

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	Nan R. Nolan
CASE NUMBER	02 C 5893	DATE	1/24/2007
CASE TITLE	Jaffe vs. Household Intl Inc, et al		

DOCKET ENTRY TEXT

Defendants seek to recall several opinion letters summarizing pending and threatened litigation against Household and its subsidiaries, written by Kenneth H. Robin, Household’s Senior Vice President, General Counsel, to KPMG, Household’s outside auditor (“KPMG Opinion Letters”). These documents were inadvertently produced during the course of discovery, an issue this court has addressed on numerous occasions throughout this litigation. The situation presented here is unique, however, in that it is the first time that Defendants are seeking to recall documents that they should have presented to the court in connection with a previous ruling. On July 6, 2006, the court held that certain opinion letters written to Household’s previous outside auditor, Arthur Andersen, were protected from disclosure under the work product privilege. *Lawrence E. Jaffe Pension Plan v. Household Int’l, Inc.*, 237 F.R.D. 176 (N.D. Ill. 2006). Defendants now argue that the July 6 Opinion extends to some 36 KPMG Opinion Letters, most of which were never disclosed to, or addressed by this court prior to now.

■ [For further details see text below.]

Notices mailed by Judicial staff.

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The court has no problem finding that the seven KPMG Opinion Letters which are identical to those at issue in the July 6 Opinion are properly covered by that ruling. Notably, Judge Guzman recently overruled Plaintiffs’ objections to that opinion, thus confirming that the Opinion Letters addressed there are indeed privileged. (Minute Order of 1/17/07, Doc. No. 923.) The remaining 29 KPMG Opinion Letters are more troublesome, however, in that they are merely “similar in form, purpose and general content to the Arthur Andersen attorney opinion letters that occasioned the Court’s July 6 ruling.” (Letter from P. Farren to N. Nolan of 1/12/07.)

Defendants have offered no reasonable explanation for their failure to bring the KPMG documents to the court’s attention in a timely manner. The parties completed two extensive rounds of briefing on this issue, and Defendants even referenced KPMG in a supporting memorandum to this court. Yet Defendants neither sought the return of the KPMG documents, nor advised the court of their existence until January 2007. (*See* Def. Reply, Doc. 525, at 1 n.1 (“The Documents . . . are largely draft or final versions of audit letters, written by Kenneth H. Robin, Esq. . . . and addressed to either KPMG or Andersen.”)) It is inconceivable that Defendants were unaware that both Arthur Andersen and KPMG served as their outside auditors, and it is not the court’s job to guess the scope of its decisions.

Nevertheless, Plaintiffs have not demonstrated that they have suffered, or will suffer any prejudice due to Defendants’ untimely recall. To the contrary, Plaintiffs have known since July 2006 that this court would likely find such documents privileged, and only recently attempted to use them at a deposition. As noted,

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moreover, Judge Guzman affirmed the court's ruling in its entirety.

The court has conducted an *in camera* review of the documents and agrees that they fall within the scope of the July 2006 Opinion and Judge Guzman's January 17, 2007 Minute Order. Given the magnitude of the document production in this case and the small number of documents at issue here, the court concludes that fairness requires that the KPMG Opinion Letters remain confidential. *R.J. Reynolds Tobacco Co. v. Premium Tobacco Stores, Inc.*, No. 99 C 1174, 2001 WL 1286727, at *6 (N.D. Ill. Oct. 24, 2001).