

**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' MEMORANDUM IN SUPPORT OF MOTION FOR ADDITIONAL
DEPOSITION TIME PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 30(d)(2)**

I. INTRODUCTION

The Class respectfully moves this Court for an order authorizing an extension of the deposition time for three fact witnesses, Lisa Sodeika, Robin Allcock and Daniel Pantelis, and the four named individual defendants, William F. Aldinger, Gary Gilmer (“Gilmer”), J.A. Vozar and David A. Schoenholz. As discussed below, these witnesses are key witnesses in this case, whose depositions will cover long periods of time and involve examination of numerous documents. Thus, completion of these depositions requires more than the presumptive seven hour guideline set forth in Federal Rule of Civil Procedure 30(d)(2). Household International, Inc. (“Household”) has refused to agree to any extension of time for these witnesses, requiring the Class to file this motion. In addition, the Class requests that the Court compel Household to produce a document, whether a resume or Household’s internal Human Resources record, relating to the deponent’s employment history at Household. The Class has formally requested such a document in its Notices of Deposition, but Household has refused to produce such a document. Production of this document would expedite the deposition process. There is good cause to grant this relief.

Both of these issues were discussed during the June 15, 2006 status conference. In response to the Court’s comments at that status conference, the Class has focused this request to seven witnesses.¹ Despite the narrow focus on this motion and notwithstanding the Court’s comments, the Household Defendants have refused to stipulate to the relief requested in this motion, including the provision of a document setting forth the witness’ employment history at Household. As discussed more fully below, there is good cause to grant this motion.

¹ During the status conference, the Class discussed extending the deposition time limits on 15 witnesses to be selected by the Class. The Class would have selected each of the seven witnesses at issue in this motion to be within the 15 depositions. The Court’s ruling on this motion will provide critical guidance to the parties in any future meet and confer sessions regarding the deposition time limits for other depositions of key witnesses.

II. FACTUAL BACKGROUND

Factual discovery in this case spans an 11-year period (1993 through 2003) and addresses three distinct factual areas: 1) Household's predatory lending practices; 2) Household's reaging or restructuring practices; and 3) Household's August 14, 2002 restatement of its accounting for certain credit card contracts.² These three factual areas involve various combinations of Household's business units as well as central corporate departments, such as the Corporate Credit Risk department. For example, the predatory lending practice allegations focus on two of those units, Consumer Lending and Mortgage Services, with the involvement of a third, Household Insurance Group, as to the sale of single premium credit life insurance, which is one of the predatory lending practices at issue. The credit card restatement allegations focus on two other business units, Household Retail Services and Household Credit Card Services. The reage/restructure allegations involve the Consumer Lending, Mortgage Services and Retail Services as well as Auto Finance and Credit Card Service business units.

The time period at issue in fact discovery is extensive. This time period commences in 1993 when Household first began the improper accounting practices relating to its credit card contracts resulting in the August 14, 2002 restatement of its financial statements filed with the Securities and Exchange Commission ("SEC") and runs through March 18, 2003, when the SEC issued an Order formally concluding that Household's disclosures relating to its reage policies violated federal securities laws.

² The Class Period is about 39 months from July 30, 1999 to October 11, 2002. However, Household's \$386 million restatement of August 14, 2002 dates back to 1994 and involves accounting decisions made in 1992 and 1993.

Consistent with the scope of the factual allegations and the time period at issue, this case is very document intensive. Since June 2004,³ the Household Defendants have produced more than four million pages. While, as in most cases of this size, there is substantial “filler” in the production,⁴ nonetheless the core group of documents is substantial in terms of number.

In these circumstances, it is natural that additional time beyond the seven hours will be needed to depose defendants’ key witnesses, including the named individual defendants. The first such witness to come up for deposition was Ms. Sodeika. Ms. Sodeika occupied a critical position within the Consumer Lending business unit during the relevant time period. Commencing at the end of 2000, Ms. Sodeika was Assistant to the President of Household Finance Corporation and Beneficial Finance Corporation, defendant Gilmer. Baker Decl.,⁵ Exhibit A at 24; Ex. B. In February 2002, Ms. Sodeika held the position of Vice President, Consumer Lending Practices.⁶ Baker Decl., Ex. A at 26; Ex. B. As she testified, although her title changed, “the new title reflected a lot of the work that I was doing, so it enhanced what I was doing for Gary in terms of making sure

³ Although the case was filed in August 2002, pursuant to mandatory discovery stay set forth in the Private Securities Litigation Reform Act of 1995 (PSLRA), discovery was stayed until March 2004 when Judge Ronald A. Guzman ruled on the motions to dismiss, denying them in large part. Document production itself did not begin until late June 2004, until after the Rule 26(f) conference had occurred and an interim protective order was in place.

