

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situating, <p style="text-align:right">Plaintiff,</p> <p style="text-align:center">- against -</p> Household International, Inc., et al., <p style="text-align:right">Defendants.</p>	} } } } } } } } }	Lead Case No. 02-C-5893 (Consolidated)  CLASS ACTION  Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan
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**DEFENDANTS' STATUS REPORT FOR THE JUNE 29, 2007  
TELEPHONE STATUS CONFERENCE WITH MAGISTRATE JUDGE NOLAN**

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The Household Defendants respectfully submit this Status Report in advance of the June 29, 2007 telephone Status Conference to (i) summarize Defendants' compliance with the Court's June 13, 2007 Order concerning the Ernst & Young ("E&Y") Compliance Engagement work papers; (ii) discuss the expert discovery schedule to be adopted by the Court; (iii) discuss Plaintiffs' amended responses to Defendants' interrogatories and their preclusion request; (iv) comment briefly about the depositions of Messrs. Keller and Bianucci; and (v) request a certification from Plaintiffs as to certain documents they were required to produce to Defendants. This Status Report also comments on certain aspects of Plaintiffs' June 26, 2007 Statement received by Defendants yesterday evening.<sup>1</sup>

#### **1. Defendants' Compliance with the June 13, 2007 Order**

Pursuant to the Court's June 13, 2007 Order, Defendants have devoted more than 450 hours of attorney time to accomplish the following in the allotted 10-day period ending June 22, 2007:

a. Defendants provided Plaintiffs with a 171-page Supplement to the First, Second and Third Installments of their Privilege Log of the 110 boxes of E&Y Compliance Engagement work papers. This Supplement, which contained 720 entries, separated out those documents created by Household and sent to E&Y as part of the Compliance Engagement. Any Household-created documents dated October 11, 2002, or earlier, were produced to Plaintiffs

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<sup>1</sup> Defendants regret that they were unable to submit this Report yesterday. In the mistaken belief that Plaintiffs would serve their amended interrogatory answers before the close of business in New York (as Defendants had requested in agreeing to the four day extension Plaintiffs had requested), Defendants deferred submitting the Report until they could include an update on Plaintiffs' compliance with the Court's June 14, 2007 Order. In fact, Plaintiffs did not serve their amended responses until nearly midnight yesterday.

pursuant to the Court's prior determination as to the timing of the *Garner* exception to Household's attorney-client privilege.

b. Defendants searched for, reviewed and produced and/or logged documents relating to the E&Y Compliance Engagement located in the hard copy and electronic files of nine "core" Household individuals. Although the Court's Order did not contemplate Plaintiffs' involvement in this process, Plaintiffs requested that Defendants search the files of the nine individuals identified by Plaintiffs. Defendants agreed to this request. On June 22, pursuant to the Court's April 27 and June 13, 2007 Orders, Defendants produced (i) all responsive documents located that were dated during the Class Period (*i.e.*, prior to October 12, 2002),<sup>2</sup> and (ii) a privilege log of all responsive documents dated after the Class Period. This privilege log consisted of 270 pages and contained 1,208 entries.

c. In addition to the documents produced to Plaintiffs as noted in paragraphs "a" and "b" above, Defendants also produced the few documents (seven in number) that appeared on Defendants' privilege log of E&Y Compliance Engagement work papers that Defendants, even with the assistance of E&Y personnel, have been unable to date.

## **2. Expert Discovery Schedule**

After having an extra six and a half months from January 31 to prepare the expert reports Plaintiffs propose to serve on August 15, Plaintiffs argue that in the interest of expediting the resolution of this action (a sentiment they have usually honored only in the

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<sup>2</sup> Defendants offered to send these documents directly to Plaintiffs' offices in San Francisco but Plaintiffs declined and requested they be sent instead to local counsel in Chicago, where they were available for Plaintiffs' review on Monday, June 25.

breach), the court should strip Defendants of the necessary time required to evaluate and submit expert reports responding to Plaintiffs' expert reports. They back this patently unfair demand with a number of inaccurate and insupportable statements to create the false impression that Defendants would not be prejudiced by having only one month (including the Labor Day weekend) in which to arrange for the preparation of rebuttal expert reports. For example, they speculate that "Defendants have . . . started their expert reports," and "[g]iven the extensive discovery in this case, Defendants know also the likely substance of the Class' expert reports." (Pls. Statement at 2) The ludicrous suggestion that Defendants should be reduced to guessing what Plaintiffs' experts may say in lieu of having meaningful response time brings Plaintiffs' concept of asymmetrical warfare to a new low that the Court should reject outright.

