

**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.)	
_____)	

**MOTION TO COMPEL DEPOSITION DATES FOR JOHN KELLER,
CHRISTOPHER BIANUCCI, AND ERNST & YOUNG LLP AND
PRODUCTION OF DOCUMENTS BY ERNST & YOUNG LLP**

By this motion, the Class seeks to compel (1) production of John Keller and Christopher Bianucci for deposition by May 15, 2007, and (2) production of relevant documents in Ernst & Young LLP's ("E&Y") possession by May 7, 2007.

I. INTRODUCTION

The purpose of this motion is to schedule the Keller and Bianucci depositions, obtain a date certain for E&Y's completed document production and ensure that counsel for E&Y appears before this Court so that these matters may be resolved. This motion is necessary because although the depositions of Keller and Bianucci were scheduled for April 26 and April 27, counsel for Keller and Bianucci (who is also counsel for E&Y) has cancelled the depositions and indicated that new dates will be offered only upon resolution of all of the issues surrounding the E&Y work papers and E&Y's internal document search. Exhibit 1 (all exhibits referenced herein are attached hereto). As the Court is aware, the Class needs to depose Keller and Bianucci prior to submission of the Class' expert reports. It is important to establish dates certain for these depositions so that fact discovery can be completed and further delay in the expert schedule can be avoided. Additionally, E&Y must search for and produce the documents in its possession related to the compliance engagement prior to these depositions so that the Class may use them in their examination of these witnesses.

II. ARGUMENT

A. Keller and Bianucci Should Be Compelled to Appear for Deposition No Later than May 15, 2007

As the Court is aware, Keller and Bianucci were the lead Household International, Inc. ("Household") audit partners at Arthur Andersen, LLP ("Andersen") which was Household's external auditor for most of the Class Period. Additionally, Keller and Bianucci directed the E&Y compliance engagement which has been and remains the subject of dispute in this action. Due to their roles at both Andersen and E&Y, the Class will question Keller and Bianucci on two separate

areas: the work performed by Andersen as Household's external auditor and the work performed by E&Y during the compliance engagement.

Andersen has a contractual obligation under the settlement agreement to assist the Class in all discovery matters. Pursuant to that agreement, Keller and Bianucci were identified by Andersen as the employees with the most knowledge concerning Andersen's audits and other work for Household. On March 24, 2006 the Class served Keller and Bianucci with deposition subpoenas. Exs. 2-3.

On May 19, 2006, the Class served a 30(b)(6) deposition subpoena on E&Y, which also sought documents related to the compliance engagement. Ex. 4. On February 8, 2007, Lucia Nale who is counsel for Keller, Bianucci, Andersen and E&Y, confirmed that Keller would be E&Y's designated witness in response to the 30(b)(6) subpoena. Ex. 5. The Class believes Bianucci also has relevant information regarding the compliance engagement.

The depositions of Keller and Bianucci were previously scheduled for April 26 and April 27, respectively. On April 13, 2007, however, Ms. Nale rescinded these dates citing scheduling conflicts and the risk that the Class may need to call either individual back following the resolution of any E&Y issues. Ex. 1. At that time Ms. Nale indicated that no further dates would be offered until the outstanding issues are resolved. The Class informed Ms. Nale during the April 13, 2007 meet and confer of its intent to bring this issue before the Court at the April 27, 2007 status conference, and requested that Ms. Nale or one of her colleagues plan to attend the hearing so that these issues can be resolved. *Id.*

As the Court is aware, prior to this latest cancellation, the depositions of Keller and Bianucci were delayed several times due to issues surrounding Household's production of documents relating to the E&Y compliance engagement. Keller and Bianucci's testimony regarding the work Andersen performed as Household's auditor is of critical importance to the Class' expert reports. Each time

the depositions of Keller and Bianucci are delayed or cancelled, the entire expert schedule is impacted.

The Class continues to believe that bifurcating these depositions so that questioning on the Andersen portion may be completed, and the expert reports submitted, is the best course. However, the Class does not want to postpone these depositions (and thus expert discovery) any further. Although the Court and parties have made substantial progress in resolving the E&Y issues, motion practice may be necessary and there is considerable uncertainty as to when these issues will be resolved. Because it makes little sense to delay this entire case pending resolution of the E&Y issues, the Class wishes to proceed with the depositions both on Andersen as well as E&Y topics as soon as possible. If after the E&Y issues are resolved the Class has good cause for further questioning, it will seek relief at that time.

