

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

FILED

JUL - 7 2005 WH

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT



LAWRENCE E. JAFFE PENSION PLAN,
on Behalf of Itself and All Others Similarly
Situating,

Plaintiff,

v.

HOUSEHOLD INTERNATIONAL, INC., et al.

Defendants.

Lead Case No. 02-C-5893
(Consolidated)

CLASS ACTION

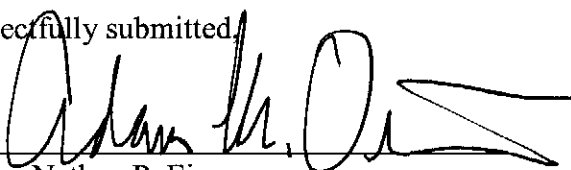
Judge Ronald A. Guzman
Magistrate Judge Nan R. Nolan

NOTICE OF FILING

PLEASE TAKE NOTICE that, on July 7, 2005, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, a Memorandum of Law in Opposition to Lead Plaintiffs' Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format, a copy of which is attached hereto.

Respectfully submitted,

By:



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Aldinger, David A. Schoenholz, Gary
Gilmer, and J.A. Vozar*

UNITED STATES DISTRICT COURT
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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

**MEMORANDUM OF LAW IN OPPOSITION TO LEAD
PLAINTIFFS' MOTION TO COMPEL THE HOUSEHOLD
DEFENDANTS TO PRODUCE ELECTRONIC EVIDENCE IN
NATIVE ELECTRONIC FORMAT**

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This memorandum is respectfully submitted on behalf of Defendants Household International, Inc.,¹ Household Finance Corp., William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, "Defendants") in opposition to Lead Plaintiffs' Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format.

PRELIMINARY STATEMENT

Plaintiffs' motion purports to require the Court's intervention to "compel" discovery in so-called "native electronic format." No such motion was necessary. Far from requiring a motion to compel, Defendants voluntarily offered to produce documents in the "native format" sought by Plaintiffs in various proposals from January 2005 through March 2005.² In fact, by email dated March 14, 2005, Plaintiffs *accepted* Defendants' written proposal of March 10, 2005, which set forth in detail every aspect of "native format" production *except*: (1) the "search terms" to be used in electronically collecting emails and (2) the "custodians" to be searched (*i.e.*, the employees of Household whose "native format" emails were to be electronically collected). (*See* Affidavit of David Owen, Esq. sworn to on July 6, 2005 ("Owen Aff.") (submitted herewith) Exs. 1, 2.) Thus, as of March 14, the only remaining "native format" issues still in dispute were the "search term" and "custodian" lists to be used for the collection.

¹ In March 2003, Household merged with HSBC Holdings Plc., and Household is now known as HSBC Finance Corp. For purposes of this submission, however, the company will be referred to as Household.

² It bears noting that although a few courts have required "native format" production, most courts have not. *See, e.g., In re Honeywell International, Inc. Securities Litigation*, No. M8-85 WHP, 2003 WL 22722961, at *2 (S.D.N.Y. Nov. 18, 2003) (finding it not "necessary to direct [the producing party] to adopt any particular procedure" for production); *see also* Fed. R. Civ. P. 34(a) (stating only that information must be produced in "reasonably usable form."). In voluntarily agreeing to Plaintiffs' "native format" demands (notwithstanding such contrary precedent), Defendants hoped to avoid precisely the burden now foisted upon this Court by Plaintiffs' motion.

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Plaintiffs' "motion" neglects to mention this and omits the March 14 email in which they explicitly agreed to Defendants' March 10 proposal, which stated: "Plaintiffs have reviewed your latest revisions to Plaintiffs' and Household Defendants' Understanding Re Production of Documents in Native Format, faxed to us on March 10, 2005, and accept it" (Owen Aff. Ex. 2.) Instead, Plaintiffs seek to "compel" matters over which there is already a written agreement. As a result, Points A through E of Plaintiffs' brief claiming a "right" to "native format" discovery are all indisputably moot given the documented agreement that Plaintiffs now have the temerity to ask this Court to "compel."³ (*See* Lead Plaintiffs' Motion To Compel The Household Defendants To Produce Electronic Evidence In Native Electronic Format ("PM") at 1-14; Owen Aff. Exs. 1, 2.)

The remainder of Plaintiffs' "motion" is limited to Point F, which begins at page 14 of Plaintiffs' 15-page "brief." Point F covers the only issues actually in dispute, namely the "search term" and "custodian" lists to be used for the collection. The parties exchanged various proposals relating to these two lists in March and April, the resolution of which was interrupted by preparations for the mediation of this case that was conducted in California at the end of May.

