

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED

FEB 28 2003 10

MICHAEL W. DOBINS
CLERK, U.S. DISTRICT COURT

LAWRENCE E. JAFFE, Pension Plan)
and on behalf of all others)
similarly situated,)
)
Plaintiff,)
)
v.)
)
HOUSEHOLD INTERNATIONAL, INC.)
ARTHUR ANDERSEN, L.L.P,)
)
Defendants.)
_____)

No. 02 C 5893

Judge Ronald A. Guzman

DOCKETED
MAR 03 2003

NOTICE OF FILING

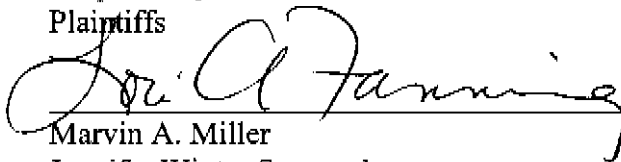
To: Counsel on the Attached Service List

PLEASE TAKE NOTICE that on February 28, 2003, we 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 *Plaintiffs' Reply to Arthur Andersen LLP's Opposition to Plaintiffs' Motion for a Finding of Relatedness*, a copy of which is hereby served upon you.

Dated: February 28, 2003

Respectfully submitted,
Plaintiffs

By:



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DECLARATION OF SERVICE BY FACSIMILE AND MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Francisco, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 100 Pine Street, 26th Floor, San Francisco, California 94111.

2. That on February 28, 2003, declarant served the PLAINTIFFS' REPLY TO ARTHUR ANDERSEN LLP'S OPPOSITION TO PLAINTIFFS' MOTION FOR A FINDING OF RELATEDNESS both by facsimile and by depositing a true copy thereof in a United States mailbox at San Francisco, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by both facsimile and mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of February, 2003, at San Francisco, California.


DEBORAH R. DASH

HOUSEHOLD INTERNATIONAL (LEAD)

Service List - 2/27/2003 (02-0377)

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HOUSEHOLD INTERNATIONAL (LEAD)

Service List - 2/27/2003 (02-0377)

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UNITED STATES DISTRICT COURT **FILED**
NORTHERN DISTRICT OF ILLINOIS FEB 28 2003 ¹⁰

EASTERN DIVISION

MICHAEL M. DOBINS
CLERK, U.S. DISTRICT COURT

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

Plaintiff,)

No. 02 C 5893

vs.)

HOUSEHOLD INTERNATIONAL, INC., et al.,)

Judge Ronald A. Guzman
Magistrate Judge Nan R. Nolan

Defendants.)

DOCKETED
MAR 03 2003

**PLAINTIFFS' REPLY TO ARTHUR ANDERSEN LLP'S OPPOSITION TO
PLAINTIFFS' MOTION FOR A FINDING OF RELATEDNESS**

I. INTRODUCTION

Lead Plaintiff, the Glickenhau Institutional Group, has moved for a finding that *Williamson v. Aldinger, et al.*, 03 C00331 ("*Williamson*"), is related to *Jaffe v. Household International, Inc. et al.*, 02 C5893 ("*Jaffe*"). No party objects to this motion except defendant Arthur Andersen LLP ("*Andersen*"). Andersen opposes on the grounds that relating the two cases would unnecessarily complicate this litigation and substantially prejudice the rights of Andersen.¹ Andersen, however, does not cite a single case supporting its position. Indeed, Andersen fails to even address the applicable statute, Local Rule 40-4. Instead, Andersen attempts to construct an argument against a finding of relatedness by highlighting minor procedural differences between the two actions, again baldly stating that Andersen would be severely prejudiced if the cases are related. In making this argument, Andersen ignores the fact that "[s]ince these cases involve common issues of law and fact,

¹Defendants Household International, Inc. ("Household"), William F. Aldinger, and David A. Schoenholz do not object to the relation of the two matters. Director Defendants in the *Williamson* case also do not object to relating the cases. Plaintiff Williamson has informed lead plaintiff that he also does not object to relation of the cases and will detail his position in papers filed with the Court on February 28, 2003.

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they are clearly related cases as that term is defined under this court's Local Rules." *Anderson v. Cornejo*, 199 F.R.D. 228, 262 (N.D. Ill. 2000). Since plaintiffs' motion satisfies the requirements of Local Rule 40-4, relating these actions would serve the interests of judicial economy and no party would be prejudiced if the cases are related. Accordingly, plaintiffs' motion should be granted.

II. ARGUMENT

A. The *Jaffe* and *Williamson* Cases Have Substantial Overlap of Issues and Parties

In Arthur Andersen's Opposition to Plaintiff's Motion for a Finding of Relatedness ("Def's Opp."), filed February 21, 2003, Andersen essentially argues that because *Jaffe* and *Williamson* are not exactly the same, the Court should deny plaintiffs' motion. However, cases need not be exactly the same in order to be related, they need only to "involve *some* of the same issues of fact or law" or "grow out of the same transaction or occurrence." See Local Rule 40.4(a)(2)-(3)(emphasis added). Indeed, in *Smith v. Check-N-Go, Inc.*, 200 F.3d 511, 513 n.* (7th Cir. 1999), the Seventh Circuit chastised the district court for failing to consolidate several cases before a single judge "even though the issues and parties [had] substantial overlap."

While there are some procedural differences between *Jaffe* and *Williamson*, any distinction between the two is immaterial and outweighed by the risk of inconsistent results and considerations of judicial economy. Andersen's argument that "*Jaffe* and *Williamson* are fundamentally different," Def's Opp. at 2, ignores the fact that, as demonstrated in plaintiffs' moving papers, both actions seek damages for injuries caused by the same underlying corporate misconduct. See Motion for a Finding of Relatedness, ¶3(a)-(e), filed February 7, 2003. Indeed, the distinction between shareholder actions and derivative suits is "a theoretical one, not rooted in the realities of most individual and derivative suits, which usually are 'equally contingent upon the proof of the same nucleus of facts.' Typically, *both* such suits will attack some sort of alleged misconduct by corporate management" *In re Dayco Corp. Derivative Sec. Litig.*, 102 F.R.D. 624, 630 (S.D. Ohio 1984) (quoting *Bertozzi v. King Louie Int'l, Inc.*, 420 F. Supp. 1166, 1180 (D.R.I. 1976)(emphasis in original). Here, both suits are equally contingent upon proof of the same nucleus of facts, *i.e.*, defendants' misconduct, including

(a) improper accounting or expenses related to certain credit card co-branding and affinity agreements, (b) improper accounting of expenses related to a third-party marketing agreement, (c) improper reaging of delinquent accounts, (d) improper accounting of pension fund income, and (d) improper predatory lending practices. Thus, any distinction between the two cases is purely theoretical.

Moreover, the plaintiff in *Williamson* seeks damages including, "[c]osts incurred as a result of the restatement ... [and] [c]osts and legal fees for defending Household, its officers and its directors against private litigation arising from the illegal and improper conduct alleged herein," *i.e.*, the cost of defending the *Jaffe* action, including any judgment or settlement for plaintiffs. See *Williamson* Complaint, ¶117(b) and (d). Thus, contrary to Andersen's assertions, the determination of issues related to the plaintiffs' claims in *Jaffe* is of central importance to the *Williamson* case. Finally, both actions involve substantially the same parties. Accordingly, these two actions are inextricably intertwined and should be related.

B. Assignment to a Single Judge Would Promote the Interests of Judicial Economy

The *Jaffe* action is a consolidated action of seven individual actions brought against many of the same defendants. By consolidating those actions, the Court has promoted the interests of efficiency and conservation of judicial resources. Likewise, by assigning the *Jaffe* and *Williamson* actions to a single judge, this Court would further conserve judicial resources and promote an efficient determination of the actions.

Relating the two cases would not, as Andersen argues, unnecessarily complicate the litigation, and consume, rather than save, judicial time and effort. In *Anderson*, the court rejected this same argument stating that the actions sought to be related involved similar issues of fact, common legal standards applied to both cases and reassigning the case would only require one judge to decide pertinent legal issues. 199 F.R.D. at 262. Similarly, here, as discussed above, these actions arise from the same set of facts and circumstances, involve many of the same defendants and concern similar questions of law. Finally, assigning these cases to one judge would avoid duplicative or

contradictory rulings and ensure consistent judgments. For these reasons both actions should be assigned to a single judge.

C. A Finding of Relatedness Would Not Prejudice Andersen

A finding of relatedness will not prejudice any party in either action. Indeed, no party other than Andersen has opposed this motion. Andersen, however, argues that if *Jaffe* and *Williamson* are related, it will be prejudiced by having to attend all depositions, court hearings and conferences and being forced to review and conduct all discovery in both actions. This assertion is untrue and Andersen's prejudice argument is therefore a red herring.

Andersen, who stressed throughout its opposition that it is not a named defendant and has no interest in the *Williamson* case, does not reveal why relating these cases would suddenly require it to attend all proceedings and monitor all discovery in *Williamson*. Indeed, "[r]eassignment of the case . . . does not necessarily mean that the cases will be consolidated for all purposes . . ." *Popovich v. McDonald's Corp.*, 189 F. Supp. 2d 772, 778 (N.D. Ill. 2002). Thus, relating these cases will not burden Andersen in the least. If *Jaffe* is implicated in a proceeding, then Andersen will be involved (and "required" to attend) whether or not this motion is granted. If a proceeding is unique to *Williamson*, again, regardless of whether this motion is granted, Andersen need not attend – the results of such a proceeding would not be binding on Andersen because it is not a party in *Williamson*. Moreover, since the core facts of both actions relate to accounting improprieties, Andersen will likely be required, pursuant to subpoena in *Williamson* and party discovery in *Jaffe*, to produce documents and testimony – related to Household's restatement of prior financial results and other accounting issues in both cases. Relating these cases will have no impact on Andersen's duty to comply with demands under either discovery method. Similarly, since Andersen has no involvement in the *Williamson* case, plaintiffs can see no reason, and Andersen has provided no reason, why, if the cases are related, Andersen would feel compelled to review and conduct *any* discovery in *Williamson*. Andersen need only review and conduct discovery in the case in which it is a party – *Jaffe*. Accordingly, relating *Jaffe* and *Williamson* would in no way prejudice Andersen.

III. CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that this Court grant their Motion for a Finding of Relatedness.

DATED: February 28, 2003

Respectfully submitted,



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