

**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.)	
)
_____)	

**PLAINTIFFS' MOTION TO STRIKE REFERENCES TO ANDERSEN IN THE
VERDICT FORM GIVEN DEFENDANTS' FAILURE TO ADDUCE EVIDENCE AT
TRIAL SHOWING ANDERSEN COMMITTED A PRIMARY VIOLATION OF THE
SECURITIES LAWS**

Plaintiffs respectfully move the Court to find defendants have failed to satisfy their burden under Fed. R. Civ. P. 50(a) to adduce evidence sufficient to support a reasonable jury's conclusion that Arthur Andersen LLP ("Andersen") is proportionately liable for defendants' securities fraud. Any reference to Andersen should be stricken from the verdict form.

The Private Securities Litigation Reform Act of 1995 ("PSLRA") permits a jury to assign some portion of liability to Andersen if and only if the jury determines that defendants did not "knowingly" commit a violation of the securities laws. *See* 15 U.S.C. §78u-4(f)(2)(A), (B); *Newby v. Enron Corp. (In re Enron Corp. Sec.)*, 236 F.R.D. 313, 318 (S.D. Tex. 2006) (knowing violators of 1934 Exchange Act subject to joint and several liability) (citations omitted). By contrast, if the jury were to conclude that one or more of the defendants recklessly violated the securities laws, only then could the jury consider proportionate liability. *Id.*

However, under the PSLRA defendants have the burden of proving that Andersen bears responsibility for their misconduct. Considering this very question, *Enron Corp. Sec.*, 236 F.R.D. at 319, held "the Court will require any party designating a non-party as potentially wholly or partially at fault to bear the burden of proof demonstrating that the ***non-party violated the federal securities statutes.***" (Emphasis added.) Further, in the context of Rule 10b-5, the Supreme Court ruled in *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 128 S. Ct. 761, 773-74 (2008) that liability only attaches to "cover secondary actors who commit ***primary violations.***" (Emphasis added.)

Defendants have not even identified a primary violation committed by Andersen, much less provided any evidence that Andersen knowingly or recklessly committed such a violation.

Because defendants have failed to advance evidence sufficient to support a reasonable jury's decision that a preponderance of evidence shows Andersen committed a primary violation of the securities laws, defendants should not be permitted to shift blame for their own misconduct to Andersen. Plaintiffs respectfully request the Court find defendants have failed to satisfy Fed. R. Civ.

P. 50(a) as to proportionate liability under the PSLRA, and strike any reference to Andersen from the verdict form.

DATED: April 28, 2009

Respectfully submitted,

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DECLARATION OF SERVICE BY ELECTRONIC 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 Diego, State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 W. Broadway, Suite 1900, San Diego, California 92101.

2. That on April 28, 2009, declarant served by electronic mail and by U.S. Mail to the parties the PLAINTIFFS' MOTION TO STRIKE REFERENCES TO ANDERSEN IN THE VERDICT FORM GIVEN DEFENDANTS' FAILURE TO ADDUCE EVIDENCE AT TRIAL SHOWING ANDERSEN COMMITTED A PRIMARY VIOLATION OF THE SECURITIES LAWS

The parties' email addresses are as follows:

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and by U.S. Mail to:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of April, 2009, at Chicago, Illinois.

/s/ Rika J. Ellis
RIKA J. ELLIS