

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	Nan R. Nolan
CASE NUMBER	02 C 5893	DATE	9/28/2004
CASE TITLE	Lawrence Jaffe vs. Household International, et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] Before this Court is lead Plaintiff's Motion for Protective Order [166-1], Defendants' Motion for a Protective Order and Opposition to Lead Plaintiff's Motion for Protective Order [167-1], and the Joint Submission Regarding Protective Order. The motions are granted in part and denied in part without prejudice to resubmission of protective order complying with this order. Enter Order.
- (11) [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.	U.S. DISTRICT COURT CLERK 2004 SEP 29 AM 7:57	12 number of notices	Document Number 181
<input type="checkbox"/> No notices required.		SEP 29 2004 date docketed	
<input checked="" type="checkbox"/> Notices mailed by judge's staff.		<i>[Signature]</i> docketing deputy initials	
<input type="checkbox"/> Notified counsel by telephone.		9/27/2004 date mailed notice	
<input type="checkbox"/> Docketing to mail notices.		hmb mailing deputy initials	
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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

Plaintiff,)

v.)

HOUSEHOLD INTERNATIONAL, INC., et. al.)

Defendants.)

DOCKETED
SEP 29 2004

Lead Case No. 02 C 5893

Judge Ronald A. Guzman
Magistrate Judge Nan R. Nolan

ORDER

This matter is before the Court on the Lead Plaintiff's Motion for Protective Order, Defendants' Motion for a Protective Order and Opposition to Lead Plaintiff's Motion for Protective Order, and the Joint Submission Regarding Protective Order. The motions are granted in part and denied in part without prejudice to resubmission of protective order complying with this order.

Although pretrial discovery is usually conducted in private, "the public at large pays for the courts and therefore has an interest in what goes on at all stages of a judicial proceeding." Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co., 178 F.3d 943, 944-45 (7th Cir. 1999). In order to protect the legitimate privacy interests of litigants, Federal Rule of Civil Procedure 26(c) allows a court to enter a protective order for good cause shown. The Seventh Circuit has made clear that a trial judge must make an independent determination of good cause prior to issuing a protective order. "The judge is the primary representative of the public interest in the judicial process" and has an independent duty to balance the public's interest against the "property and privacy interests of the litigants." Id. at 945. A court need not determine good cause on a document-by-document basis.

181

Id. at 946. Rather, a court may authorize the parties to restrict public access to properly demarcated categories of legitimately confidential information if the judge (1) satisfies herself that the parties know what the legitimate categories of protectable information are and are acting in good faith in deciding which parts of the record qualify for protection and (2) makes explicit that either party and any interested member of the public can challenge the designation of particular documents. Id.

Defendants' proposed protective order seeks to limit from public disclosure "confidential, proprietary, or private information for which special protection from public disclosure would be warranted under applicable law. ("Confidential Information")." Defendants' protective also order states: "Any producing party may designate any Discovery Material Confidential if the Producing Party believes, in good faith, that such Discovery Material contains Confidential Information." The defendants' proposed protective order does not provide any specific categories of "confidential, proprietary, or private information" that they seek to protect from public disclosure.

Defendants' motion states that Household seeks to protect non-parties' personal financial information, shareholders' personal financial information, Household's internal business strategies, Household's proprietary software, and "other Household proprietary information." With respect to defendant Arthur Andersen, defendants seek to protect proprietary business information and strategies, the personal financial information of Andersen and/or its various members/employees, and "other categories of proprietary information." Defendants explain that such information is confidential and not known or available outside of Andersen.

Good cause existed to enter a protective order with respect to the public disclosure of (1) non-parties' personal financial information, (2) Household's shareholders' personal financial information, (3) Household's proprietary software, and (4) the personal and non-public financial

information of Andersen and/or its various members/employees. Only material that falls within these categories is entitled to protection. The terms Household's "internal business strategies," "other Household proprietary information," Andersen's "proprietary business information and strategies" and Andersen's "other categories of proprietary information" are too broad as categories of protectable information. These broad and undefined categories do not allow the Court to fulfill its duty of satisfying itself that the parties know what the legitimate categories of protectable information are and are acting in good faith in deciding which parts of the record qualify for protection. Counsel for Household and Arthur Andersen should have more narrowly defined the types of documents they seek to protect from public disclosure. If counsel for Household and Arthur Andersen believe that additional categories of information should be protected from public disclosure, they shall file an appropriate motion including a narrow definition of the types of documents they seek to protect and an analysis of the propriety of secrecy for each additional category of information they seek to protect from public disclosure.

After considering the parties' submission, the Court issues the following rulings regarding the additional areas of disagreement. Defendants' objections to plaintiffs' proposed ¶ 10 and plaintiffs' proposed recital are sustained. Defendants' objection to plaintiffs' proposed ¶ 11 is overruled. Defendants' objection to the portion of ¶ 18(a) of plaintiffs' proposed order which allows confidential information to be disseminated to "the authors of the documents or the original source of the information, and/or the recipient of any such document, including all addresses and persons listed as receiving copies or blind copies" is overruled. With respect to witnesses (¶18(c) of plaintiffs' proposed order), the protective order shall be provide for dissemination of confidential information to "prospective witnesses who may be required to testify or be cross-examined at a

deposition or trial on facts contained in the confidential materials and who have signed the confidentiality agreement.” The protective order should also include the “for purposes of this litigation” limitation. Counsel that disclose confidential information to any such person shall retain the signed Confidentiality Agreement.

Plaintiffs’ objection to ¶ 9 of defendants’ proposed order is overruled. Plaintiffs’ concern regarding the filing of pleadings and briefs containing confidential information is addressed below. Plaintiffs’ objection to ¶¶ 17-23 of defendants’ proposed order is sustained in part and overruled in part. Whether production is inadvertent and whether the privilege has been waived will be determined by the Court if and when such an issue arises. Defendants’ proposed procedure is sustained to the extent it includes a written notice requirement and a meet and confer requirement before approaching the Court. Obviously, if a dispute exists regarding the producing party’s claim of privilege, the receiving party shall refrain from using or disclosing the document or its contents or part(s) of the document claimed to be privileged until the dispute is resolved.

Plaintiffs’ objection to defendants’ proposed requirement that the person or entity receiving a subpoena requesting confidential information notify the entity serving or issuing the subpoena that the information sought is subject to a protective order is sustained. The subpoena recipient must give written notice of the subpoena to the producing party within three (3) business days after receiving the subpoena.

Moreover, the Court directs the parties to Pepsico, Inc. v. Redmond, 46 F.3d 29 (7th Cir. 1995) and In the Matter of Grand Jury 983 F.2d 74 (7th Cir. 1992), which discuss the impropriety of filing entire pleadings or briefs under seal. The protective order should be revised to indicate that the parties must file public pleadings and briefs but may file sealed supplements if necessary to

discuss in detail materials subject to the protective order. Documents which contain both protectable and non-protectable information need only have the protectable portions of the documents redacted in order to maintain secrecy. Citizens, 178 F.3d at 945. Plaintiffs' objection to defendants' proposed requirement that the parties obtain leave of court before filing confidential information is sustained.

The protective order should indicate that either party or an interested member of the public can challenge the secreting of particular documents pursuant to the protective order. Citizens, 178 F.3d at 946. Finally, the protective order should indicate that if the case proceeds to trial, the trial court will determine whether any of the protected information should become a part of the public record.

ENTER:



Nan R. Nolan

United States Magistrate Judge

Dated: _____

9/28/04