

**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 FEBRUARY 12, 2007  
STATUS CONFERENCE**

The Class provides the following report on the status of discovery and issues to be addressed at the February 12, 2007 Status Conference:

**I. THE STATUS OF FACT DISCOVERY**

The fact discovery cut-off was January 31, 2007. The Class has worked hard to complete its factual discovery within that date. In the last three weeks, the Class took the depositions of William Aldinger, Douglas Friedrich, James Kauffman, Kathleen Curtin, Goldman Sachs and Joseph Vozar. All but one of the remaining Household witness depositions have been scheduled. Additionally, on January 29, 2007, the Class served its amended responses to multiple sets of defendants' interrogatories. These responses were detailed and comprehensive and total some 250 pages in length.

**A. The Class' Pending Discovery – Depositions & Document Production**

The Class has taken 47 depositions to date. The depositions of Robin Allcock, Craig Stroom and Dave Schoenholz have been scheduled. Deposition dates for the following witnesses must be finalized: John Keller, Chris Bianucci, Morgan Stanley, Wells Fargo and Bobby Mehta. We discuss the status of each below:

1. John Keller and Chris Bianucci – These individuals are available on March 6 (New York) and March 8 (Chicago), respectively. The Class finds these dates and locations acceptable, but defendants have not yet indicated their availability although they have been copied on all correspondence and the Class has requested their availability. Additionally, the Class must obtain a completed document production from Ernst & Young LLP ("E&Y") and all E&Y documents from defendants in advance of the depositions. Defendants have stated they would produce the E&Y documents on Monday, February 12, 2007. This production is untimely in two respects. First, on December 15, 2006, this Court directed defendants to produce the documents five days after Judge Guzman's ruling, which was February 6. Second, as defendants are aware, Ms. Allcock, whose

deposition is set for February 15 and 16 in Charlotte, N.C., had involvement in the E&Y project. Production of the E&Y documents on February 12, thus, prejudices the Class' ability to use these documents at the Allcock deposition. The Class therefore will recall Ms. Allcock to respond to questions based on this belated production, should that become necessary.

Despite repeated requests, E&Y has not indicated whether or when it will produce responsive documents. Now that Judge Guzman has rejected defendants' objection to this Court's ruling on the matter, there should be no impediment to production. The Class will continue to work to obtain a complete document production without Court assistance. However, the Class may need to move to compel very soon if definitive production dates are not forthcoming in a timely fashion.

The Keller and Bianucci depositions constitute two depositions. Defendants, however, count them as three, although they will be completed in 2 days. As the Court is aware, both witnesses worked at Arthur Andersen and E&Y, Mr. Keller was designated on February 8, 2007 as E&Y's Rule 30(b)(6) witness. The Class intends make the best use of everyone's time and has committed to make a good faith effort to cover all relevant topics in only two days. The Class should not be punished for this efficiency.

2. Morgan Stanley – The Class has yet to receive a full document production from Morgan Stanley. On February 1, counsel for Morgan Stanley indicated for the first time that Morgan Stanley would not produce any e-mails based on burden. This belated assertion is contrary to agreements reached previously with Morgan Stanley's in-house counsel. On January 26, 2007, counsel for Morgan Stanley agreed to have any issues resolved by this Court. The Class will file a motion to compel compliance with its subpoena before this Court by Wednesday, February 14.

3. Wells Fargo – The Class moved to compel Wells Fargo to comply with its subpoena in the Northern District of California. On February 7, 2007, the Class and Wells Fargo appeared before Magistrate Judge Zimmerman. Defendants had notice of the hearing but did not attend. With

Judge Zimmerman's assistance, the Class and Wells Fargo agreed to enter into a separate protective order governing the production of certain Wells Fargo documents designated as "Attorneys' Eyes Only." The order was entered by Judge Zimmerman on February 8, 2007, and Wells Fargo produced the documents at issue on the same day. Notably, the production included a letter indicating the same documents had been produced to defendants on January 17, 2007. As to depositions, Wells Fargo will produce a witness who has knowledge about the due diligence conducted in connection with the potential transaction with Household, and has agreed to educate that individual about substantive negotiations. Wells Fargo represented that it would need between 30 and 45 days to prepare the witness properly. The Class stated it would inform this Court of that timeframe. Defendants have been informed as well but, as is the case with the Keller and Bianucci depositions, have not indicated whether they are available in the proposed timeframe.