⁴ For example, defendants reproduced approximately 2.1 million pages that were previously produced to the SEC and in a similar case involving ERISA allegations. This production included over 1.3 million pages of indecipherable spreadsheets over 100 pages (up to over 2,000 pages) in length that had been previously dumped on the SEC and the ERISA plaintiffs. Similarly, there are literally thousands of duplicate documents in defendants’ production. In some cases, there are more than five copies of the same document.

⁵ “Baker Decl.” refers to the Declaration of D. Cameron Baker in Support of the Class’ Motion for Additional Deposition Time Pursuant to Federal Rule of Civil Procedure Rule 30(d)(2), (filed under seal), filed herewith.

⁶ Ms. Sodeika was not certain of the precise date on which she acquired this position, but indicated that information regarding her positions at Household and the dates on which she held them would be within her record at Household’s Human Resources department. Baker Decl., Ex. A at 30.

the company was taking on a leading role in best practices for consumers.” Baker Decl., Ex. A at

26. Ms. Sodeika explained her role in the following terms:

My role was, again, to be the eyes and the ears for the company and the customers. So I was looking at best practices; I was talking to advocates about what best practices would be; I was looking at definitions of predatory lending, looking at our practices, looking at our business from that standpoint.

Id. at 27. Household has produced over 62,000 pages of documents from Ms. Sodeika’s files, including numerous emails and hand-written notes.

On April 24, 2006, counsel for the Class requested in a telephonic meet and confer that Household agree to extend the deposition of Ms. Sodeika beyond the seven hours. In response, counsel for Household stated that they would not agree in advance to the extension, but would consider it in “good faith” at the conclusion of seven hours. The parties then scheduled Ms. Sodeika’s deposition for June 6, 2006 with the date of June 7, 2006 available as a second day.

As part of the meet and confer over the length of Ms. Sodeika’s deposition, the Class requested that Household reconsider its objection to producing a resume for the witness as provision of a resume would expedite the deposition.⁷ Household responded that it would do so only if the Class agreed “not to question her on the subjects set forth therein.” Baker Public Decl.,⁸ Ex. A. This limitation makes no logical sense and the Class would not agree. Thus, despite its stated desired to expedite the deposition, Household did not produce Ms. Sodeika’s resume or similar document.

On June 6, 2006, the Class commenced Ms. Sodeika’s deposition. The examination of Ms. Sodeika included the following topics: 1) her positions at Household and her responsibilities in

⁷ The Class has requested such a document be produced in response to its Notices of Deposition. Household objected to producing a resume or similar document and has not altered this position during the meet and confer process.

⁸ “Baker Public Decl.” refers to the Declaration of D. Cameron Baker in Support of the Class’ Motion for Additional Deposition Time Pursuant to Federal Rule of Civil Procedure 30(d)(2), public declaration, filed herewith.

those positions; 2) predatory lending complaints submitted by a consumer lending group (ACORN) commencing in 2000 and Household's subsequent communications with ACORN; 3) predatory lending complaints submitted by certain of Household's state regulators and state Attorneys General; 4) Household's internal committees relating to predatory lending; 5) the negotiations with the Attorneys General leading to the multi-state settlement announced on October 11, 2002; and 6) the development of Household's consumer lending practices. *See generally* Baker Decl., Ex. A (also includes testimony regarding two key committees within Household: the Responsible Lending Committee, a committee formed in 2000, and the Compliance Committee, a committee formed in 2001). During the course of the examination, 85 exhibits were introduced, many of them multiple page documents.

In the afternoon session of the deposition, Thomas Kavalier, counsel for Household defending the deposition, started intimating that he would not agree to extend Ms. Sodeika's deposition beyond the seven hours. At one point, he announced, "you have 25 minutes left" and would not agree to take a 15 minute break. Baker Decl., Ex. A at 256-57. After less than seven hours of deposition, Mr. Kavalier stated: "Mr. Baker that's exactly seven hours. We are done." *Id.* at 270. Household has refused to produce Ms. Sodeika for a further day of deposition.

