes-Oxley mirrors the language used in Section 10b-5, the court observed that these terms are not found in Sections 11 or 12(a)(2) which refer only to material misrepresentations or omissions. Id. at \*8.

The court next held that although resort to legislative history in interpreting Section 804 was inappropriate because the statutory language was unambiguous, the legislative history was noteworthy in the particular case since Sarbanes-Oxley was passed on the heels of the WorldCom bankruptcy. The court found, however, that the legislative history, including comments by Senator Leahy, indicated that the Act was not intended to extend to all private

securities actions, only those that validly sound in fraud. In re WorldCom, 2003 WL 22738546, at \*9.

The court concluded that Sections 11 and 12(a)(2) are governed by Section 13 and not Sarbanes-Oxley:

If Congress had intended to extend the statute of limitations for every private securities law claim, it could have done so. Section 804 does not, however, state that it extends the statute of limitations for all claims under the securities laws. Instead, it includes limiting language that extends the time for private causes of action under the securities laws only for claims that involve “fraud, deceit, manipulation or contrivance.” This language does not encompass Sections 11 and 12(a)(2).

In re WorldCom, 2003 WL 22738546, at \*9.

**II. IN RE WORLDCOM PROVIDES FURTHER SUPPORT TO THE HOUSEHOLD DEFENDANTS’ MOTION TO DISMISS PLAINTIFFS’ CORRECTED AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

As in In re WorldCom, plaintiffs here allege Section 11 and 12(a)(2) claims based on registrations that occurred more than three years prior to the initiation of the lawsuit, and these claims specifically disavow allegations of fraud. See Compl. ¶¶ 354, 383. In re WorldCom provides further support to the Household Defendants’ motion to dismiss these claims as time-barred, and specifically rebuts the three arguments Plaintiffs have proffered as to why Sarbanes-Oxley should apply to its claims—(1) that the act applied to all private securities claims; (2) that the use of the word “contrivance” reflected an intention by Congress to extend the statute of limitations to non-scienter based securities claims; and (3) that the legislative history of the statute indicates Congress’ intention to have the Act apply to all securities claims.



See Plaintiffs' Opp. Br. at 46-50. As set forth above, the court in In re WorldCom specifically rejected each of these arguments.

### III. CONCLUSION

For all of the foregoing reasons, the Court should grant leave to the Household Defendants to cite the additional authority of In re WorldCom, Inc. Securities Litigation, No. 02 Civ. 3288(DLC), 03 Civ. 6592, 2003 WL 22738546 (S.D.N.Y. Nov. 21, 2003), in support of their motion to dismiss plaintiffs' Corrected Amended Consolidated Class Action Complaint.

Dated: December 12, 2003

Respectfully submitted,

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**SEE CASE  
FILE FOR  
EXHIBITS**