4. Remaining Deposition – Based on the above count, the Class has one remaining deposition. Given Judge Guzman's affirmation of this Court's ruling on the denial of discovery of the Wilmer Hale documents, the Class will not take this deposition. Additionally, the Class has been unable to locate Andrew Kahr. The Class therefore intends to take Bobby Mehta's deposition as its last remaining. The Class requested dates for Mr. Mehta weeks ago, but have received no response from defendants as a consequence of defendants' fixation on a list of depositions as opposed to the number the Class has actually taken.

**B. Defendants' Refusal to Share Third-Party Communications with the Class**

Despite repeated requests by the Class, defendants refuse to provide their communications with third parties. Just as this Court has required the Class to include the Household Defendants in its communications with third parties, so too must the Household Defendants share their communications with the Class, particularly given the belated objections raised by some of the third parties.

**C. The Class' Pending Motions**

The Class has pending a motion for sanctions with respect to the Friedrich deposition. No briefing schedule has been set for that motion. On February 7, 2007, the Class filed two motions, one respecting the KPMG audit letters and the second respecting the stock repurchase documents.

In the KPMG motion, the Class addresses the Court's finding that the Class is not prejudiced as a result of being unable to use the KPMG audit letters. As shown in that motion, these audit letters represent important evidence as to Household senior management's knowledge of pending litigation, views as to what pending litigation was material, and whether the disclosures to auditors were false or misleading so as to undercut any reliance at trial upon the resulting audit opinions.

In the stock repurchase document motion, the Class demonstrates why defendants should be forced to adhere to their representation that they would produce the responsive documents as set forth in their November 17, 2007 response to the specific document request. As shown in that motion, identification of the dates and amounts of specific stock repurchases is important evidence regarding defendants' manipulation of the stock price. This evidence pertains to the Class' allegation that defendants improperly bolstered the stock price and defendants' theory on "loss causation," as well as to the issue of damages.

**D. Defendants' Refusal to Provide Interrogatory Responses Regarding Andrew Kahr's Compensation**

On January 24, 2007, the Court ordered either that defendants respond to a single interrogatory clarifying the compensation paid to Andrew Kahr or the parties enter into a stipulation regarding the same. On January 31, not having heard from defendants regarding a stipulation, Lead Plaintiffs propounded the following interrogatory and requested a response prior to the deposition of defendant Joseph Vozar who worked with Mr. Kahr during the Class Period:

Identify all compensation paid by Household or any of the Individual Defendants to Andrew Kahr by stating the date, amount and method of each payment and confirm that the document HHS 03479577-HHS 03479602 (as redacted)

attached hereto as Ex. A reflects all payments made by Household and any of the Individual Defendants to Andrew Kahr.<sup>1</sup>

Defendants did not respond to this interrogatory before Mr. Vozar's February 7 and 8, 2007 deposition and, in fact, interposed several foundational objections during questioning regarding Mr. Kahr's compensation. Given their representation during the last status conference that the document produced reflects all compensation paid by defendants to Mr. Kahr, there is no valid reason for further delay in responding. Defendants should be ordered to respond to this straightforward interrogatory today (the deposition of Robin Allcock is scheduled for February 15 and 16).

**E. Interrogatory Responses from the Class**

On January 29, 2007, the Class provided defendants with detailed, comprehensive responses to defendants' outstanding interrogatories consisting of three separate sets. These responses, which total over 250 pages in length, identified with specificity numerous facts and documents on which the Class intends to rely. Notwithstanding the efforts made by the Class in response to these interrogatories, defendants immediately requested a meet and confer. Prior to the meet and confer, the class requested several times that defendants identify which of the numerous responses they wished to discuss. Defendants refused. The parties met and conferred on these interrogatory responses and other issues, such as expert discovery, on February 9.

During the meet and confer, defendants identified a handful of interrogatories they claimed were deficient. The parties were unable to resolve these issues during the meet and confer due to defendants' failure to identify their concerns in advance. Lead Plaintiffs advised defendants they would endeavor to provide their position by Tuesday, February 13.

