

**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. )	
_____ )	

**THE CLASS' STATUS REPORT: MARCH 9, 2006 STATUS CONFERENCE**

The Class hereby submits this Status Report in advance of the March 9, 2006 status conference.

**A. Status of the Settlement with Arthur Andersen LLP**

On January 31, 2006, Judge Guzman entered the Revised Order Preliminarily Approving Settlement with Arthur Andersen LLP and Providing for Notice. Notice of the settlement as well as class certification was sent to the Class by February 13, 2006. The final approval hearing is currently scheduled for April 6, 2006.

**B. Status of Motions Pending Before Judge Guzman**

Household Defendants' Motion Pursuant to the Seventh Circuit's Recent Decision in *Foss v. Bear Stearns, Co.* to Dismiss the Complaint in Part: On February 28, 2006, Judge Guzman granted the Household Defendants' motion, and dismissed the Class' claims arising from misrepresentations and omissions made between October 23, 1997 and July 30, 1999. Pursuant to this decision, the new Class Period is July 30, 1999 through October 11, 2002. Judge Guzman's decision was based on his determination that the five-year statute of limitations under the Sarbanes-Oxley Act of 2002 does not apply to the Class' claims. In his February 28, 2006 Order, Judge Guzman did not address validity of the Class' substantive allegations, which were upheld in the Court's March 19, 2004 Order. Because information regarding defendants' pre-Class Period statements and activities remains relevant, the Class will continue to seek discovery related to events occurring prior to July 30, 1999, as appropriate. *In re Enron Corp. Sec. Litig.*, 235 F. Supp. 2d 549, 689 (S.D. Tex. 2002) (even where a claim is time-barred, conduct prior to the class period may still be relevant to establish scienter or a pattern and practice amounting to a scheme for purposes of §10(b)); *In re Scholastic Corp. Sec. Litig.*, 252 F.3d 63, 72 (2nd Cir. 2001) (rejecting argument that pre-class period data is not relevant to defendants' state of mind during the class period: "Any information that sheds light on whether class period statements were false or materially misleading is relevant.").

Household Defendants' Motion to Dismiss Pursuant to the Supreme Court's Recent Decision in *Dura Pharmaceuticals Inc. v. Broudo*: This motion is still pending before Judge Guzman.

**C. Status of Motions Before This Court**

The Class' Motion to Compel Responses to the Second Set of Interrogatories from Household Defendants: On February 17, 2006, the Court issued a Minute Order granting, in part, denying in part, and continuing in part the Class' Motion to Compel Responses to the Second Set of Interrogatories from Household Defendants. Household was ordered to supplement its prior responses by providing further information in response to certain interrogatories and to reference the charts generated for the Attorneys General. Additionally, Household was ordered to provide an estimate as to the cost of providing other responsive information, such as the 2002 information responsive to Interrogatory Nos. 5-8(b) and 9-12. To date, Household has not supplemented its responses nor provided any estimate of the cost of providing the additional information. By letter dated March 7, 2006, Household confirmed these points and did not provide any date on which it would comply with this Court's Order.

**D. Status of Discovery**

**1. Depositions**

**a. Deposition Limit**

At the October 26, 2005 status hearing, this Court granted each party permission to take 35 depositions. The Class has taken company depositions pursuant to Rule 30(b)(6) and depositions of Elaine Markell, Walter Rybak and Curt Cunningham (in-progress today) for a total of four depositions. The Household Defendants cancelled the depositions of former directors Lou Levy and John Nichols pending the resolution of the issue regarding disputed "agency" documents. The Class also had propounded two notices for 15 and 54 depositions respectively. These deposition notices include 41 out of the more than 75 individuals identified as having relevant information by the

Household Defendants in their Initial Disclosures and responses to interrogatories and 28 individuals identified by the Class based on deposition testimony and its ongoing review of documents.

The Class met and conferred with counsel for the Household Defendants on March 3, 2006, and requested that they agree to an increased number for depositions that parties could present to the Court. The Household Defendants refused to do so based on the assertion that this issue was not ripe until after the Class had completed 35 depositions. In light of the May 12, 2006 fact discovery cut-off, the Class believes that the issue is ripe.

The Class has been working with Arthur Andersen LLP's ("Andersen") counsel to depose seven to nine former Andersen employees. The Class also intends to depose 10-12 third-party witnesses and has issued subpoenas dated March 7, 2006, for five depositions of third parties. In sum, the Class anticipates needing 100 depositions in order to develop the necessary factual record for summary judgment and trial.

