UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, *- against -* Household International, Inc., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

DEFENDANTS' STATUS REPORT FOR THE APRIL 12, 2007 TELEPHONIC STATUS CONFERENCE WITH MAGISTRATE JUDGE NOLAN

Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
(212) 701-3000

Eimer Stahl Klevorn & Solberg LLP
224 South Michigan Ave.
Suite 1100
Chicago, Illinois 60604
(312) 660-7600

Attorneys for Defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar

The Household Defendants respectfully submit this Status Report (i) to summarize the steps Defendants have taken with respect to the approximately 400 boxes of Ernst &Young ("E&Y") work papers that were prepared during E&Y's July 2002 Compliance Engagement, (ii) to provide Defendants' response to Plaintiffs' request at the March 30 status conference for documents pertaining to work performed by Jefferson Wells and PriceWaterhouseCoopers, (iii) to inform the Court of the current status of Plaintiffs' non-party depositions, and (iv) to again raise issues concerning Plaintiffs' inadequate responses to Defendants' interrogatories.

1. Judge Guzman's Affirmance of the Court's February 27, 2007 Ruling

In an April 9, 2007 Minute Order (received by the parties on April 11, 2007), Judge Guzman adopted in full this Court's February 27, 2007 ruling that the *Garner* fiduciary exception did not apply to privileged material dated after the Class Period, that Household did not waive any privilege with respect to the recent discovery of the boxes of E&Y work papers, and that sanctions were not appropriate.

2. Review of the Boxes of E&Y Work Papers

Pursuant to a request on Monday from Ms. Engel to counsel for the parties, Defendants yesterday provided the Court with a copy of the complete privilege log prepared by Defendants of approximately 115 boxes of E&Y work papers. Under separate cover today, we are also providing to the Court for its *in camera* review, (i) a copy of a January 2004 draft report prepared by E&Y that pertains, in part, to the July 2002 Compliance Engagement; and (ii) a cover letter regarding same.

Defendants' counsel have spent more than 1,100 hours on the various projects, described below, that were directed by the Court in its recent Orders and during the March 20 telephone status conference.

a. The majority of the 1,100 hours were spent in preparing a privilege log of the approximately 115 boxes of E&Y work papers that, for the most part, contain the review and analysis prepared by E&Y during this privileged engagement. The 215-page privilege log was provided to Plaintiffs in three installments, on March 29, April 4 and April 6, 2007. (As we indicated in our March 29, 2007 Status Report, completion of the entire log by March 30 proved to be impossible, despite our best efforts, because the contents of every box had to be copied and bates stamped before the contents could be reviewed and logged. Although we used two separate copy vendors in order to speed up this process, we did not receive the last of the copied boxes until after March 30.)

Our review of the 115 boxes confirmed that with very few exceptions they contain E&Y's analysis of Household's compliance with state laws/company policy with respect to particular loan attributes. These analyses implemented the privileged Compliance Engagement initiated by Household's General Counsel in July 2002, and with only a minor exception (in the form of a document created prior to the start of this lawsuit, which we have already produced to Plaintiffs), this material was created after the start of this lawsuit. The logged material is therefore protected by the attorney-client privilege for the reasons spelled out in this Court's December 6, 2006 Order and affirmed by Judge Guzman, and is not subject to production under the fiduciary exception for the reasons explained in this Court's February 27, 2007 ruling, which has also been sustained by the District Court. Accordingly, Plaintiffs' demand for this privileged material should be denied.

b. On March 23, Defendants submitted to Plaintiffs and the Court proposals for the Court's *in camera* review of a subset of the remaining approximately 278 boxes containing the data validation and sampling materials that E&Y collected and/or prepared in the preliminary stages of the Compliance Engagement. Defendants made two proposals: (i) a random selection of one or two boxes of data validation documents and three or four boxes of sampling documents, or (ii) a random selection of one or two boxes of data validation documents and, with respect to E&Y's sampling materials (the far larger of the two categories), seven boxes broken down by loan attribute and state. In a March 27 letter, Plaintiffs rejected these proposals. Defendants believe that either of their proposals will enable the Court to achieve its desired objective of gaining a "feel" for the contents of the 278 boxes of E&Y's data validation and sampling work papers. And since the Court now has the work papers index, with the data validation and sampling boxes identified by letter (*see* paragraph (c) below), it can pick any number and combination of these boxes to review in the first instance and at any time can instruct that additional boxes be provided for its review.

c. On March 23, Defendants provided the Court, for its *in camera* review, with a copy of the index of the boxes of its work papers. Defendants annotated this index by adding the codes "DV" for boxes containing data validation and "S" for boxes with sampling materials. As Defendants noted in their March 28 letter to the Court (see paragraph (d) below), that index is part of the material prepared under the privileged Compliance Engagement, and is entitled to protection under the attorney-client privilege and attorney work product doctrine insofar as it necessarily reveals privileged information about the conduct of that Engagement.

d. On March 28, in response to the Court's request during the March 20 conference, Defendants provided the Court with authority to support a finding that the boxes of

E&Y work papers assembled and created by E&Y in the course of their privileged Compliance Engagement for Household's General Counsel to assist him in rendering legal advice, are privileged in their entirety, without the necessity of a document by document analysis. Household recognizes the Court's need to understand the nature of E&Y's output, and respectfully suggests that the detailed 215-page privilege log created by Defendants confirms that these materials were all part of the privileged Compliance Engagement.