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<sup>1</sup> Attached to third interrogatory as Ex. A was the single document defendants represented reflects compensation paid to Mr. Kahr.

**F. Defendants' Untimely Interrogatories**

On the last day of fact discovery, defendants served yet another set of interrogatories. The Class has requested that defendants withdraw this set, but they have refused to do so. Serving fact discovery on the last day of fact discovery cut-off, designed only to further delay the progress of litigation to the expert discovery phase, violates the Federal Rules of Civil Procedure. Accordingly, the Class requests that the Court find these interrogatories to be untimely and the Class not be required to respond to them. The Class will file a motion for protective order, if necessary.

**G. Defendants' Untimely and Improper Request for the Deposition of the AMS Fund**

The AMS Fund is neither a Lead Plaintiff appointed by Judge Guzman, nor a Class representative. Despite this Court's Order denying individualized discovery and Judge Guzman's January 29, 2007 Order affirming that decision, defendants now posit a new reason to depose the AMS Fund, *i.e.*, to question them on a position that AMS Fund has taken in a completely different case. Defendants' attempt to circumvent these Orders should not be permitted.

As an initial matter, defendants misrepresent in their status report the scope of this Court's November 13, 2006 Order which was adopted by Judge Guzman in full. This Court's November 13, 2006 Order was not, as defendants claim, limited to depositions regarding Defendants' purported truth on the market defense. The November 13, 2006 Order clearly states: "Defendants' motion to depose the named Plaintiffs and their financial advisors prior to a determination of class-wide liability is denied." Defendants' failure to identify additional reasons in support of their motion before this Court and objection before Judge Guzman constitutes waiver, not an excuse to file yet a third motion to compel on the subject of individualized depositions.

In any event, the information defendants now purport to seek from the AMS Fund has no bearing on this case. This case has been pending for over four and a half years and discovery for more than two years and the adequacy of Lead Counsel here cannot be questioned. Lead Counsel

have been diligent in gathering evidence and marshalling their case through fact discovery despite dogged resistance by defendants at every turn. Now that expert discovery is on track, defendants again wish to distract and stall the progress toward trial with their renewed smear campaign. They should not be permitted to do so. Although Lead Counsel have perhaps been too adequate for defendants' taste, it is not defendants' place to question Lead Counsel's adequacy, as their interests are directly opposed to those of the Class. Indeed, allowing defendants to proceed down this track "is a bit like permitting a fox, although with a pious countenance, to take charge of the chicken house." *Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130*, 657 F.2d 890, 895 (7th Cir. 1981). The Court should not countenance defendants' tactics by permitting an untimely motion to compel. Not only does this prejudice the Class in advancing this litigation, it unfairly rewards defendants' dilatory tactics.

## **II. EXPERT DISCOVERY**

As one of the topics for the February 9, 2007 meet and confer, the Class proposed that parties negotiate a protocol respecting expert discovery. The Class agreed to provide defendants with a draft stipulation relating to such protocol within the next couple of days.

DATED: February 11, 2007

Respectfully submitted,

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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 February 11, 2007, declarant served by electronic mail and by U.S. Mail to the parties the: **THE CLASS' STATUS REPORT FOR THE FEBRUARY 12, 2007 STATUS CONFERENCE**. The parties' email addresses are as follows:

<a href="mailto:TKavaler@cahill.com">TKavaler@cahill.com</a> <a href="mailto:PSloane@cahill.com">PSloane@cahill.com</a> <a href="mailto:PFarren@cahill.com">PFarren@cahill.com</a> <a href="mailto:LBest@cahill.com">LBest@cahill.com</a> <a href="mailto:DOwen@cahill.com">DOwen@cahill.com</a>	<a href="mailto:NEimer@EimerStahl.com">NEimer@EimerStahl.com</a> <a href="mailto:ADeutsch@EimerStahl.com">ADeutsch@EimerStahl.com</a> <a href="mailto:MMiller@MillerLawLLC.com">MMiller@MillerLawLLC.com</a> <a href="mailto:LFanning@MillerLawLLC.com">LFanning@MillerLawLLC.com</a>
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I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of February, 2007, at San Francisco, California.

s/ Marcy Medeiros  
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MARCY MEDEIROS