

**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' REPORT FOR THE OCTOBER 19, 2006 STATUS CONFERENCE

The Class submits the following issues that should be addressed at the October 19, 2006 Status Conference:

1. The Scheduling of the Remaining Class Depositions;
2. The Class' Request to Resume Two Depositions;
3. Household's Document Production;
4. State Agency Document Issue; and
5. HSBC Holdings, Inc..

We discuss these points further below.

I. Deposition Schedule

Since September 10 when the Class submitted a working deposition schedule, the parties have been working to schedule the remaining Class depositions. Pursuant to the Court's direction, the Class on October 11 identified 20 depositions that it wished to take. This list includes third party depositions. Via letter dated October 12, Household responded to the Class' identification, providing dates for additional witnesses. As of today, there remain eight Household deponents who have not been scheduled: six because Household has not provided any dates for these witnesses and two others (Mr. Robin and Ms. Allcock) because the only dates offered are in January and thus, untimely from the Class' perspective.

As to Mr. Robin, as the Class stated at the October 4 hearing, the Class wishes to depose him prior to Mr. Nichols and proposed a date of December 12, a week before Mr. Nichol's deposition. (Mr. Robin was Secretary to the Household Board of Directors and Mr. Nichols was the Chairman of the Board.) Based on Mr. Robin's deposition, the Class could decide not to depose Mr. Nichols.

Additionally, the proposed date of January 26 is too late from the Class' perspective. Not only are other depositions contingent upon what happens at Mr. Robin's deposition, but scheduling depositions this late in the discovery period is likely to result in extending this period. There will be some unanticipated issues that will result in depositions being pushed back. Additionally, there are third party depositions that will be pushed back due to pending or likely disputes, including those of Ernst & Young, Wilmer, Cutler & Pickering and HSBC Holdings. As the Class proposed a date of December 12 for Mr. Robin, which is still two months in the future, the Class believes it important to frontload the deposition schedule as much as possible. The Class remains hopeful that Household will cooperate and make Mr. Robin available on or near the proposed December 12 date.

A similar common-sense constraint applies with Ms. Allcock. The Class wishes to take her deposition prior to that of Mr. Gilmer, her superior, and proposed dates in the last week of

November. Household has stated that Ms. Allcock will only be made available on January 26 and 27, two weeks after the Class' proposed dates of January 9-10 for Mr. Gilmer (as noted above the Class has not yet been informed as to when Mr. Gilmer will be made available). Scheduling Ms. Allcock so late in the discovery period will disrupt the Class' preferred order of depositions and further backload the deposition schedule. While the Class would prefer its proposed dates in late November, the Class is amenable to taking Ms. Allcock's deposition in December and has notified Household of this. The Class is awaiting a response from Household on this proposed compromise. The Court should direct Household to make Mr. Robin, Ms. Allcock and the remainder of the unscheduled Household witnesses available on or near the dates identified by the Class in its working deposition schedule.

There is a related issue. As the Court knows, there are currently pending motions before this Court and before Judge Guzman that will determine whether certain depositions go forward. It is possible that some of these issues may not be resolved prior to January 31, but after that date. In this situation, the Class believes that it should be entitled to proceed with those depositions at that juncture even if it had taken 55 depositions. Put differently, the Class has only 55 depositions: it should not be put to the test of having to reserve some of those depositions for witnesses that it may never take and thus, potentially lose the depositions.

II. The Class' Request To Resume Depositions

In the deposition letter of October 11, the Class requested that Household agree to reopen the depositions of Mr. Tim Titus (as a Rule 30(b)(6) witness) and Mr. Lidney Clarke based on newly available documents. Household has refused to agree to reopen these depositions. Under the standards of the FRCP, there is good cause to reopen both depositions.

First, with respect to Mr. Titus, at his prior deposition Household asserted privilege over a number of documents and prevented the Class from questioning Mr. Titus on them. Subsequently,

Household withdrew its claim of privilege as to some of the documents. The Class now seeks to question Mr. Titus on these documents. Additionally, at this deposition Household improperly instructed Mr. Titus not to answer questions in contravention of Rule 30(d)(1). That rule precludes instructions not to answer except in those instances involving privilege, a limitation imposed previously by the Court and to present a motion under Rule 30(d)(4). None of those exceptions are applicable here. The Class now seeks responses to these questions as well.

The Class estimates the total examination of Mr. Titus on these points should take less than an hour and a half. The Advisory Committee notes to Rule 30 provide that a party can obtain additional deposition time if another party has impeded its examination of the deponent. Advisory Committee notes to the 2000 Amendment, Rule 30(d)(2). Under these facts, there is good cause to reopen Mr. Titus' deposition.

