

**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 FOR THE OCTOBER 4, 2006
WORKING STATUS CONFERENCE**

Pursuant to the Court's instructions at the September 19, 2006 hearing, the Class respectfully submits the following issues that should be addressed at the October 4, 2006 Working Status Conference:

1. The Class' Proposed Deposition Schedule and Household International, Inc.'s ("Household") Limited Response to date;
2. Household's Qualified Document Production Certification;
3. State Agency Document Issue;
4. Remaining Document Discovery;
5. Briefing Schedule and Presentment Hearing
6. Confidentiality Issues Under the Protective Order; and
7. Subsequent Working Conference.

We discuss these points further below.

I. Deposition Scheduling

As the Court is aware, on September 12 the Class submitted a working deposition schedule that covers the period up until January 31, 2007, the currently scheduled fact discovery cut-off. *See* Exhibit I to the Class' Status Report filed on September 12 (Docket No. 667). In that schedule, the Class identified 21 depositions that it wished to take between October 23, 2006 and January 31, 2007, and in its preferred order. To date, Household has only provided possible dates for less than half the witnesses and not for any of the critical two-day witnesses, including the individual defendants. Further, when the Class requested confirmation that Household had contacted all of the witnesses, Household responded, "It's none of your business." After two weeks, Household should have been able to apprise the Class of the available deposition dates for all of the witnesses on the working schedule. Household's failure to perform this simple task is jeopardizing achievement of the January 31 discovery cut-off.

For example, Household has proposed a deposition date for Paul Makowski of November 14. The Class is amenable to taking this deposition on this date but only if the deposition of Daniel Pantelis is confirmed for the prior week. However, Household has yet to provide dates for Mr. Pantelis, one of the two-day witnesses.

Similarly, where identified deponents are not available on the dates proposed by the Class, the suitability of substitute dates depends on the scheduling of yet other deponents. Despite this, Household has threatened the Class to withdraw witnesses from availability if the Class does not promptly accept the date unilaterally offered by Household even if out of order and on dates selected for other witnesses by the Class. We attach hereto as Exhibit A, one such communication from Household counsel relating to the deposition of John Nichols.

A further complication is Household's contention that the Class would exceed its deposition allotment of 55 if it took all of the depositions set forth in the previously provided schedule, including the third party depositions referenced in the schedule. According to Household, the Class has already taken 35 depositions. In reaching this number, Household has counted each individual deposed pursuant to a Rule 30(b)(6) deposition notice as a separate deposition. This approach is contrary to the Federal Rules of Civil Procedure. "A deposition under Rule 30(b)(6) should, for purposes of [the deposition] limit, be treated as a single deposition even though more than one person may be designated to testify." Fed. R. Civ. P. Rule 30 Advisory Committee Notes to 1993 Amendments. Properly counted, the Class has only taken 27 depositions, with 28 remaining, for a total of 55. In any event, by withholding scheduling of the most important witnesses for the very end, Household seems to be aiming for a situation where the Class would not be entitled to depose the individual defendants because of defendants' erroneous contention the Class had exceeded its depositions.

To avoid all of these issues and to allow the scheduling of depositions to proceed more smoothly and efficiently, Household should provide available dates for all of the witnesses on the September 12 working deposition schedule prior to October 11, one month after Household reviewed such schedule.

II. Household's Qualified Document Production Certification

Household's failure to contact all of the witnesses is significant for a second reason. Household's certification of the completeness of its document production comes with a huge asterisk, namely that it will not certify that it has produced all documents associated with the identified deponents notwithstanding the fact that it will only produce documents responsive to the Class' prior document requests. Instead, Household has produced these documents seven days before the deposition, if at all. With the pace of depositions necessarily increasing, this approach no longer makes sense, if it ever did.¹ As part of contacting these witnesses, Household should ascertain now whether they have or know of additional documents. However, in a meet and confer held on September 28, Household refused to engage in such a task even though it would involve no burden on Household to do so as part of determining available deposition dates. Procrastination of this simple task prejudices the Class in terms of preparing for depositions and has led to the cancellation of depositions due to the quantity of documents being produced so late.