During the status conference on June 15, 2006, the Class raised the issue of extending depositions beyond the seven hours stated in Rule 30(d)(2). During the discussion, the Class explained to the Court the situation with Ms. Sodeika. As the Court recognized at the hearing, Ms. Sodeika's role and the production of over 62,000 pages of her documents⁹ were significant factors in whether to extend her deposition beyond seven hours. The Court commented, "[t]his person sounds

⁹ Additionally, the Court should be aware that there are many additional documents relating to Ms. Sodeika contained in the files of other Household employees that are not contained within Ms. Sodeika's own files.

like a key person at the trial I don't understand why you [Household] wouldn't – why on this one you couldn't say this is probably in our top ten witnesses, this is somebody . . . both of us might need.” Baker Public Decl., Ex. B at 24 (intervening interruption of Household's counsel omitted).

As to the depositions of the four individual defendants, the Court noted that their depositions are “going to take longer.” *Id.* at 28.

The discussion before the Court also touched on the production of resumes for deposition witnesses. In response to the Class' statement that Household would not produce a resume for Ms. Sodeika, the Court stated, “[w]ell, that's very stupid.” *Id.* at 22.

After the status conference, in an effort to avoid filing this motion, the Class narrowed its request for extended depositions to Ms. Sodeika, Ms. Allcock and Mr. Pantelis and the four named individual defendants and requested that Household stipulate to extending these depositions and producing a resume or similar document in light of the Court's comments. *See* Baker Public Decl., Ex. C. Notwithstanding the Court's comments and this narrow request for relief, Household refused to make this stipulation. *See* Baker Public Decl., Ex. D.

As discussed more fully below, there is good cause for granting this motion.

III. LEGAL ARGUMENT

A. The Court Should Authorize Additional Deposition Time for the Identified Witnesses

Pursuant to Rule 30(d)(2), the Court upon a showing of good cause should authorize a deposition to proceed greater than seven hours. *Mother & Father v. Cassidy*, 338 F.3d 704, 712 (7th Cir. 2003) (applying good cause standard); Fed. R. Civ. P. 30(d)(2) (“The court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent . . .”). In determining whether to extend a deposition beyond seven hours, the courts have considered a wide variety of factors. “Examples of grounds for granting an extension include whether . . . the examination covers events occurring over a long period of time or extensive documents.” *Jensen v.*

Astrazeneca LP, Civil No. 02-4844 (JRT/FLN), 2004 U.S. LEXIS 19089, at *8 (D. Minn. Aug. 30, 2004). Here, given the scope of the topics to be addressed at the depositions identified by the Class, a fair examination will require two days for each of these witnesses.¹⁰ Accordingly, there is good cause for the Court to grant this motion.

There should be no dispute as to the necessity of additional time with the named individual defendants. As named defendants, their testimony at trial will naturally be very important and the factual issues covered in their depositions will parallel in large part the Class' factual allegations (three separate sets of factual allegations that cover a period from 1993 through March, 2003) as well as their own asserted defenses to these allegations. Given these basic indisputable points, as the Court acknowledged, the named defendant depositions are "going to take longer." Baker Public Decl., Ex. B at 28.

Moreover, the individual defendants' own conduct has made extended depositions necessary. To date, they have refused to provide substantive responses to the Class' interrogatories, instead asserting a lack of knowledge and relying on Household's responses. They have done so even as to matters clearly within their own knowledge, such as whether they made any public statements relating to the predatory lending practices or the reaging practices.¹¹ This refusal by the individual defendants to provide substantive responses will necessitate additional deposition time to cover the information sought in the interrogatories.

¹⁰ With respect to Ms. Allcock, the Class has requested that she be made available for a single extended session. This request was refused.

¹¹ Identification of these statements was requested in Interrogatory Nos. 28, 34 and 39. Household's responses to these interrogatories and the responses from the individual defendants are discussed in the Class' Motion to Compel Responses to the Third Set of Interrogatories, which is being filed and briefed on the same schedule as this motion.

Similarly, Ms. Sodeika, Ms. Allcock and Mr. Pantelis are key witnesses who require extended deposition sessions. While these depositions will not have the same breadth as those of the individual defendants, each of these witnesses had critical involvement in one of the three factual allegations: Ms. Sodeika and Ms. Allcock with respect to the predatory lending allegations and Mr. Pantelis on the reaging allegations. Thus, although these depositions will be more focused on particular factual allegations, the deposition examination will be much more in depth and will require additional time on that basis.

