

**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' STATEMENT REGARDING DEPOSITION ISSUES FOR
OCTOBER 30 HEARING**

The Class addresses two hurdles that defendants seek to impose on the Class' attempt to obtain depositions. First, despite many attempts by the Class to compromise, defendants will only agree to produce three key witnesses, Mr. Robin, Mr. Friedrich, and Ms. Allcock, on their unilaterally selected dates in late January 2007 in contravention of this Court's prior comments and as a means to unduly hinder the Class' ability to depose these witnesses. Second, defendants have now reneged on their prior agreement to produce Dennis Hueman in San Diego, California, and insist that the Class must depose Mr. Hueman in Costa Mesa, California, on November 7. The Class seeks this Court's assistance and requests that the Court direct Household to provide these witnesses as follows: i) Mr. Robin between December 4 and 15; ii) Mr. Friedrich between November 13 and 30; and iii) Ms. Allcock between November 13 and December 15; with no two witnesses in a single week. Further, the Court should direct defendants to make Mr. Hueman available on November 7 in San Diego consistent with their prior agreement.

These issues result from defendants' desire to thwart the Class' discovery and the related refusal by defendants to make reasonable compromises. The Class has made every possible compromise with respect to scheduling the depositions of Mr. Robin (Household's general counsel), Mr. Friedrich (former head of Household's Mortgage Services business unit, and now retired), and Ms. Allcock (former Vice President, Compliance for the Consumer Lending business unit). These three witnesses were all identified in the Class' September working schedule submitted to this Court, which included proposed dates. In response, defendants provided only one date for each witness in late January: Mr. Robin (January 26), Mr. Friedrich (January 25), and Ms. Allcock (January 16-17). Accepting defendants' dates in combination with other Household depositions in January creates an overload in late January. *See Ex. A* (schedule showing defendants' proposed dates). A comparison with the Class' proposed schedule shows how this overload could be easily avoided. *See Ex. B* (the Class' proposed schedule).

Defendants' January overload is exacerbated by the need to add third party witnesses to the January schedule, including Ernst & Young LLP ("E&Y"), Wilmer Cutler & Pickering Hale and Dorr LLP ("Wilmer Cutler"), Wells Fargo & Co. and two Arthur Andersen LLP witnesses. Indeed, in recognition of the anticipated third-party depositions in January, this Court directed the parties to keep January open. *See* Ex. C at 56 (October 19, 2005 hearing transcript) (the Ernst & Young deposition and the Wilmer & Cutler deposition "[t]hose you save spaces for in January, and any other issue that anybody files in the next two weeks.>").

To reduce the January overload, the Class has repeatedly and without success requested alternative dates for these witnesses. After a futile exchange of written correspondence, the Class requested a telephonic meet and confer, which occurred on October 26. At the meet and confer, the Class proposed dates within the time period November 20 through December 15, nearly a month. Defendants responded that not one date within that time period was acceptable but refused to state why. The Class then expanded the time period to include November 13 through December 15, over a full month. *See* Ex. D (Jason Davis' email). Still Defendants have not budged from their initial January dates.

Defendants cannot unilaterally impose a deposition schedule with respect to the Class' depositions, particularly where:

- 1) defendants' schedule imposes a tremendous burden on the Class and prejudices the Class' ability to prepare for the depositions – for example, under Household's proposed schedule, the Class would depose Mr. Gilmer on January 11 and 12 in Chicago and then Ms. Allcock on January 16 and 17 in Charlotte, North Carolina. Given the relationship between these witnesses, the Class obviously needs time to evaluate Ms. Allcock's deposition as part of preparing for Mr. Gilmer's deposition and to have a single attorney conduct both depositions. Household's schedule

would provide not even a single business day between these depositions due to the Martin Luther King holiday on January 15, 2007;

2) defendants' schedule disrupts the natural progression of depositions – as stated in open court, the Class wants to depose Mr. Robin, the secretary to Household's Board of Directors, prior to Mr. Nichols, the chairman of the Board, a sequence that could avoid the need to depose Mr. Nichols. Similarly, the Class wishes to depose Mr. Friedrich prior to his superior, Mr. Schoenholz, and to depose Ms. Allcock prior to her superior, Mr. Gilmer;

3) defendants' schedule violates the Court's directive to reserve January time for the E&Y and Wilmer Cutter deposition (Ex. C at 56), a directive made more imperative given the additional third party depositions to be taken that month, including two Arthur Andersen witnesses and Wells Fargo; and

4) defendants' claims that these witnesses are not available at any time during a whole month makes no sense in general nor in light of the facts that a) Mr. Friedrich is retired; b) Mr. Robin was able to attend Mr. Levy's deposition in New York with less than a month's notice and has attended numerous hearings in court on even shorter notice; and c) Household has known about the need to reschedule Ms. Allcock's deposition since August 2006.

The meet and confer process having failed, the Class requests this Court's assistance by directing Household to produce i) Mr. Robin between December 4 and 15; ii) Mr. Friedrich between November 13 and 30; and iii) Ms. Allcock between November 13 and December 15; with no two witnesses in a single week. As shown in the Class' proposed schedule, this window in the deposition schedule is available and should be utilized. *See* Ex. B (schedule showing the Class' proposed dates).

With respect to the second issue, the location of the Mr. Hueman deposition, at Household's request the Class agreed to depose Mr. Hueman, a former employee, in San Diego at the offices of

Class counsel as opposed to Chicago, Illinois. At a September 28 meet and confer, defendants confirmed that Mr. Hueman would be available for deposition on November 7 without mentioning anything about a change in location. *See* Ex. E. By letter dated October 18, Household reneged on its prior agreement to produce Mr. Hueman in San Diego and imposed the location of Costa Mesa, California, where the Class has no offices and which has no airport. *See* Ex. F. Even putting aside the parties' prior agreement, it is without dispute that the Class is entitled to depose Mr. Hueman in San Diego under Fed. R. Civ. P. Rule 45(c)(3)(A)(ii). (Mr. Hueman lives in San Clemente, California, which is between San Diego and Costa Mesa.) Defendants' last-minute renegeing is intended to increase the expense and burden on the Class in taking this deposition: either the Class acquiesces in which case it has additional time and expense in taking the deposition or wastes time and energy trying to convince defendants to honor their agreement (they wouldn't) and having to raise this issue with the Court. Further, if either the Class or the Court permits defendants' conduct to go unchallenged, defendants will renege as to the agreements to produce other former employees at designated sites. The Court should direct Household to produce Mr. Hueman in San Diego, California.

DATED: October 27, 2006

Respectfully submitted,

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

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 October 27, 2006, declarant served by electronic mail and by U.S. Mail to the parties the: **THE CLASS' STATEMENT REGARDING DEPOSITION ISSUES FOR OCTOBER 30 HEARING**. The parties' email addresses are as follows:

TKavaler@cahill.com
PSloane@cahill.com
PFarren@cahill.com
LBest@cahill.com
DOwen@cahill.com
NEimer@EimerStahl.com
ADeutsch@EimerStahl.com
MMiller@millerfaucher.com
LFanning@millerfaucher.com

and by U.S. Mail to:

Lawrence G. Soicher, Esq.
Law Offices of Lawrence G. Soicher
110 East 59th Street, 25th Floor
New York, NY 10022

David R. Scott, Esq.
Scott & Scott LLC
108 Norwich Avenue
Colchester, CT 06415

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of October, 2006, at San Francisco, California.

s/ Monina O. Gamboa

MONINA O. GAMBOA