

**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,	)	Case No. 02 C 5893
	)	
v.	)	Hon. Ronald A. Guzman
	)	Magistrate Judge Nolan
HOUSEHOLD INTERNATIONAL, INC.,	)	
ARTHUR ANDERSEN LLP,	)	
W.F. ALDINGER, and D.A.	)	
SCHOENHOLZ,	)	
	)	
Defendants.	)	

**MOTION OF ARTHUR ANDERSEN LLP FOR DETERMINATION OF THE COURT AS TO THE RETURN OF PRIVILEGED DOCUMENTS INADVERTENTLY PRODUCED TO PLAINTIFFS AND TO SET A SCHEDULE FOR FURTHER BRIEFING BY THE PARTIES**

Pursuant to Paragraph 28 of the Protective Order entered on November 1, 2004 (the “Protective Order”) and Federal Rule of Civil Procedure 37, Arthur Andersen LLP (“Andersen”), a non-party to this action, by counsel, hereby moves this Court for determination as to whether certain privileged documents, identified below, that were inadvertently produced to plaintiffs should be returned to Andersen, and to set a schedule for further briefing by the parties on this issue. In support of this Motion, Andersen states as follows:

1. Andersen was originally named as a defendant in this action.
2. On April 11, 2006, pursuant to the Stipulation of Settlement with Arthur Andersen LLP, Judge Guzman entered a Final Judgment and Order of Dismissal with Prejudice as to Arthur Andersen LLP.

3. Prior to the dismissal of all claims in this case as to Andersen, Andersen inadvertently produced to plaintiffs certain documents that were generated in the course of Andersen's audits of Household International, Inc.'s ("Household") financial statements as to which a good faith basis of privilege could be asserted (the "Documents"). The Documents are numbered as follows:

AA059988-059993  
AA059994-060007  
AA060008-060047  
AA16216-16219  
AA036959-036966  
KPMG03407-03440  
(AA036967-037000)  
AA060068-060069  
AA058181-058214  
AA058215-058229  
AA058177-058179  
AA049469-049473  
AA049442-049468  
AA058175-058176  
AA042597-042603  
AA042574-042596  
AA049474-049476  
AA049477-049478<sup>1</sup>

4. The Documents were prepared by and/or in connection with Household's legal counsel, with the expectation of strictest confidentiality between Household and Andersen. As such, the Documents are protected under the attorney-client privilege and/or work product doctrine. *See, e.g., Tronitech, Inc. v. NCR Corp.*, 108 F.R.D. 655, 656 (S.D. Ind. 1985) ("An audit letter is not prepared in the ordinary course of business but rather arises only in the event of litigation. It is prepared because of the litigation, and it is comprised of the sum total of the attorney's conclusions and legal theories concerning that litigation. Consequently, it should be protected by the work product privilege.")

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<sup>1</sup> If it would be helpful to the Court in considering this Motion, Andersen will deliver a copy of these documents to the Court under seal for *in camera* inspection.

5. Pursuant to the procedures outlined in Paragraph 28 of the Protective Order, Andersen notified plaintiffs by letter dated January 31, 2006 (the “January 31 Letter”) that Andersen believed that the Documents were privileged, and requested their return. A copy of the January 31 Letter is attached hereto as Exhibit 1.

6. Plaintiffs responded by letter dated March 1, 2006 (the “March 1 Letter”) that they did not believe the Documents were privileged, and requested that Andersen withdraw its assertion of privilege. A copy of the March 1 Letter is attached hereto as Exhibit 2.

7. Andersen responded by letter dated March 9, 2006 (the “March 9 Letter”) that it had considered plaintiffs’ request, but determined that the Documents were indeed privileged, and thus stood by its request for their return. A copy of the March 9 Letter is attached hereto as Exhibit 3.

8. Plaintiffs responded by letter dated March 10, 2006 (the “March 10 Letter”), requesting that Andersen provide the basis for its assertion of privilege. A copy of the March 10 Letter is attached hereto as Exhibit 4.

9. Andersen responded by letter dated March 16, 2006 (the “March 16 Letter”) that, based on the court’s ruling in *Tronitech*, the Documents were privileged and therefore should be returned. A copy of the March 16 Letter is attached hereto as Exhibit 5.

10. Finally, plaintiffs responded by letter dated March 24, 2006 (the “March 24 Letter”) that *Tronitech* did not apply and would therefore “consider the matter closed and your objections withdrawn *unless you move to place the matter before the Court.*” A copy of the March 24 Letter is attached hereto as Exhibit 6 (emphasis added).

11. Thus, as a result of Andersen’s inability to reach an accord with plaintiffs on this issue, as illustrated above and also based on prior communications between counsel, Andersen is bringing the present Motion.

12. Because the privilege contained in the Documents belongs to Household, counsel for Andersen consulted with counsel for Household, and was informed that Household wished to assert privilege as to the documents in question. Counsel for Andersen also determined that counsel for Household seeks the opportunity to make its position known on this matter. Thus, Andersen has consulted with plaintiffs and Household, who propose that the Court enter the following briefing schedule for plaintiffs and Household:

- a. Household will file and serve its memorandum in support of the assertion of privilege within 14 days after the Court enters an Order approving this briefing schedule;
- b. Plaintiffs will file any response to that memorandum 14 days after that date; and
- c. Household will file any reply 7 days after that date;
- d. To the extent the Court wishes to hear argument on this Motion, it shall set such date by Minute Order.

WHEREFORE, for the reasons set forth above, Andersen respectfully requests that the Court make a determination that the Documents are privileged and that they should be returned, and set a schedule for further briefing by the parties on the privilege issue.

Dated: April 27, 2006

Respectfully submitted,

/s/ Mark D. Brookstein  
Mark D. Brookstein

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