

**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, )  
  
Plaintiffs, )  
  
v. )  
  
HOUSEHOLD INTERNATIONAL, INC., )  
et al., )  
  
Defendants. )

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

Hon. Ronald A. Guzman

Magistrate Judge Nan R. Nolan

**DOCKETED**  
OCT 27 2004

**FILED**  
OCT 25 2004  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

**NOTICE OF FILING**

To: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE THAT, on October 25, 2004, we caused to be filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois, the Unopposed Motion To Modify Protective Order, a copy of which is attached and served on you.

Dated: October 25, 2004

Respectfully Submitted,

ARTHUR ANDERSEN LLP

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One of the Attorneys for Arthur Andersen LLP

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Lead Case No. 02 C 5893 (Consolidated)

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on October 25, 2004, I caused copies of the foregoing Notice of Filing to be served upon the persons on the attached service list by electronic mail.

  
\_\_\_\_\_  
Susan Charles



Internal proprietary material of Andersen reflecting or disclosing audit processes or methodology for the conduct of audits or the disclosure of the results of such a process, including, but not limited to audit manuals.

**A. Documents Protected Under the Illinois Accountancy Act**

Under Illinois law, there is an accountant's privilege. *See* 225 ILCS 450/27. The Illinois Accountants Privilege belongs to the accountant and the privilege protects from disclosure information which an accountant learns or generates in its confidential capacity as an accountant. While this privilege would protect information in the possession of an accountant in state court, or in federal court when jurisdiction is predicated upon diversity, the privilege does not shield information from disclosure when jurisdiction is based upon federal law and there are no state law claims. In this case, many, if not all, of the documents that Andersen generated as the auditor for Household are privileged *and* would be protected from disclosure under state law. Accordingly, it is appropriate to have such documents be designated as confidential under the protective order in this case. Among other things, persons who would otherwise be precluded from obtaining these documents because they are privileged ought not gain access to them by the fortuity of the filing of this federal suit.

**B. Andersen Workpapers**

There can be no dispute that workpapers of an accountant are in fact privileged under state law. *See Western Employers Ins. Co. v. Merit Ins. Co.*, 492 F. Supp. 53, 54 (N.D. Ill. 1979) ("Under Illinois law, public accountants cannot be compelled by any court to divulge information obtained while acting in their confidential capacity as accountants.") (citing 225 ILCS 450/27). However, as set forth below, because this action is not based on diversity jurisdiction, this Court is not bound to follow Illinois law. Nevertheless, this Court should enter

an order protecting Andersen's workpapers from public disclosure because doing so would in no way harm any federal policy. Rather, it would further the strong policy of encouraging corporations to make full disclosures to their auditors during the course of an audit. *Compare Fisher v. U.S.*, 425 U.S. 391, 403 (1976) ("The purpose of the [attorney-client] privilege is to encourage clients to make full disclosure to their attorneys."). *See generally* C. MCCORMICK, EVIDENCE 175-76 (2d ed. 1972).

There are additional reasons, moreover, to provide for protection of the workpapers under the protective order. First, the workpapers reflect the proprietary audit methodology of Andersen and for the reasons set forth below are entitled to protection from public dissemination. Second, like all large public accounting firms, Andersen has been engaged in a steady stream of litigation, and Andersen has a strong interest in protecting its confidential documents in order to not give any of these plaintiffs an unfair and illegal advantage over Andersen. *See, e.g., Sasu v. Yohshimura*, 147 F.R.D. 173, 176 (N.D. Ill. 1993) (noting that "a party does have an interest in preventing the dissemination of confidential information" and ruling that the protective order would not permit dissemination to other litigants). *See also Culinary Foods, Inc. v. Raychem Corp.*, 151 F.R.D. 297, 307 (N.D. Ill. 1993) (holding that the "confidential information obtained by [the plaintiff] in this litigation may not be disseminated to litigants in other cases against [the defendant].").

Therefore, in light of the fact that these documents would be privileged under state law, and the only reason they are discoverable is due to the applicability of federal law, they should be subject to confidential treatment. Doing so will preserve the confidential nature of the documents while allowing plaintiffs the opportunity to review relevant documents for purposes of this lawsuit only.

**C. Internal Confidential and Proprietary Literature of Andersen**

The internal confidential and proprietary literature of Andersen should also be protected under the protective order (Andersen disputes the discoverability of these document in any form other than as part of the workpapers, but this issue is not before the Court at this time). As stated in *Robin v. Doctors Offcenters Corp.*, Nos. 84 C 10798, 85 C 08913, 1986 WL 14133, at \*1 (N.D. Ill. 1986):

The manuals contain Arthur Young's particular procedure and methodology concerning accounting, auditing, and reporting issues. They undoubtedly represent an enormous expenditure of time and effort by Arthur Young. Each manual clearly states that it is confidential and is for internal firm use only. Similar internal manuals used by other national accounting firms have been found to be trade secrets. . . . This court agrees that the internal accounting and auditing manuals are proprietary and confidential; their contents are carefully protected and are the product of much effort on Arthur Young's behalf.

1986 WL 14133 at \*1

So too here, Andersen's internal audit manuals and standards contain its "particular procedure and methodology," are the product of "an enormous expenditure of time and effort" by Andersen, and have been consistently treated as confidential by Andersen. Therefore, to the extent these documents are discoverable, they should be treated as confidential. *See* Fed. R. Civ. P. 26(c)(7) (court may order "that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.").



**Conclusion**

For the reasons stated above, these three categories of information should be added to the protective order.

Dated: October 25, 2004

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on October 25, 2004, I caused copies of the foregoing Unopposed Motion to Modify Protective Order to be served upon the persons on the attached service list by electronic mail.



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