III. State Agency Document Issue

As the Court is aware, the state agencies were given until October 3 to provide submissions to this Court in support of the confidentiality of their documents. To the extent that one or more of the relevant agencies do not make a submission establishing that its documents should not be

¹ One critical failing of the current system is Household's practice of notifying the Class of a production late on Friday, thus preventing the Class from obtaining the documents until Tuesday for a Friday deposition. Household continues this practice despite repeated requests to stop.

produced by Household, the Class requests that the Court enter an Order compelling Household to produce all remaining documents pertaining to that state agency. This will enable the Class to commence using these documents in depositions and thus, prevent any further delay in proceeding with related depositions. Any state agency documents may, of course, be produced subject to the modification to the Protective Order recently entered by the Court.

The Class wishes to alert the Court of a related issue. As the Court may be aware, certain state agencies have indicated that they intend to proceed against Household for unauthorized release of state agency documents in contravention to state law. In communications with the Class, some of these state agencies have requested clarification that the modification to the Protective Order does not immunize Household on this issue. The Class believes this clarification should be issued.

IV. Remaining Document Discovery

There are a few areas of document discovery that remain from the Class' perspective. This document discovery includes some focused discovery on third parties, including but not limited to HSBC Holdings plc, Morgan Stanley & Co. International, Ltd., and Wilmer Cutler Pickering Hale and Dorr LLP. Additionally, there are a few discrete categories of documents that apparently have not yet been produced by Household. The Class has already served the relevant subpoenas and document requests or has initiated the process of doing so.

V. Briefing Schedules and Presentment Hearings

The Class requests that the Court adopt a universal motion schedule so as to avoid the need for presentment hearings, save as requested by the Court or one of the parties. This will prevent unnecessary expense to both counsel and the parties as well as avoid interruptions to the deposition schedule that would otherwise result from the need to attend a presentment hearing. The proposed schedule is substantially the same as used by the parties throughout this litigation: opposition brief

due two weeks after the initial filing and the reply brief due 10 days after that. This general briefing schedule could, of course, be altered by the Court or the parties via stipulation.

VI. Confidentiality

The promulgation by the Northern District of Illinois of new rules respecting the filing of “confidential” documents has compounded the problems associated with Household’s over-designation of documents pursuant to the Protective Order entered November 5, 2004. Simply put, most of the documents designated as “Confidential” by Household are over four years old and devoid of any significant trade secret or financial importance. These documents would not withstand the Seventh Circuit’s rigorous test for confidentiality and should not have been designated as Confidential under the Protective Order. *See* September 19, 2006 hearing transcript at 37. (“The Seventh Circuit is probably the strongest circuit in the country on narrow protective orders.”); *id.* at 38-39 (discussing cases). Household’s over-designation has resulted in an ever-increasing burden on the Court and the Class. The solution is not to require the Class to meet and confer on each document’s alleged confidentiality but for the Court to order, as it once did, Household to re-review all of the documents at issue and re-designate them. *See* September 28, 2005 Order (Docket No. 306). Because of the administrative expense on both parties associated with reproduction of de-designated documents, the Class is willing to accept Household’s redesignation via list rather than reproduction of all the documents. If properly done, the documents designated under the Protective Order would dwindle to a mere handful. This will substantially reduce the burden on this Court and the Class in handling confidential documents.

VII. Subsequent Working Conference

The Class requests that the Court set a date in mid-November for another working status conference. This conference will address the progress achieved as to completion of fact discovery, as well as expert discovery, and the proposed mediation.

DATED: September 29, 2006

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Azra Z. Mehdi

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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 September 29, 2006, declarant served by electronic mail and by U.S. Mail to the parties:

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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 29th day of September, 2006, at San Francisco, California.

s/ Marcy Medeiros

MARCY MEDEIROS