As discussed above, the Class has deposed Ms. Sodeika for slightly less than seven hours. As counsel for Household is well aware based on the volume of documents produced from Ms. Sodeika's files and her role, the Class was unable to depose Ms. Sodeika on a number of significant topics in this initial session. These topics include Ms. Sodeika's involvement in internal investigations by Household into complaints, including the "Effective Rate Complaints"¹² and complaints emanating from the Bellingham, Washington branch office, as well as further examination of her with respect to: a) the settlement discussions with the Attorneys General and the resulting \$484 settlement million agreement; b) communications with ACORN, the Attorneys General and the state regulators as to predatory lending complaints; c) Household's efforts to develop lending "best practices;" and d) Household's internal discussions on the foregoing topics.

Ms. Sodeika's testimony on these factual matters is highly critical for two reasons. First, these factual matters go to the heart of the Class' predatory lending allegations. Second, Ms. Sodeika's testimony is highly probative of Mr. Gilmer's knowledge as she was his liaison on predatory lending issues. Baker Decl., Ex. A at 27-28 and 31-32. As the Court correctly noted, Ms. Sodeika is a key witness for both parties. *See* Baker Public Decl., Ex. B at 24.

¹² Ms. Sodeika has already testified that there was such an investigation. Baker Decl., Ex. A.

Ms. Allcock had an equally central role in the Consumer Lending business unit. Throughout the period at issue, Ms. Allcock was in the Compliance Department of the Consumer Lending business unit and in February of 2002, held the position of Vice President of Compliance for the Consumer Lending business unit, a position that reported directly to Mr. Gilmer. She had responsibility for overseeing compliance with external and internal predatory lending requirements.¹³ *See id.* at 33; Ex. B at 5. Topics to be addressed at her deposition, include the monthly internal reports relating to the predatory lending complaints received by Household, correspondence with Household's state regulators on these issues, and Household's internal communications on these issues. The centrality of Ms. Allcock's role is highlighted by the fact that in 2001, she together with Ms. Sodeika and Mr. Gilmer decided to create the Rapid Response Team, a new unit within the Compliance team focusing on getting a better understanding of the consumer complaints received by Household as to its lending practices. Baker Decl., Ex. A at 68-70. To date, Household has produced 10,559 documents (not pages) with Ms. Allcock's name. By letter dated June 1, 2006, Household advised the Class that it had recently discovered an additional 21 boxes of Ms. Allcock's files. Baker Public Decl., Ex. E. To date, Household has only produced a box and a half of these files.

As noted above, Mr. Pantelis is a key witness on the reaging allegations. Mr. Pantelis was the Vice President of Credit Policy within the Corporate Credit Management department and was involved in communications with the credit risk managers at five business units regarding each unit's loss mitigation tools and policies, such as reaging, modification, rewrite and forbearance policies, and the impact of those policies on Household's delinquency metrics. Thus, Mr. Pantelis'

¹³ This distinguishes her testimony from that of Ms. Sodeika, who emphasized that she did not have this responsibility. Baker Decl., Ex. A at 27-28.

deposition will cover not only the corporate credit risk department's policies and practices with respect to loss mitigation tools and delinquency statistics, but also those of each of the applicable business units throughout the Class Period. Significantly, some of these business units had multiple changes to their loss mitigation policies within the Class Period, which changes were the subject of significant internal discussions within Household and the Corporate Credit Risk Committee. In addition to these topics, Mr. Pantelis' deposition will address the external reporting regarding these reage policies, including the reporting contained in Household's SEC filings and the April 9, 2002 Financial Relations Conference, a conference where Household officers discussed the reaging policies at length. Significantly, defendants have produced 94,620 pages (or 28 boxes) for Mr. Pantelis.

In these circumstances, including the scope of the deposition topics, the applicable time period and the number of documents at issue, there is good cause to extend the deposition time for each of these deponents beyond the seven hours. As one court noted, "no court has construed the 2000 Advisory Committee notes as causing some profound change in the Rules requiring parties to use a stopwatch and immediately and finally adjourn a deposition after seven hours of testimony [has been] taken." *Moore v. CVS Corp.*, Civil Action No. 7:04cv054, 2005 U.S. Dist. LEXIS 3798, at *9 (W.D. Va. Mar. 11, 2005). Yet, this is precisely the approach that Household has adopted and will be urging the Court to adopt. Indeed, at the Sodeika deposition, Household's counsel ended the deposition with the declaration, "Mr. Baker that's exactly seven hours. We are done." Baker Decl., Ex. A at 270.