The parties' proposed expert discovery schedules differ considerably in both (i) the sequence of expert reports and depositions, and (ii) the time allowed for the submission of Defendants' expert reports. (In the first respect, Defendants' proposal differs from the schedule established in the Court's March 12, 2007 Minute Order and later vacated, and on the question of time allotments, both proposals vary from the Court's original schedule.) Defendants' proposed schedule is set forth in a letter to Plaintiffs' counsel dated June 13, 2007, a copy of which is annexed hereto at Tab A. It is reproduced here with dates keyed off August 15, as the date for submission of Plaintiffs' expert reports.

August 15, 2007	-	Plaintiffs to submit expert reports
September 14, 2007	-	Depositions of Plaintiffs' experts to conclude
November 13, 2007	-	Defendants to submit rebuttal expert reports
December 13, 2007	-	Depositions of Defendants' experts to conclude
January 14, 2008	-	Plaintiffs to submit reply expert reports
February 4, 2008	-	Depositions of Plaintiffs' reply experts to conclude

For the convenience of the Court, a chart comparing this proposal to Plaintiffs' proposal and the Court's original schedule is attached hereto at Tab B. A meet and confer held by the parties on June 25, 2007 was unable to resolve the parties' differences, which are discussed in greater detail below.

a. Depositions of Experts

Defendants' proposal reflects the suggestion that a party be allowed to depose its adversary's expert before, rather than after, submitting a response or reply report. Rather than unreasonably expanding the time for completing expert discovery, as Plaintiffs assert,<sup>3</sup> this suggestion would rearrange the sequence to include a 30-day period after receipt of Plaintiffs' reports for Defendants to depose Plaintiffs' experts prior to the submission of Defendants' rebuttal expert reports. The schedule also would allow a 30-day period after submission of Defendants' reports for Plaintiffs to depose Defendants' experts before Plaintiffs submit their reply expert reports. Defendants would then have the opportunity to depose Plaintiffs' experts as to any new material in their reply reports. The Court did not adopt this staggered sequence in its March 12 Order, but rather contemplated a single period of time after all of the parties' expert reports had been submitted for the depositions of all experts.

Defendants respectfully submit that allowing a party to depose its opponent's experts before having to submit responsive reports is a practical (and commonplace) mechanism

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<sup>3</sup> Defendants' proposed schedule would add only six weeks to the court's original schedule, partly in recognition that much of the work in producing responsive reports would fall on Defendants' experts during the typical vacation period in late August, over the Labor Day weekend, and during the distractions of early September. Plaintiffs could easily collapse the slight expansion of time by cooperating to produce their experts for depositions on a timely basis and/or (since they seem to think that expert opinions can be anticipated and responses drafted sight unseen), accelerating the delivery of their reply expert reports. After enjoying a huge expansion of their own preparation time, Plaintiffs resistance to allowing a realistic schedule for Defendants' efforts is unfair.

that allows for a better informed and more comprehensive and useful rebuttal, based in part on information learned, clarified and explained at the depositions. This sequence also simplifies presentation of expert issues to the Court and the jury, because an expert's views and an opponent's critique thereof will be reflected in a self-contained response or reply report, rather than in a patchwork of reports and deposition transcripts. Defendants do not know the basis for Plaintiffs' opposition to this sensible proposal — other than that it was not included in the Court's now-vacated schedule — because they refused to address it during the parties' meet and confer. Nevertheless, defense counsel will be prepared to discuss this subject at Friday's status conference.

b. Time for Defendants' Expert Reports

As to the time allowed for submission of Defendants' expert reports, Plaintiffs continue to try to short-change Defendants, to Defendants' considerable prejudice despite the Court's explicit rejection of Plaintiffs' prior attempt to abbreviate Defendants' response time, and despite the windfall of several additional months Plaintiffs have had to arrange for their expert reports. Plaintiffs initially suggested that Defendants be limited to a two week period for submission of Defendants' reports (Plaintiffs' January 22, 2007 Status Report). That proposal was rejected by the Court during the January 24, 2007 status conference and in the Court's January 24 Minute Order. The Court allowed Defendants 60 days after receipt of Plaintiffs' expert reports to prepare their reports. Plaintiffs' current June 26, 2007 proposal (like their similar May 27 proposal) ignores the Court's wishes by seeking to limit Defendants' response time to only 30 days.

Based on Plaintiffs' target date of August 15 for submitting their initial expert reports (even those that have nothing to do with E&Y issues), Plaintiffs will have had more than six months since the January 31, 2007 fact discovery cut-off to prepare their reports. Allowing Defendants only 30 days to prepare their expert reports — especially when those four weeks overlap Labor Day weekend — is unrealistic and devoid of any semblance of good faith — not in the least because for no good reason it would cut in half the time this Court previously allotted for submission of responsive reports.

During the June 25, 2007 meet and confer conference call between the parties, Plaintiffs refused to consider any aspect of Defendants' schedule on the ground that only their proposal was "consistent" with the Court's vacated schedule. But Plaintiffs' proposal is not at all consistent with that of the Court. As noted above, Plaintiffs would allow only one month after submission of their initial reports for Defendants' reports (versus the two month period contemplated by the Court) and Plaintiffs' proposal would allow only one month for all expert depositions, while the Court's schedule allowed six weeks for these depositions.

To justify these unrealistic reductions, Plaintiffs assert in their June 26, 2007 Status Report that "Defendants have . . . started their expert reports." This unfounded assertion has no basis in fact, except in the unremarkable sense that Defendants have always tried to discern the shifting basis of Plaintiffs' theories and consider the best means of exposing their flaws. That process certainly has not enabled Defendants to predict the substance of Plaintiffs' reports two months from now or to start any response, and it is simply nonsensical for Plaintiffs to argue otherwise. Plaintiffs also claim that "[g]iven the extensive discovery in this case, Defendants know also the likely substance of the Class' expert reports." (Statement, p. 2) This is a classic non sequitor. It is precisely because of the massive discovery in this case, *e.g.*,

Defendants' production of over five million pages of documents, Plaintiffs' 55 depositions, etc., that Defendants cannot know which documents or other components of fact discovery will be relied on by Plaintiffs' experts, and in what way — until Defendants actually *receive* the reports of these experts. Indeed, Plaintiffs themselves routinely deflected Defendants' interrogatories by asserting that they cannot provide a proper answer without expert input. (On this subject, *see* subpart (c) below.) Nor does the fact that Defendants may have been told by one or more individuals they had been retained previously by Plaintiffs tell Defendants anything about the substance of that person's report, other than that it may concern the general subjects of damages or Household's lending practices.

Plaintiffs' wholly unfair and unworkable proposal of 30 days for Defendants to submit their expert reports deserves no serious consideration by this Court. Should the Court be disinclined to adopt Defendants' proposed sequence of depositions to precede the submission of response and reply reports, Defendants request that they be allowed at least the 60 days provided by the Court's prior schedule for submission of their response reports.

Defendants respectfully ask the Court for a small increase in that window from 60 to 75 days in view of the August 15 target date for submission of Plaintiffs' initial reports. Even apart from the value of evening the playing field a small bit in view of the extra preparation time afforded to Plaintiffs, as a matter of common sense, it is not practical to expect efficient progress on Defendants' rebuttal expert reports during the last two weeks of August (given conflicting vacation schedules, Labor Day weekend, and the busy opening days of September when schools reopen and office staffs return). As the Court correctly observed during the January 24, 2007 status conference, “[t]hese people [experts] are the hardest people in the world to get. . . .” (1/24/07 Transcript, p. 11) Because that reality will be particularly evident during the end of



summer prior to Labor Day, Defendants believe that it would be prudent to add an extra two weeks to the 60-day time period previously allowed by the Court for submission of Defendants' expert reports. This modest two-week extension pales by comparison to the nearly seven months of additional preparation time that Plaintiffs have enjoyed.

Plaintiffs conclude their June 26, 2007 amended response to Defendants' Interrogatory No. 64 by saying: "Lead Plaintiffs anticipate that additional disclosures ["regarding Household's true financial and operating condition with respect to the fraud alleged in the Complaint"] may be identified during expert testimony." And this amended response includes eleven newly alleged "corrective disclosures" in addition to the 14 Plaintiffs had previously listed. This is all the more reason for accepting the timing and staggered depositions in the expert discovery schedule proposed by Defendants.

c. Request for Supplements to Interrogatory Answers that were Deferred Pending Input from Experts

Defendants' proposal also would require a party, at the time it submits its expert reports, to submit "supplemental interrogatory responses . . . for all responses which referenced expert testimony." (Tab A) This provision is needed because Plaintiffs frequently responded to interrogatories — Defendants' only method of discovery in this action — by asserting that answers, or more complete answers, would have to await input from their experts. Plaintiffs invoked this objection to at least 32 separate interrogatories propounded by Defendants. Requiring appropriate supplements at the same time a party's expert reports are due would enable the opposing party to review these supplemental responses in advance of the deadline for that party's expert reports.

### **3. Plaintiffs' Amended Responses to Defendants' Interrogatories.**

Apparently unable to meet the schedule set by the Court, Plaintiffs' counsel sought and received from Defendants an extension of time to provide new responses to interrogatories which had been ordered. Amended responses were received by Defendants very late last night. Defendants are reviewing these amended responses and have already noted various defects of differing severity. Notwithstanding the lack of time afforded by Plaintiffs for Defendants to review these revisions, Plaintiffs' Statement asks for an order precluding "any further motion practice by defendants as to these responses or any other responses previously submitted." (Pls. Statement at 4) Plaintiffs have not offered any basis for such an order and none exists. The Court has granted numerous such motions in the past to remedy Plaintiffs' defective responses and defective amended interrogatory responses from Plaintiffs' counsel. Indeed, some responses were the subject of more than one successful motion. As noted above, a great many responses remain to be forthcoming as part of the expert discovery schedule insofar as the responses are explicitly subject to further supplement or caveats regarding undisclosed expert opinions on the subject matter of the interrogatory. Given the backdrop of Court intervention to remediate prior defective responses and additional answers to be forthcoming, there is absolutely no reason why any of Plaintiffs' responses should now be insulated *ex ante* from further review.

### **4. Depositions of Keller and Bianucci**

In its May 31, 2007 Minute Order, the Court said that it would discuss "dates for the depositions of John Keller and Chris Bianucci" at the June 29 status conference. In a June 19, 2007 letter to counsel representing both Arthur Andersen and E&Y, Plaintiffs requested that these depositions take place during the weeks of July 23 and July 30 with one

deposition scheduled during each week.<sup>4</sup> On June 26, counsel for Arthur Andersen/E&Y proposed July 26 for Mr. Keller's deposition ( in New York City) and August 2 for Mr. Bianucci's deposition (in Chicago). Defendants have advised all parties that these dates are acceptable to Defendants.

**5. Request for Certification as to State Agency Documents Produced by Plaintiffs**

Defendants request that Plaintiffs be directed to certify that all documents received by Plaintiffs from any state agencies pursuant to their FOIA requests to such agencies have been produced to Defendants pursuant to Defendants' Second Document Demand. The issue of Plaintiffs' state agency documents, including correspondence between Plaintiffs and the agencies, was discussed during the January 24, 2007 status conference. In a February 12, 2007 Minute Order, the Court directed Plaintiffs to "provide Defendants by 2/16/07 with a certification that their document production is complete with respect to state agency correspondence ordered produced by the Court on January 24, 2007." Plaintiffs did so in a February 16, 2007 letter: "Pursuant to the Court's February 12, 2007 Order, this is to confirm that, to the best of our knowledge, Lead Plaintiffs' production is complete with respect to the state agency correspondence ordered produced by the Court on January 24, 2007."

However, it is not clear to Defendants whether the term "correspondence," as used both in the Court's Order and in Plaintiffs' February 16 letter, includes the actual documents received by Plaintiffs from the various state agencies as opposed to ancillary letters or submissions. In order to remove this ambiguity, Defendants request that Plaintiffs be directed to

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<sup>4</sup> By requesting deposition dates more than a month after receiving the last E&Y documents to which they are entitled, Plaintiffs are allotting themselves even more time to prepare their expert reports.

certify that all documents received from any state agency pursuant to any request by Plaintiffs' counsel have been produced to Defendants pursuant to Defendants' Second Document Demand.

Dated: June 27, 2007  
Chicago, Illinois

Respectfully submitted,

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June 13, 2007

Re: Lawrence E. Jaffe Pension Plan v. Household International, Inc., et al. Case No. 02-CV-5893 (N.D. Ill.)

Dear Cam:

I write in response to your June 4, 2007 letter, in which you request that Defendants propose an expert discovery schedule for agreement by the parties. Defendants agree that it makes sense to discuss the proposed schedule in terms of number of days rather than in terms of dates given the still-uncertain date for the final conclusion of all fact discovery.

Defendants propose the following expert discovery schedule:

- 10 days after close of fact discovery:<sup>1</sup> Plaintiffs' expert disclosures and expert reports due; Plaintiffs' supplemental interrogatory responses due for all responses which referenced expert testimony.
- 30 days after Plaintiffs' initial expert disclosures and expert reports: Depositions of Plaintiffs' experts during 30 day period.
- 60 days after the end of Plaintiffs' ex- Defendants' expert disclosures and expert

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This time period has been selected due to Plaintiffs' repeated statements that they will be ready to serve their expert reports within a short period of time after completion of fact discovery.

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| perts deposition period:  | reports due; Defendants' supplemental interrogatory responses due for all responses which referenced expert testimony. |
| • 30 days after Defendants' initial expert disclosures and rebuttal expert reports: | Depositions of Defendants' experts during 30 day period.   |
| • 30 days after the end of Defendants' experts deposition period:                   | Plaintiffs' rebuttal expert reports due (if any)   |
| • 21 days after Plaintiffs' rebuttal expert reports                                 | Depositions of Plaintiffs' experts regarding rebuttal reports (if any)   |

The above schedule should provide sufficient time for the parties to find agreeable dates for the necessary expert depositions after each round of expert reports. For instance, Defendants assume that Plaintiffs will wish to depose Defendants' experts subsequent to Defendants filing those experts' reports and prior to Plaintiffs' filing any rebuttal expert reports. Likewise, Defendants will wish to depose Plaintiffs' experts after each new report filed by those experts, including any rebuttal reports.

We believe that this schedule is appropriate given the importance of expert testimony to this case. For example, Plaintiffs have often emphasized the critical role of expert testimony to their claims. Defendants must be given sufficient opportunity to examine Plaintiffs' experts and to submit Defendants' expert reports.

Please let me know whether the above proposal is agreeable to Plaintiffs.

Sincerely,



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VIA FACSIMILE

**TAB B**



## **Expert Discovery Schedule**

	<b>Court Order (3/12/07) Adjusted for New Starting Date<sup>1</sup></b>	<b>Plaintiffs' Proposal (6/26/07)</b>	<b>Defendants' Proposal (6/13/07)</b>
Plaintiffs' Expert Reports	August 15, 2007	August 15, 2007	August 15, 2007 (based on Plaintiffs' Proposal)
Completion of Depositions regarding Plaintiffs' Expert Reports	See below	See below	September 14, 2007
Defendants' Responsive Expert Reports	October 15, 2007	September 19, 2007	November 13, 2007
Completion of Depositions regarding Defendants' Expert Reports	See below	See below	December 13
Plaintiffs' Reply Expert Reports	November 14, 2007	October 17, 2007	January 14, 2008
Completion of Expert Depositions	December 26, 2007	November 16, 2007	See below

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<sup>1</sup> Plaintiffs' original deadline for serving expert reports was March 31, 2007. That was adjusted at Plaintiffs' request to May 15, 2007, but that date was vacated in view of the on-going disputes regarding privileged E&Y documents. The above table applies a day-for-day extension to the Court's vacated schedule, as if Plaintiffs' new deadline were August 15, as they propose.

Completion of Depositions regarding Plaintiffs' Reply Reports	See above	See above	February 4, 2008
Total Elapsed Time	4.5 months	3 months	5.75 months <sup>2</sup>

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In the alternative, if the Court should reject the idea of conducting depositions before submitting a rebuttal report, Defendants have proposed adding two weeks to their deadline for submitting responsive reports — which would have the added advantage of avoiding the need to complete depositions between Thanksgiving and Christmas — a notoriously difficult time to get things done. That alternative schedule would call for Defendants to serve responsive reports on or around October 30, Plaintiffs to serve reply reports on November 30, expert depositions to be concluded January 11, 2008, instead of the day after Christmas. Total elapsed time: 5 months.