**b. Deposition Scheduling**

The Class has noticed depositions so that they can be completed by the fact discovery cut-off, currently scheduled for May 12, 2006. Most of the depositions noticed by the Class have been rescheduled for later dates at the request of counsel for the Household Defendants. Despite the slippage (which has ranged from two weeks to two months), with the Household Defendants' cooperation, the Class hopes to complete the noticed depositions in a timely fashion.

In order to ensure that the Class has all of the information necessary to proceed with depositions, the Class has served document requests pursuant to Fed. R. Civ. P. 30(b)(5) and 34 concurrent with its deposition notices. The document requests seek production of responsive documents on a date certain, more than 30 days after the request is served. Defendants' practice has been to ignore the deadline for document production in the notice, and serve objections and produce documents weeks after they are due. While the Class understands that it is sometimes necessary to

change the date of a witnesses' depositions based on his or her availability, and has accommodated defendants in rescheduling depositions, there is no valid reason for defendants to withhold documents until the last minute. Accordingly, the Class requests that the Court order defendants to produce documents responsive to Rule 30(b)(5) document requests on the date specified in the notice.

## **2. Discovery Cut-Off and Other Deadlines**

The current fact discovery cut-off is May 12, 2006. Absent any modification to this May 12, 2006 discovery cut-off, based on the May 20, 2004 Rule 26(f) Report, the Class proposes the following dates for expert disclosures and discovery:

(a) The Class will designate any expert witnesses and provide the disclosure required pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure by June 30, 2006;

(b) Defendants will designate any expert witnesses and provide the disclosure required pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure by August 25, 2006;

(c) The Class will disclose any expert rebuttal opinion(s) by September 29, 2006;  
and

(d) Depositions of expert witnesses will be taken by and all expert discovery will be completed by November 20, 2006.<sup>1</sup>

## **3. Document Production and Motions to Compel**

Defendants currently represent that their document production, including native format documents responsive to the Class' first request for production of documents, will not be complete until April 7, 2006 – just over one month prior to the current fact discovery cut-off of May 12, 2006.

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<sup>1</sup> The Class proposes that these dates be proportionally changed in connection with any future extension of the fact discovery cut-off.

Given the length of time the discovery has been pending and the limited time frame within which to complete discovery, the Class believes production in response to both plaintiffs' first and second requests for production of documents should be completed on or before **March 20, 2006**. In addition, due to the Household Defendants' refusal to produce all relevant documents in response to the first two document requests, the Class has been forced to propound a third document request. Most of the documents sought by the Class' Third Request for Production of Documents to Household International, Inc., William Aldinger, David Schoenholz, Gary Gilmer and J.A. Vozar ("Third Request") were specifically identified during depositions. The Class believes that these documents should have been produced pursuant to its first two requests. Defendants, however, have taken the position that they are not responsive to the first two requests and have refused to produce them absent a third "formal request." Significantly, defendants have offered no other reason why these documents should not be produced. Rather than engage in further motion practice, the Class has chosen to propound the Third Request specifically seeking these documents. The Household Defendants have been aware for some time that the Class seeks these relevant documents. Thus, production should be made in short order.

In addition to the ongoing delays in production and the failure to complete production discussed above, defendants' production has been deficient for failure to produce relevant post-Class Period documents. The Class narrowed the scope of the time period requested in the document requests to the period January 1, 1997 through December 31, 2003 – the same period defendants demanded in document requests to plaintiffs. Defendants have agreed to produce post-Class Period document for only a select few categories. Additionally, despite their limited production, the Household Defendants have objected to deposition questions regarding post-Class Period documents and events. The post-Class Period discovery sought by the Class is directly relevant to the impact of

defendants' fraudulent scheme on Household's bottom line, a key component of the Class' case.

Accordingly, the Class requests specific guidance from the Court on this issue.

DATED: March 8, 2005

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DECLARATION OF SERVICE BY EMAIL 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 Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on March 8, 2006, declarant served by electronic mail and by U.S. Mail **THE CLASS' STATUS REPORT: MARCH 9, 2006 STATUS CONFERENCE** to the parties listed on the attached Service List. The parties' email addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of March, 2006, at San Francisco, California.

/s/ Marcy Medeiros  
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