3. Jefferson Wells and PriceWaterhouseCoopers Documents

During the March 30 telephone status conference, Plaintiffs raised a question about work performed by two accounting firms, Jefferson Wells and PriceWaterhouseCoopers ("PwC") stating that they had been unaware of such work before taking the deposition of former Household employee Robin Allcock on March 7-8, 2007. In its March 30 Minute Order, the Court provided: "Defendants to report to court at next status regarding production of any PricewaterhouseCoopers and/or Jefferson Wells documents or audits as mentioned by Robin Allcock at her deposition." Plaintiffs' newly-minted request for documents pertaining to work undertaken by Jefferson Wells and PwC is untimely in the extreme:

- Fact discovery concluded on January 31, 2007 (except for a few limited exceptions granted by the Court).
- Household produced documents relating to work performed by Jefferson Wells and PwC — including exhibits Plaintiffs introduced at the Allcock deposition as early as April 2005.[1]
- Plaintiffs did not learn of this work from the deposition testimony of Robin Allcock. Nothing in the deposition of Robin Allcock added any

[1] The Allcock deposition originally was scheduled long prior to the fact discovery cut-off. Plaintiffs could have no expectation that the Allcock deposition would eventually be moved to a date following the cut-off and therefore no excuse for delaying their preparation (and supposed awakening to the existence of Jefferson Wells and PwC documents) until after January 31.

information about Jefferson Wells or PwC work beyond what is contained in the documents.

- Plaintiffs never served a document request on Household seeking the Jefferson Wells or PwC documents, and Household properly objected to Plaintiffs' overbroad document demands.

- Plaintiffs never served a subpoena on either of these non-parties.

During the March 30 conference, and in their March 29 status report, Plaintiffs gave the misleading impression that audits or other work involving these two entities were mentioned for the first time in this action during the March 7-8, 2007 deposition of Robin Allcock and that Plaintiffs are promptly following up on Ms. Allcock's testimony. The reverse is what actually occurred. Audits or other projects involving these two entities were referred to in several documents marked as exhibits at Ms. Allcock's deposition — documents that had been produced to Plaintiffs months, and in some cases years, prior to the deposition. They were not disclosed for the first time in Ms. Allcock's deposition testimony.[2] Ms. Allcock had no information about Jefferson Wells and PwC audits apart from what was contained in the documents shown to her and her testimony added nothing to what appears on the face of the documents.

For example, when shown a document marked as Exhibit 140, which referred to a prepayment penalty review conducted by Jefferson Wells in 2002, Ms. Allcock testified that she "really has no recollection of this." In response to a question from Plaintiffs' counsel as to whether Jefferson Wells had been retained to review prepayment penalties, Ms. Allcock responded: "I have a vague recollection [that they had], but it's just from looking at this." And, in response to a question about other work that Jefferson Wells may have done for Household

[2] In fact, Plaintiffs questioned another deponent, Mr. Stephen Hicks, about Jefferson Wells in his December 9, 2006 deposition.

during the time frame of the prepayment penalty review, Ms. Allcock testified: "I don't specifically, as I mentioned, even recall them doing this, nor do I recall anything else." Ms. Allcock's comments about several other documents that mentioned work by Jefferson Wells or PwC, marked as Exhibits 144-147, were to the same effect. She had no recollection of the work to be undertaken by these two entities that were mentioned in these documents. (Attached as Tab A are pages from the transcript of Ms. Allcock's deposition that contain the testimony noted above.)

To the extent that Plaintiffs may have wanted to obtain information regarding the work undertaken or to be undertaken by Jefferson Wells and PwC, as mentioned in documents produced by Defendants, Plaintiffs failed to do so in a timely manner. The documents marked as exhibits at Ms. Allcock's deposition that mention Jefferson Wells or PwC were provided to Plaintiffs by Household on April 13, 2005, October 12, 2005 and February 28, 2006, years before the close of fact discovery.

Importantly, even after the production of these exhibits and other documents regarding the two entities, Plaintiffs never served document requests on Defendants asking for documents relating to work performed by either of them. Plaintiffs argue that any such documents would be encompassed within the first request of their First Document Demand. That demand reads as follows: "All documents and communications concerning or relating to investigations by any state or federal, administrative or regulatory agency, department or other body into Household's lending policies and practices." This demand does not ask for work or projects that Jefferson Wells or PwC may have done at Household's request, but rather contemplates an adversarial investigation. Indeed, Household's objections and response to this request underscores this limitation, and reads as follows: "Defendants object to this request on

the grounds that it is overbroad and seeks documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing General and Specific Objections, Defendants will produce non-privileged responsive documents provided to state or federal governmental entities concerning or relating to investigations by them into Household's lending policies and practices, if any."

