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

Lawrence E. Jaffe Pension Plan, On Behalf of Itself and All Others Similarly Situated,	)	
Plaintiffs,	)	Case No. 02 C 5893
v.	)	Hon. Ronald A. Guzman Magistrate Judge Nolan
HOUSEHOLD INTERNATIONAL, INC., ARTHUR ANDERSEN LLP, W.F. ALDINGER, and D.A. SCHOENHOLZ,	)	
Defendants.	)	

RESPONSE OF ARTHUR ANDERSEN LLP TO LEAD PLAINTIFFS' MOTION FOR PROTECTIVE ORDER QUASHING THE HOUSEHOLD DEFENDANTS' THIRD-PARTY SUBPOENAS

The Lead Plaintiffs have filed a motion to require the Household Defendants to withdraw certain subpoenas. The Lead Plaintiffs have also sought an order from this Court "prohibiting defendants from pursuing further discovery related to individual claims and defenses until after class wide liability has been determined." Motion at 1. The Lead Plaintiffs have not satisfied their obligations to meet and confer prior to filing a motion seeking to preclude Arthur Andersen LLP from pursuing discovery in this case. As a consequence, the motion should be denied. In the event that the Court considers the motion on its merits, the Court should deny the motion on the merits.

In their Motion, Lead Plaintiffs acknowledge that "discovery of information related to PACE's investment decisions and those of its investment advisors might, in theory, give rise to a defense against PACE . . . ." Motion, at 7. Thus, the Lead Plaintiffs concede that the discovery which is being sought is in fact proper discovery under the Federal Rules. Lead Plaintiffs assert,

however, that "[t]he Household Defendants seek information through the Third-Party Subpoenas, ostensibly to explore individualized defenses against Class representative PACE's claims. Such information, however, has no bearing on Household's liability to the Class as a whole. Thus, the Household Defendants have no discernable purpose for issuing the Third-Party Subpoenas at this time . . . ." Motion at 6. Lead Plaintiffs in effect argue that the discovery is impermissible because discovery has been or should be limited to what they call class issues only.

The Lead Plaintiffs' argument lacks merit for several reasons. First, by Order dated May 25, 2004, the Court, with the agreement of all of the parties, entered a scheduling order. That Order does not bifurcate discovery in any way. Instead, it provides that fact discovery of all and any nature shall be concluded by January 13, 2006. Plaintiffs can not now challenge an agreed order. Under the May 25, 2004 Order, even if the discovery served by the Household Defendants related only to non-common class issues, and it does not, it would be entirely appropriate. Indeed, if the discovery period concluded and the Household Defendants did not do this discovery, the Household Defendants would find themselves faced with an argument that their discovery was too late. [1]

Second, the Lead Plaintiffs' argument that The Stipulation and Order Regarding Class Action Certification ("Stipulation") means that this discovery is not proper turns the Stipulation on its face. Indeed, the Stipulation itself makes it clear that this discovery is entirely proper. The Stipulation expressly states that "[t]he parties agree that *nothing herein* precludes the parties from making any and all substantive arguments concerning the claims of the named plaintiffs and/or the Class."

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[1] It is telling, moreover, that the Lead Plaintiffs do not cite any case in their brief which in fact precluded discovery from being taken from the Lead Plaintiffs. Should this case survive summary judgment, and it will not, the district court may choose a multitude of different ways to try the case. That issue is premature. The only issue here is whether discovery should be waylaid at this time so the district court has no options when it needs to make that determination.

Given the fact that "[a]ny showing that severs the link between the alleged misrepresentation and either the price received (or paid) by the plaintiff, or his decision to trade at a fair market price, will be sufficient to rebut the presumption of reliance", *Basic v. Levinson,* 108 S.Ct.978, 992 (1975), discovery as to the individual Lead Plaintiffs' purchases is plainly relevant.

Stipulation ¶ 4 (emphasis added). Thus, while the parties agreed to class certification, they also agreed that there would be no limitation on defendants proceeding with merits discovery on matters relating to the "named plaintiffs" in addition to the Class. While Lead Plaintiffs proceed to argue why such discovery would not be appropriate, that is not the deal that they struck. Instead, they agreed that "nothing herein precludes the parties from making any and all substantive arguments concerning the claims of the named plaintiffs and/or the class." Stipulation ¶ 4. That is exactly what the Household Defendants are doing here. Accordingly, Lead Plaintiffs should be held to their bargain and the motion should be denied.

Dated: January 26, 2005

Respectfully submitted,

By: Stanley Parzen

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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2005, I caused copies of the foregoing **RESPONSE OF ARTHUR ANDERSEN LLP TO LEAD PLAINTIFFS' MOTION FOR PROTECTIVE ORDER QUASHING THE HOUSEHOLD DEFENDANTS' THIRD-PARTY SUBPOENAS** to be served upon the following persons via hand delivery or overnight courier:

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