

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

LAWRENCE E. JAFFE PENSION PLAN, ON)  
BEHALF OF ITSELF AND ALL OTHERS SIMILARLY)  
SITUATED, )

Plaintiff, )

- against - )

HOUSEHOLD INTERNATIONAL, INC., ET AL., )

Defendants. )

Lead Case No. 02-C5893  
(Consolidated)

CLASS ACTION

Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

**DEFENDANTS' SUPPLEMENTAL MEMORANDUM OF LAW IN  
OPPOSITION TO PLAINTIFFS' MOTION *IN LIMINE* NO. 4**

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This Supplemental Memorandum is respectfully submitted on behalf of Defendants Household International, Inc., (“Household”), William F. Aldinger, David A. Schoenholz and Gary Gilmer (the “Individual Defendants” and, collectively with Household, the “Household Defendants” or “Defendants”), in further support of their opposition to Plaintiffs’ Motion *In Limine* No. 4 to further address certain questions raised by the Court this afternoon during the pretrial conference. The Court inquired as to the extent to which Defendants intend to introduce evidence regarding the role of the legal department as part of the overall internal control structure at Household, whether defendants intend to use that evidence to imply that lawyers approved certain policies and actions, and whether Defendants had produced sufficient non-privileged documents to allow Plaintiffs to verify the role in-house counsel played in Household’s internal control structure.

First, as defense counsel confirmed at the conference, Defendants do not intend to introduce evidence that any Defendant relied upon any legal opinion provided by counsel regarding any public statement. Moreover, Defendants do not intend to argue that any consumer lending practice was legitimate because counsel said so. Indeed, that would not even be relevant because Plaintiffs cannot satisfy their burden of proving that any exceptions to sound lending policies at Household were (a) statistically significant or (b) endorsed by senior management. It was not the function of the Company’s senior executives personally to construct and implement each and every lending practice used by the Company, which operated in 46 states and had over 30,000 employees. Instead, the Company’s senior executives created and depended on an extensive internal control structure to deal with such issues.

Indeed, Plaintiffs are proceeding on a theory of scienter through “severe recklessness.” Plaintiffs claim Defendants were severely reckless when they told the public that Household was not a “predatory lender” because Defendants knew that Household effectively had no internal control structure and therefore they had no basis for asserting that the Company was in compliance with the applicable laws. For example, in response to an interrogatory requesting Plaintiffs to iden-

tify their position on scienter as to Individual Defendant William Aldinger, Plaintiffs alleged that “Aldinger had the authority and responsibility to ensure the existence of internal controls, policies and procedures to comply with applicable state and federal laws and regulations, but knew or was reckless in disregarding the need to institute such controls.”<sup>1</sup>

As part of their response to this claim, Defendants intend to introduce evidence that Household’s legal department was one layer in Household’s extensive internal control structure. Because Defendants believed that they had put in place an adequate internal control system such that any policy that was implemented had been thoroughly vetted, Plaintiffs will be unable to carry their burden of proving the scienter of any Defendant based on a supposed failure to institute appropriate control structures (assuming *arguendo* that such evidence would establish scienter).

Plaintiffs falsely imply that they have received no information regarding the role of the legal department in Household’s internal control structure. Plaintiffs argue that their attempts to obtain such information through document discovery and deposition testimony have been thwarted by Defendants’ assertions of privilege. This is not true. Attached are a few examples of the ***hundreds of documents that Defendants have produced in this litigation*** that describe or demonstrate the existence of the legal department, its position within the Company’s larger internal control framework, and the role the legal department played in the policy development process (*See* Declaration of Thomas J. Kavalier, March 12, 2009 (“Kavalier Decl.”), Ex. A-F) — including in-house counsel’s explanation of the Company’s legal position to government regulators (*See* Kavalier Decl. Ex. G). These documents were not withheld from Plaintiffs.<sup>2</sup> Moreover, Defendants permitted wit-

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<sup>1</sup> Lead Plaintiffs’ Fifth Supplemental Amended Responses and Objections to Household Defendants’ [Eighth] Set of Interrogatories to Lead Plaintiffs, at 125.

<sup>2</sup> The fact that Plaintiffs have obtained documents such as these undermines their claim that Defendants have hindered discovery on this issue through the assertion of privilege. Moreover, the fact that Plaintiffs have chosen not to include these documents as trial exhibits demonstrates that, though armed with these materials, they have no serious interest in pursuing the issue beyond their perceived ability to make mischief with this motion *in limine*.

nesses to testify regarding the existence and function of the law department at the Company. For example, Tom Schneider, Household's Director of Policy & Compliance Support testified as follows:

"Q Do you recall what you would have done in response to this particular aspect of the Missouri exam where you are listed with specific areas of responsibility?

MR. SLOANE: You mean him personally?

MS. WINKLER: Yes.

A I would have called Carla over. We would have reviewed some examples that they gave us and, then, we would try to develop a course of action, whether this was in fact a true issue or an issue where the State misinterpreted something.

BY MS. WINKLER: Q Take, for example, if this was one -- first where a state misinterpreted something, what would have been your course of action?

MR. SLOANE: Him personally or the department?

MS. WINKLER: First him and, then, your department.

A Again, I would have discussed this with Carla and also maybe Ron or April, or even one of their subordinates. ***And, then, most likely we would have called our Law Department and asked for their input, if we made any decision which way to go.***" (Kavaler Decl. Ex. I (Transcript of Deposition of Tom Schneider), at 73:16-74:12) (emphasis added).

Likewise, Robin Allcock, Household's Vice President of Operations Support testified as follows:

"Q. And the last page refers to enhancing controls to insure timely updating of the loss surveys?

MS. BEST: Page 11?

MR. BAKER: Page 11.

Q. Were there any steps within -- taken within your department, or by you, to enhance controls to insure timely updating of the loss surveys?

A. ***The law department handled that.***

Q. And so -- and the recommendation we talked about, back-end reviews, that was -- would have been done within the law department, as opposed to someone else?

A. Yes.” (Kavaler Decl. Ex. J (Transcript of Deposition of Robin Allcock), at 267:3-17) (emphasis added).

Privilege extends only to the substance of legal advice. It does not extend to the mere fact that a party sought legal advice. Plaintiffs were permitted ample opportunity during discovery to explore the existence and purpose of the legal department at Household, which was tasked with providing legal advice to the Company. Accordingly, Defendants should not be prevented from introducing evidence as to the existence and function of the legal department.

Plaintiffs’ requested remedy would go too far. If Defendants were not able to introduce evidence that Household had a legal department, then the jury might improperly infer that the absence of evidence of a legal department is evidence of a legal department’s absence. This would amount to an impermissible (and inaccurate) adverse inference as a consequence of the Company’s limited (and judicially upheld) assertion of privilege as to legal advice where Defendants have not asserted the privilege to block discovery of the fact of the legal department’s existence or its function.

### CONCLUSION

For the foregoing reasons, Defendants respectfully request that Plaintiffs’ Motion *In Limine* No. 4 be denied.

Dated: March 12, 2009  
Chicago, Illinois

Respectfully submitted,  
CAHILL GORDON & REINDEL LLP

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