In its status report, the Class will propose a revised expert discovery schedule commencing on June 8, 2007 and concluding October 22, 2007. In order to make this schedule work the Class must complete its depositions regarding the work done by Keller and Bianucci for Andersen by May 15, 2007. Accordingly, the Class seeks an order compelling Keller and Bianucci to appear for deposition no later than May 15, 2007.

B. E&Y Should Complete its Document Production No Later than May 7, 2007

Federal Rule of Civil Procedure 45(d) governs subpoenas served on nonparties and permits discovery of any and all information discoverable under Rule 26(b). *See Centurion Indus., Inc. v. Warren Steurer & Assocs.*, 665 F.2d 323, 325 (10th Cir. 1981). Rule 26(b)(1) provides for discovery of any information that is “relevant to the claim or defense of any party,” or “appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1).

As discussed above, the May 19, 2006 subpoena served on E&Y sought production of documents related to the compliance engagement. *See* Ex. 4. E&Y has not complied with its

obligation to produce responsive documents pursuant to the May 19, 2006 subpoena. In fact, E&Y has produced only 20 documents consisting of about 50 pages from one individual's files. *See* Exs. 9-10. The Class provides below a brief recitation of its attempts to obtain a responsive production from E&Y.

In June 2006, following several conversations, E&Y refused to produce documents based on the privilege asserted by Household. Ex. 6. On December 7, 2006, the Class sent to E&Y this Court's December 6, 2006 ruling that the E&Y documents must be produced, and again requested production. Ex. 7. Following Defendants' objection to this Court's December 6, 2006 order, the Class – consistent with many telephone conversations – wrote E&Y advising it that as soon as Judge Guzman ruled, the Class would “move quickly to set a deposition date and obtain documentary discovery as soon as Judge Guzman rules.” Ex. 8. On February 5, 2007, the day on which the parties received Judge Guzman's ruling, the Class wrote to E&Y, enclosed the Order, and requested immediate production of all responsive documents. Ex. 15.

On February 23, 2007, E&Y produced 20 documents from one individual's personal files. Ex. 9. Following that production, E&Y and the Class had several meet and confers regarding the timing and scope of E&Y's further production. Exs. 10-13. The Class continued to seek production dates, but received none.

During the last meet and confer on April 13, 2007, E&Y refused to search for responsive documents outside the files of unidentified “core people” who worked on the compliance project, and even then only on the condition that the Class agree to the scope of E&Y's search prior to production. Ex. 1. This limitation is unreasonable and inconsistent with E&Y's obligation under the Federal Rules of Civil Procedure, particularly when E&Y has agreed to search the files of only a handful of individuals. The Class should not be forced to agree in advance that a production is sufficient without having seen any of the documents. E&Y knows where responsive documents are

located. Accordingly, the Court should require E&Y to search all sources it reasonably believes may have responsive documents, including the files of “core people” on the compliance engagement, managers, employees who performed analysis or drafted reports and other employees who E&Y reasonably believes may have responsive documents. The Federal Rules of Civil Procedure require E&Y to undertake such reasonable search.

E&Y also claims to be withholding documents pending Household’s consent to production. Ex. 1. Given this Court’s prior rulings, Household cannot object to production of any documents created prior to October 11, 2002, or any documents which constitute only work product. February 17, 2007 Order. Indeed, Household already has given E&Y express permission to produce “all documents concerning [the compliance] engagement that was received, reviewed, created or revised during the class period (*i.e.*, between July 30, 1999 and October 11, 2002).” Ex. 14. All such documents must be produced immediately. Furthermore, E&Y should be ordered to provide a privilege log listing all documents withheld on privilege grounds. *Hobley v. Burge*, 433 F.3d 946, 947 (7th Cir. 2006). Finally, E&Y should be ordered to complete their production by May 7, so that the Class can use these documents at the depositions of Keller and Bianucci.

III. CONCLUSION

For all of the foregoing reasons, Keller and Bianucci should be ordered to appear for deposition on or before May 15, 2007 and E&Y should be compelled to produce all documents responsive to the May 19, 2006 subpoena by May 7, 2007.

DATED: April 24, 2007

Respectfully submitted,

S/Luke O. Brooks
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