In response, it is to be anticipated that Household will seek to demonstrate that somehow the Class failed to utilize its prior time with Ms. Sodeika wisely and efficiently. The Class disagrees with this assertion. As noted above, Ms. Sodeika's prior deposition session covered numerous

subjects of direct relevance to the Class' predatory lending allegations. In sum, such allegations by Household would be untrue.

Nor should the Court entertain the argument that the Class must first depose each witness for seven hours before addressing this issue. Household has already demonstrated that it is not approaching the issue of extending the depositions' length in good faith by virtue of how it handled the Sodeika deposition. To be sure, even as of this late date, Household has remained fully preoccupied with the notion that the seven hour guideline is fixed in stone, a preoccupation directly contrary to the Advisory Notes to Rule 30(d)(2). *See* 2000 Advisory Committee Notes to Rule 30(d)(2) ("Preoccupation with timing is to be avoided."). As a further indicia of Household's approach, it should be noted that at the Sodeika deposition, Household's counsel threatened a counter-motion for sanctions if the Class moved for additional time with Ms. Sodeika. Baker Decl., Ex. A at 272. Further, as explained at the status conference, deposing the witnesses on non-consecutive days is wasteful of Class' resources and indeed, those of Household and the witness. The Class expended time and effort to prepare for Ms. Sodeika's deposition, where it was obvious to all that the deposition could not be completed in a single day. To complete this deposition will require further resources including an additional trip to Chicago and the related travel time as well as the need to again prepare for this deposition. Having the Court's authority to proceed with these witnesses on two days will avoid this unnecessary expenditure of resources. Finally, a Court Order on these depositions will provide the parties with clear guidance on this issue and thus, hopefully truncate any further unnecessary disputes on this issue. *See* Advisory Notes to Rule 30(d)(2) ("[i]t is expected that in most instances the parties and the witness will make reasonable accommodations to avoid the need for resort to the court"). As the Class noted at the status conference, there are other depositions that will present this issue and thus, this guidance is necessary as soon as possible.

B. Household Should Produce a Resume or Internal Human Resources Document Relating to the Household Positions Held by the Witnesses

As noted above, in its Notices of Deposition the Class has requested resumes or summary documents for the deponents showing their positions at Household and the related dates. Household has refused to provide resumes or other documents. Significantly, at her deposition, Ms. Sodeika testified that Household's Human Resources department has a documentary record of the positions held at Household by the deponent and the dates. Baker Decl., Ex. A at 30. A resume and the Human Resources documents should be produced for each deponent as a means to focus the inquiry into the deponent's work history at Household and prior employment. Provision of these documents would make the depositions more efficient and less time consuming, a goal which the parties share. Additionally, there is no burden on Household or the witness in providing a copy of a resume and the Human Resources documents. Indeed, Household could have easily produced a three-page resume for Ms. Sodeika. *See* Baker Public Decl., Ex. A. Nonetheless, Household has refused to produce these documents, but will only offered to produce a "current" resume if it is already exists in "[d]efendants' files." *See* Baker Public Decl., Ex. F. The Court should now compel their production.

As the Court noted, the refusal to produce Ms. Sodeika's resume was "very stupid." Baker Public Decl., Ex. B at 22. Indeed, as with extending the depositions' time, Household's position has the effect of cutting off one's nose to spite the face. Production of resumes and the described Human Resources document, like extending the duration of key witness depositions, will make the depositions more efficient in terms of probing the prior positions held by the deponents. The alternative is that the Class must ask each witness to go over his or her entire Household history without the guidance of a summary document. This will consume unnecessary deposition time. Given Household's preoccupation a seven-hour deposition limit, Household seeks to place the Class in an untenable position: either spend deposition time learning the witness' background at the

expense of other subjects or run the risk of not discovering all of the witness' knowledge with the scope of the allegations. The Court should not allow Household to engage in such discovery ploys.

This issue should not required Court intervention, particularly in light of the Court's comments at the June 15, 2006 status conference. Nonetheless, Household would prefer that the Class spend resources in obtaining Court intervention in a situation where normally none would be required.

IV. CONCLUSION

For the reasons stated above, this Motion should be granted. The Class has shown good cause for extending the depositions of Ms. Sodeika, Ms. Allcock, Mr. Pantelis and the four named individual defendants. Further, the Class has shown good cause for the Court to compel Household to the produce a resume and the Household Human Resources document for each deponent.

DATED: June 29, 2006

Respectfully submitted,

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