Plaintiffs further claim that their March 2007 request for Jefferson Wells and PwC documents was occasioned by the recent discovery of the boxes of E&Y work papers pertaining to a July 2002 engagement. But this occurrence does not give carte blanche to Plaintiffs to ignore the January 31 fact discovery cutoff, nor does it serve to insulate Plaintiffs for their failure to request such documents during the lengthy fact discovery period that has already closed. If Plaintiffs are allowed to pursue their current new request for Jefferson Wells and PwC audit documents, Plaintiffs will only be emboldened to seek further discovery in this case and fact discovery will continue unabated, the barrage of follow up motions and objections will never end, and Defendants' time to seek judgment on Plaintiffs' overblown fraud charges will be even further delayed.

Whether or not Plaintiffs did an adequate job of examining the material they demanded and received over the past several years, the time to concoct new avenues of inquiry and follow up has long since passed. As Judge Guzman emphasized in his November 22, 2006 Memorandum Order and Opinion (at page 7), "the mere fact that further discovery might be relevant does not mean that Plaintiffs are entitled to that discovery."

4. Plaintiffs' Depositions

All depositions of current and former Household employees, including the four individual Defendants, have been completed, and the four remaining non-party depositions all have been scheduled. The depositions of two Morgan Stanley representatives are scheduled for April 20 and 23 (one-half day each) in New York.[3] The deposition of Wells Fargo is scheduled for May 1 in Minneapolis. The depositions of John Keller and Chris Bianucci are currently scheduled for April 26 and 27, respectively, in Chicago. Messrs. Keller and Bianucci worked for both Arthur Anderson and E&Y during the Class Period, and Mr. Keller is the E&Y Rule 30(b)(6) designee.

In an April 9 letter, Plaintiffs suggested to counsel for Andersen and E&Y (the same counsel is representing both entities for the purpose of the depositions) that the April 26 and 27 depositions be limited only to Arthur Andersen matters and that Plaintiffs would like to "reserve the E&Y topics for a later, mutually agreeable date." Particularly now that Judge Guzman has affirmed this Court's E&Y-related rulings in all respects, Defendants do not see any reason why the depositions of Mr. Keller and Mr. Bianucci cannot go forward on these dates as to both Arthur Andersen and E&Y matters, as Plaintiffs originally represented would occur. Plaintiffs are seeking what the Court previously said was unreasonable — inconveniencing non-party witnesses by making them appear on two separate occasions for their deposition. The Court agreed to allow each of these depositions to counsel as only one because they would each occupy only a single day, irrespective of subject matter, Plaintiffs' proposal to conduct separate

[3] Yesterday, Morgan Stanley's counsel requested that Mr. Posner's deposition be moved from April 23 to April 19 due to a professional commitment of Mr. Posner. Defendants are checking into their availability on this date.

AA and E&Y depositions of Messrs. Keller and Bianucci on separate days would put their deposition count at 57 — two greater than the Court has allowed.

5. Plaintiffs' Responses to Defendants' Interrogatories

Pursuant to orders from this Court dated March 9 and 14, Plaintiffs provided responses to two sets of Defendants' interrogatories on March 23 and 29. Plaintiffs' responses are deficient in a number of respects. Some issues may potentially be resolved by corrections to the responses, such as the identification of documents that do not appear to exist. Other issues, however, reflect an apparent disregard of prior direct Court orders — most significantly the failure to identify the truthful facts contained in previously identified disclosures that allegedly corrected previous misrepresentations to the public, and the refusal to quantify the claimed percentage or number of loans alleged to contain alleged illegal prepayment penalties.

On April 3, Defendants requested that Plaintiffs meet and confer with respect to these responses, and indicated that they were available on April 5 and 6. Plaintiffs' counsel, however, indicated that they would be unable to meet and confer until early Thursday afternoon on April 12, nine days after Defendants' initial request. Defendants reluctantly accepted this date. As a result, Defendants hope to have established Plaintiffs' position on these and other subjects related to these responses by the start of the conference with the Court later on Thursday afternoon, April 12.

To the extent that Plaintiffs agree to further amend some of their responses, Defendants will request that the Court provide a date certain for Plaintiffs to do so (assuming that Plaintiffs do not agree to such a date during the meet and confer). To the extent that Plaintiffs refuse to amend their responses as requested by Defendants in accord with the Court's directives,

Defendants will request a briefing schedule for a motion to compel proper responses by Plaintiffs to certain of Defendants' interrogatories.

Dated: April 11, 2007
Chicago, Illinois

Respectfully submitted,

Eimer Stahl Klevorn & Solberg LLP

By: s/ Adam B. Deutsch
Nathan P. Eimer
Adam B. Deutsch

224 South Michigan Ave.
Suite 1100
Chicago, Illinois 60604
(312) 660-7600

and

Cahill Gordon & Reindel LLP
80 Pine Street
New York, New York 10005
(212) 701-3000

Attorneys for Defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar