

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON)	
BEHALF OF ITSELF AND ALL OTHERS)	
SIMILARLY SITUATED,)	
)	Lead Case No. 02-C-5893
Plaintiff,)	(Consolidated)
)	
v.)	CLASS ACTION
)	
HOUSEHOLD INTERNATIONAL, INC., et al.,)	Judge Ronald A. Guzman
)	Magistrate Judge Nan R. Nolan
Defendants.)	

**CARL A. LA SUSA’S RESPONSE TO PLAINTIFFS’
MOTION TO COMPEL PRODUCTION OF DOCUMENTS
PURSUANT TO SUBPOENA DUCES TECUM**

This memorandum is submitted on behalf of Carl A. LaSusa (“LaSusa”), by his attorney, Craig Varga, in response to a “Motion to Compel” which Plaintiffs filed on Monday, February 25, 2008.

Plaintiffs’ motion ought to be summarily denied, as utterly deficient, in that Plaintiffs filed it without ever having undertaken this Court’s “meet and confer” requirements with the undersigned as counsel for La Susa. Plaintiffs have carefully omitted mention of this fact in their motion filed with this Court. Plaintiffs have, moreover, sought to cast as an apparent emergency a situation whose circumstances are wholly of their own making -- and as to which they ought bear the onus -- especially in light of Plaintiffs’ blatant violation of applicable well-known procedures (not to mention Plaintiffs’ discourtesy to the undersigned and lack of candor with this Court).

Background And Chronology Of Events As Relate To LaSusa

1. LaSusa’s identity as an expert for Defendants was disclosed to Plaintiffs by Defendants as early as October 22, 2007.

2. LaSusa's expert report ("Report"),¹ authored in conjunction with John Bley (another of Defendants' experts -- but not represented by the undersigned), was provided to Plaintiffs by Defendants on December 10, 2007. That Report (62 pages) detailed, as to both LaSusa and Bley, such matters as:

- a) employment background and qualifications -- in LaSusa's case, the fact that he had long been an Illinois regulator in the Department of Financial Institutions (from 1977 to 2003), and that he had, since 2003, operated a consulting business; (Report, at 2-4);
- b) documents relied upon -- various appendices to the report identified many thousands of pages of such documents (Report, at iii, in Table of Contents), all of which were provided to Plaintiffs;
- c) compensation arrangement (Report, at 2-4);
- d) other testimony as an expert -- in Mr. Bley's situation such matters existed, but not in LaSusa's (hence, none were listed for LaSusa) (Report, at 2-4).

3. On February 8, 2008, Plaintiffs served LaSusa with a subpoena (see Ex. A, attached), seeking, depending on how one construes it, information that ranges from that which had already been provided in the Report on December 10, 2007, to literally every piece of paper or electronic information in LaSusa's office.²

¹ This Report is subject to a protective order and is not attached. The Court would be able, of course, to review it in camera or under other appropriate arrangement.

² Request No. 5, for example, especially once one wades through the expansive overlays of all Plaintiffs' "Instructions" and "Definitions" could conceivably mean that LaSusa was supposed to comb through his office for any bit of information (any "communication") that might concern a "lending practice" or "loan product." Since LaSusa is a financial services consultant this would be tantamount to asking a Magistrate Judge for any piece of paper or electronic information concerning "litigation." LaSusa (a one-man operation as a consultant) would be being supposed to do this, of course, during the time he was preparing for his March 6 "expert" deposition, which deposition will include his views on the Ghiglieri Rebuttal Report -- which responded to the Bley/LaSusa Report -- and which LaSusa received in recent weeks. The point is, of course, that LaSusa would be forced to respond to a belated (and circumventive of a previous Stipulation on Expert Discovery) subpoena instead of prepare for his deposition.

4. In the brief period following February 8, when LaSusa was served, LaSusa, a person not accustomed to receiving subpoenas, undertook to decide how he needed to address the subpoena, including whether he ought retain counsel. He ultimately did so. His counsel, the undersigned, Craig Varga, was apprised of the “Stipulation Regarding Expert Discovery” agreed to by Plaintiffs and Defendants, which set forth the applicable parameters of expert discovery for the case, and which the Subpoena seeks to circumvent.

5. On Friday, February 22, 2008, Mr. Varga, and in compliance with the Federal Rules of Civil Procedure, served objections to the LaSusa Subpoena on Plaintiffs’ counsel (see, Ex. B hereto), by both fax and U.S. Mail. Service of the objections was made on the two specific attorneys, for Plaintiffs, whose names were on the Subpoena served on LaSusa.

6. Mr. Varga has never heard a word from Plaintiffs’ counsel since then, other than to receive an e-mail, after close of business on Monday, February 25, 2008, supplying him with copies of Plaintiffs’ Motion to Compel, noticed up for Friday, February 29, 2008. Mr. Varga has heard nothing from Plaintiffs since then either.

7. Plaintiffs, before receipt of the LaSusa objections from Mr. Varga on February 22 apparently had a “meet and confer” conference with Defendants’ counsel as to persons served subpoenas other than LaSusa. Plaintiffs never contacted Mr. Varga, though, after service of the LaSusa objections. Plaintiffs filed their Motion to Compel on Monday, February 25. Plaintiffs’ motion recites (see p. 4, at the top) having received an objection from LaSusa, but does not mention

that the objections were from Mr. Varga (not from Defendants' counsel) and that Plaintiffs never even sought to speak to Mr. Varga.³

Argument

A. Plaintiffs' Motion Is Utterly Deficient As To Applicable Requirements Regarding Discovery And Should Be Summarily Denied As Such.

This Court's standing order provides that:

“The Court will not hear or consider any discovery motion unless the parties have complied with the meet and confer requirement under Local Rule 37.2. Any discovery motion must state with specificity when and how the movant complied with Local Rule 37.2.”

Plaintiffs did not do this as to LaSusa. Moreover, the reportage in Plaintiffs' motion, insofar as the expert subpoenas are concerned, seems -- in the undersigned's humble opinion -- designed to have the Court not really be aware of relevant and known facts (to Plaintiffs) about LaSusa, about who was representing him, and about what if any interactions had occurred (or not), etc.

B. The Court Ought Not Reward Plaintiffs By Letting Them Proceed In A Way That Excuses Their Past Conduct And Imposes Burdens On LaSusa, His Counsel And The Court.

Plaintiffs may receive this response and now seek to undertake what they were absolutely required to do previously -- i.e. undertake discussions designed to work out a discovery matter and avoid, or limit, it manifesting itself in a controversy before the Court. Such a course would be utterly at odds, though, with the rationale and dictates behind the applicable rule, for it would reward non-compliant counsel at the expense of opposing counsel and the Court. In the circumstances of this case, where Plaintiffs have known of LaSusa since October, and had his Report since December 10, 2007, it simply offends all notions of fairness to suggest that any

³ Plaintiffs do attach, as Ex. 6 to their motion, the LaSusa objections and will no doubt argue that the Court was “on notice” of the fact -- were the Court to comb through all those pages of Exhibits -- that LaSusa had different counsel. The Court will assess for itself whether this course taken by Plaintiffs was indicative of candor -- or evasion. It was, in any event and utterly beyond doubt, wholly deficient under this Court's standing order as to discovery matters. The Court entered a very short briefing schedule, on February 26, without Mr. Varga having any opportunity to weigh in on anything. Out of deference to the Court, Mr. Varga has scrambled to get this Response in, on Thursday, not having even learned of the short briefing schedule until late Tuesday evening, by speaking with Defendants' counsel.

emergency exists. No “fire drill” waves of ultimatums and draconian briefing, attendant to pleas for “do-overs” by Plaintiffs, ought be countenanced. Plaintiffs ought be left to the reasonable consequences of their actions and LaSusa’s deposition proceed as scheduled, shorn of any last minute sideshows designed to drain LaSusa’s focus, preparations and attentions. The information provided in the December 10, 2007 Report detailed LaSusa’s background, qualifications, compensation, testifying expert experiences (or not) and documents on which his opinions were based. This is the stuff of which inquiries to experts at deposition are made, and forcing LaSusa to do otherwise, at this point and under the circumstances detailed herein, would be harassing, oppressive and singularly unmindful of Plaintiffs’ unreasonable approach as to LaSusa.

C. LaSusa Does Not Waive, And Reserves All, Substantive Objections To The Subpoena.

This Response outlines a stance that is commensurate with where LaSusa, his counsel and the Court now find themselves -- i.e. in a landscape littered with an absence of compliance with applicable rules, a disregard for LaSusa’s counsel and a lack of candor vis-à-vis the Court. All this does not mean, of course, that LaSusa does not have legitimate concerns, and bases for objection to the Subpoena, beyond matters discussed herein. Plaintiffs have chosen to waive proceeding in a manner that would require LaSusa undertaking herein a detailing of those or a discussion of how they might be tempered by compromise. LaSusa makes clear, though, that to the extent Plaintiffs employ any future stratagem designed to get what they’ve waived here, LaSusa reserves all his rights.

CONCLUSION

The Court should deny the motion as to LaSusa outright, with prejudice, and should afford LaSusa such other relief as the Court deems appropriate.

Dated: February 28, 2008

Respectfully submitted,

CARL A. LA SUSA, a non-party

By: Craig A. Varga
His Attorney

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CERTIFICATE OF SERVICE

I, Craig A. Varga, an attorney, hereby certify that a true and correct copy of the foregoing

Carl A. LaSusa's Response to Plaintiffs' Motion to Compel Production of Documents

Pursuant to Subpoena Duces Tecum, was served electronically upon counsel of record:

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by the filing of said document through the Court's electronic filing system this 28th day of February, 2008, and further state that the following were served upon:

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by placing same in the United States mail chute located at 224 South Michigan Avenue, Chicago, Illinois 60604, properly addressed and postage fully prepaid, this 28th day of February, 2008, on or before the hour of 5:00 p.m.

s/ Craig A. Varga