

**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 DECEMBER 15, 2006
STATUS CONFERENCE**

The Class submits the following Status Report in advance of the December 15, 2006 Status Conference:

A. The District Court's Denial of Defendants' 28 U.S.C. §1292(b) Motion

On December 11, 2006, the District Court denied defendants' motion pursuant to 28 U.S.C. §1292(b) for certification of an appeal of the Court's April 26, 2006 Order denying defendants' motion to dismiss based on *Dura Pharmaceuticals, Inc. v. Broudo*, 125 S. Ct. 1627 (2005). *See* Docket No. 816.

B. Depositions

1. Scheduling of Third-Party Depositions

The Class has communicated (either with defense counsel on the telephone or copying defense counsel on emails or facsimiles) with third-party deponents regarding deposition scheduling and has the following report:

(a) **Goldman Sachs:** Document production continuing and pending; deposition dates will be forthcoming.

(b) **HSBC:** Counsel for HSBC has informed parties that the appropriate witness is available on January 8, 2007, but requested the parties discuss the possibility of taking that deposition sometime in March. Defense and Class counsel advised HSBC that January 31, 2007 is a fixed discovery cut-off date. Rolling document production continues, but it is currently unclear when the production will be completed.

(c) **Wells Fargo:** No response from counsel for Wells Fargo.

(d) **Arthur Andersen:** Andersen counsel is attempting to obtain deposition dates in January, but the parties have not received any definite dates. The Class wishes to apprise the Court that the Class' Objection to the Court's July 6, 2006 Order regarding audit letters is currently pending before the District Court. The Class needs a ruling on that Objection prior to deposing the

Andersen witnesses. The Class has been informed by Andersen counsel that these deponents will not be made available a second time.

(e) **Ernst & Young:** Parties have received no response on deposition dates. Class counsel has provided Ernst & Young with a copy of the December 6, 2006 Order granting the Class' motion to compel production of Ernst & Young documents, but has received no response. In addition, it appears defendants intend to object to the Court's December 6, 2006 ruling, which threatens to further delay timely completion of this aspect of discovery.

(f) **Andrew Kahr:** This deposition depends on the outcome of the Court's ruling on the Class' pending Motion For Authorization Pursuant to the Walsh Act For Issuance of Subpoena for Andrew Kahr. The Class intends to file its reply brief on this motion on December 13, 2006.

2. **Scheduling of Defendant Depositions**

The Class will have taken six additional depositions by December 15, 2006 since the last status conference of November 30, 2006. Based on these and other depositions, the Class has deprioritized the depositions of Promontory Financial Group (a third party) and that of Mr. John Nichols. In lieu of these two depositions, the Class has requested that defendants provide dates for the depositions of Kay Curtin and James Kauffman, both employees of Household during the Class Period.

C. **Document Production**

1. **Defendants' Continued Refusal to Produce Responsive Documents Despite Court Order**

Defendants' refusal to produce documents responsive to the Class' narrow document requests is impeding the Class' ability to take depositions. For that reason, the Class filed on December 12, 2006 a motion to compel production of documents in response to the Class' Fourth Request. *See* Docket No. 819. In addition, defendants have failed to respond to the Class' Fifth and Sixth

Requests. As discussed during the November 30, 2006 status conference, the Class was willing to consider further limiting its already narrow and precise Fifth Request served on October 12, 2006 if defendants would quickly produce a list (described in the Fifth Request) showing Household's open market stock repurchases. Despite the Court's Order requiring production by December 6, 2006, and despite the Court's subsequent intervention and clarification provided by Ms. Allison Engel, defendants still have produced no list and further failed to provide a date certain by which they will produce these documents. Defendants suggest such a record is of little importance to Household, when in fact it reflects literally billions of dollars of open market purchases. Those purchases have immediate and long-term accounting and reporting effects on the company. Defendants had previously committed to providing a complete production in response to the Fifth Request by December 15, 2006. Defendants should be required to produce all such documents (*i.e.*, ***all*** documents responsive to the Fifth Request) by that date. In this context, the Class is very concerned that defendants will stonewall production in response to the Class' Sixth Request, served on October 25, 2006. The Class requests that defendants be required to produce all documents responsive to that request by no later than December 20, 2006.

2. State Agency Document Issues

Defendants have produced hundreds of pages of state agency documents with no Bates numbers. Some do not even have page numbers. Many of these documents are Excel spreadsheets that are already difficult to read because a single row extends across three physical pieces of paper. The Class made a good faith effort to resolve this problem with defense counsel on November 29, 2006, when Class counsel flew to Chicago to review documents pertaining to Wisconsin for the purpose of drafting a stipulation. At that time, defendants had produced numerous documents with no Bates numbers. Worse, even the pages that were produced were completely out of context. For example, defendants produced page one or two of a three-page document when the other two pages

were absolutely necessary to understanding the one page that was produced. Since defendants produced no Bates-numbered pages, it was impossible to match the one page that was produced with any other pages previously produced (if at all) to the Class. In response to the Court's order on November 30, 2006 that defendants produce immediately all of state agency documents they had refused to produce (despite an outstanding Court Order), defendants dumped additional unnumbered pages on the Class. Some documents numbering hundreds of pages literally have a single hand-written number on the first page. The Class would be glad to provide examples of these documents for the Court. The state agency issue has been outstanding for months and thus, defendants should be required to Bates number, at their own cost, *all* of the state agency documents promptly but no later than December 20, 2006.

3. Defendants' Last-Minute Document Production Hinder Depositions

Defendants' "certification" of the Class' first three requests last week is of little value in light of their practice of producing documents on the eve, or the very day of, depositions in which the Class would likely use such documents. For example, defendants made available hard copies of a box of documents, including documents from Household's Legal Department on December 7, 2006 – the very day the Class was deposing Kenneth Robin, General Counsel and Head of the Legal Department. Defendants could have easily sent an electronic (*i.e.*, PDF copy) of the documents to the Class so they could be used in Mr. Robin's deposition. Rather than producing such documents at the last minute, they should be required to produce *all* such documents by December 20, 2006 in order to avoid similar problems in the future.

4. Defendants' Unsupported Recall of "Inadvertently" Produced Documents

Consistent with the Court's Order during the last Status Conference, on December 6, 2006 the Class filed its motion to permit the use of certain documents defendants claim are privileged, but

were purportedly “inadvertently” produced. Defendants’ response is due by December 13, and the Class’ reply by December 20, 2006.

5. Defendants’ Withholding of So-Called “Privileged” Documents that Appear on No Privilege Log

The Class has undertaken an extremely time-consuming and expensive process of helping defendants fix problems with their own privilege logs. While it is defendants’ obligation to produce accurate privilege logs, they have managed produce logs without capturing all documents that they claim are privileged. The Class compiled and provided to defendants lists identifying such documents, only to be told by defendants in vague and evasive terms that “large numbers” present no problems. The Class has requested that defendants identify specific Bates numbers produced, but has not received any response from defendants.

D. Contention Interrogatories

On Friday, December 1, 2006, the Class provided Defendants a 151-page response to their contention interrogatories. With respect to defendants’ complaints regarding the Class’ failure to respond to additional interrogatories which they contend the Class should have answered, defendants have yet to identify the interrogatories that they claim the Class has not answered. To date, defendants have failed to accept the Class’ suggestion that the parties meet and confer to identify the substantive issues defendants have with the Class’ responses. Interrogatories served subsequent to Defendants’ [Fourth] Set are pending ruling by the District Court of an Objection filed by the Class. *See* Docket. No. 700. Further, with respect the Class’ voluntary compromise to further supplement certain interrogatories propounded pursuant to the Court’s August 10, 2006 Order (which the Class believed to be adequate and complete as initially answered), the Class intends to serve these responses before the end of the week.

E. Defendants' Accusations Should Be Disregarded

In their status report, defendants make the ludicrous assertion that Ms. Mehdi, lead Class counsel, "spied" on defense counsel at the deposition of Kenneth Robin. Defs' Status Report at 9-10. This allegation is yet another example of defendants' making unsupported and ridiculous allegations respecting putative misconduct in order to distract this Court from the serious and more important business of forcing defendants to produce documents and respond to this Courts' Orders in a timely fashion. Significantly, as defendants acknowledge, defense counsel was aware from the beginning of the deposition that Ms. Mehdi was participating via the internet. That they did not comprehend the significance of this statement reflects not that Ms. Mehdi was "spying" but that defense counsel was ignorant of what it means to participate via internet. Moreover, Defendants cannot possibly have missed the fact that the deposition room is attended by a court reporter and videographer. Lurking behind these "spying allegations" is an effort by defendants to somehow ban deposition participation via internet, which they know would impede Class counsel, particularly Ms. Mehdi, who, as the Court is aware, needs to reduce her travel for personal reasons. Instead, the proper "solution" to this non-existent problem is for defendants to be aware of their surrounds and to pay attention to what they are told.

DATED: December 12, 2006

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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 December 12, 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 12th day of December, 2006, at San Francisco, California.

s/ Pamela Jackson

PAMELA JACKSON