As to Mr. Clarke, Household produced additional documents on October 6 from the files of Mr. David O'Brien. Mr. Clarke was Mr. O'Brien's superior. Many of the documents produced on October 9 were addressed to Mr. Clarke. The Class has been reviewing the documents produced on October 6 and has confirmed that a number of important documents were not available at Mr. Clarke's earlier deposition. As stated in the Advisory Committee notes to Rule 30, the latter production of documents may justify further examination. Advisory Committee Notes to the 2000 Amendment, Rule 30(d)(2). The documents produced from Mr. O'Brien's files were produced in response to the Class' prior document requests and thus, there is good cause for the Class to depose Mr. Clarke on newly produced documents.

III. Household's Document Production

At the last working status conference, the Class requested that Household commit to producing all documents responsive to then pending discovery requests by a date certain. Household has not made any such commitment but has stated that it will do checks with the witnesses at the

time of contacting them for deposition. The Class has sought confirmation that Household has in fact made this check for the witnesses whose depositions have been scheduled.

Household should have produced all responsive documents long ago. This concept of a last minute check is inconsistent with the Federal Rules of Civil Procedure, which require Household to have contacted these witnesses long ago to determine if they have responsive documents. Moreover, as the intensity of depositions grows, it will become increasingly prejudicial for the Class to review documents being produced shortly before the deposition. Further, while the Class does want Household to produce new documents, many documents contained within these deposition productions are duplicates of documents previously produced. The Class has confirmed that many of the documents produced for the O'Brien deposition were in fact duplicates. It appears that although Household is reviewing these documents for privilege, it is not reviewing them to determine if they have been previously produced.

IV. State Agency Document Issue

At the October 4 status conference, the Court extended the date for the agencies to respond to October 16. At that time, two state agencies, those of Wisconsin and North Carolina, had filed papers objecting to the production of documents by Household. Since that time, an additional two states, Vermont and Kansas, have objected. The Court has granted an extension of time for a fifth state, New York. Because the remaining state agencies have not objected to this production despite this Court's extending the due date for an objection, this Court should order Household to produce all responsive documents relating to those state agencies. Household's assertions that it may be prosecuted by the state agencies for producing documents in response to an Order from this Court are misplaced. Any such prosecution would have numerous flaws, including lack of intent, federalism issues and the fact that it would be an improper collateral attack. There is no reason for further delay as to the states that have failed to enter an objection before this Court.

As to those states that have objected, the Court should order Household to produce the documents relating to three state agencies, Vermont, North Carolina and Kansas. The papers submitted by those agencies fail to provide a valid reason to oppose production. They either rely solely upon state law, which is not a basis for withholding documents in federal court, or assert the bank examination privilege, which is inapplicable because the operations at issue do not involve banks. Further, as this Court has noted previously on the record, the documents at issue are relevant. *See, e.g.*, October 4 Transcript at 63 (statement of Court regarding the relevance of the documents). Moreover, the Class cannot obtain similar evidence elsewhere. Each state agency regulated only the activities in its state. Moreover, these agencies had a different jurisdiction than the federal agencies, which focused on the banks within Household. Thus, each state agency's documents are unique. Finally, there is no burden in producing these documents. Household has already identified the documents at issue for each state and thus, could produce them without burden. Conversely, the Class already has in its database documents relating to each of these state agencies and subject to possible recall. As the Court is aware, removal of documents from the Class' database is expensive and time-consuming. Also, removal at this juncture would disrupt the Class' efforts to prepare for depositions.

V. HSBC Holdings, Inc.

Since the last status conference, the Class has received an indication from HSBC that it will authorize Morgan Stanley's London office to release its documents to the Class pending HSBC's review of the Protective Order. As Household has already approved the form of the Protective Order, the Class is hopeful that it will receive final approval from HSBC shortly.

DATED: October 16, 2006

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (90785466)
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
LUKE O. BROOKS (90785469)
MARIA V. MORRIS (223903)
BING Z. RYAN (228641)

s/ D. Cameron Baker

D. CAMERON BAKER

100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
WILLIAM S. LERACH
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER FAUCHER AND CAFFERTY LLP
MARVIN A. MILLER
30 North LaSalle Street, Suite 3200
Chicago, IL 60602
Telephone: 312/782-4880
312/782-4485 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.
SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, D. Cameron Baker, one of the attorneys for Plaintiffs, hereby certify that on October 16, 2006, service of *The Class' Report for the October 19, 2006 Status Conference* was accomplished by the method indicated:

Thomas J. Kavalier (Tkavalier@cahill.com)
Peter Sloane (Psloane@cahill.com)
Patricia Farren (Pfarren@cahill.com)
Landis Best (Lbest@cahill.com)
Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005-1702

Nathan P. Eimer (Neimer@EimerStahl.com)
Adam B. Deutsch (Adeutsch@EimerStahl.com)
Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604

s/ D. Cameron Baker

D. Cameron Baker