Following the failure of the mediation, Plaintiffs filed three motions to compel, each of which sought needlessly to burden this Court with matters that might have been (or already were) resolved by agreement of the parties. As for the "native format" motion, putting aside the dozen-plus pages of irrelevant "argument," Plaintiffs' proposed search term and custodian lists (which are attached to their "brief") are stunning in their overbreadth. Plaintiffs' pro-

³ In addition to the patently irrelevant arguments contained in Points A through E of Plaintiffs' "brief", the brief also contains an uncountable number of mischaracterizations, distortions, diversions and other irrelevancies that are neither part of this motion, nor worthy of any response that would consume the resources of this Court. In short, the document is substantially a work of incoherent fiction.

posed "List of Search Terms" spans no less than 10 pages, with more than 500 terms listed. To make matters worse, the majority of those terms are expanded many-fold by the vague (and unspecified) use of the phrase "(and all other iterate forms of this term)" for a likely total of thousands of actual "terms." Plaintiffs' proposed "Custodian List" (also 10 pages long) is no better, containing no fewer than 335 individuals, including hundreds of low-level business unit, district and branch employees that would have no apparent connection to any of Plaintiffs' claims.

In contrast to Plaintiffs' overbroad lists, Defendants have proposed compromise lists of 119 custodians and 219 search terms which substantially reduce the likelihood that an overwhelming number of irrelevant emails will be captured electronically. The 119 individuals listed in Defendants' proposed custodian list consist of: (i) the four individual defendants in this case, (ii) the individuals listed in Defendants' Initial Disclosures as those individuals most likely to have discoverable information (*see* Fed. R. Civ. P. 26(a)(1)(A)), (iii) the individuals listed on Defendants' production log as individuals whose "hard-copy" documents have been produced to plaintiffs, (iv) additional individuals insisted upon by plaintiffs or in whom plaintiffs appear to be particularly interested, (v) high level employees (to whom other proposed custodians reported), and (vi) other individuals mentioned in the Amended Complaint and/or whose positions with the Company indicate they would be likely to have relevant documents. This list includes those Household employees who by virtue of their senior position or relevant area of responsibility, might reasonably be expected to have emails relevant to Plaintiffs' claims. Likewise, Defendants' proposed search term list of 219 terms has been tailored to Plaintiffs' claims, incorporating hundreds of Plaintiffs' proposed terms, but excluding a wide variety of unfocused and generic terms that would require a review of countless irrelevant emails.

With Defendants having acquiesced to virtually all of Plaintiffs' unreasonable demands, Plaintiffs' search term and custodian "lists" are beyond the limit. Plaintiffs' lists are unreasonable because they would unavoidably lead to a pointless search of countless thousands

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of irrelevant emails from hundreds of individuals who have no apparent connection to any of Plaintiffs' claims of securities fraud by Household's top executives.

BACKGROUND

In connection with documentary discovery in this case, which has already included the production to Plaintiffs of over three million pages of documents (including thousands of electronic documents in non-native format), the "Native Format Agreement" reached on March 14, 2005 provides, *inter alia*, for the review and production of emails in "native format" as follows:

5. *Email*: Household used both Lotus Notes and Housemail during the relevant time period.

a. Lotus Notes — **Review and production of native format emails will take place with the use of a search term protocol that will search both active and archived mail boxes of designated individuals.** Lotus Notes emails (not attachments) will be exported to a full text format and metadata shall be captured and put in a database which will include a link to each attachment. In such instance, attachments will remain in native format. E-mails will be "de-duped" across the collection to remove e-mails that are exact duplicates of others which are produced. Bcc's and forwarded emails shall not be considered exact duplicates. Production will be made in Concordance format and will include the email, metadata, and attachments.

b. Housemail — Housemail shall be produced in paper form.

(Owen Aff. Ex. 1 at attachment p. 2 (emphasis added).) Consistent with the parties' Native Format Agreement, Plaintiffs notified Defendants that they would provide a proposed list of search terms and a proposed list of custodians. (See Owen Aff., Ex. 3 (Email of Azra Mehdi, Esq. to Landis C. Best, Esq. dated February 11, 2005).)

Plaintiffs' proposed search term list consisted of 507 terms, many of which: (i) had no conceivable relevance to the claims at issue between the parties, (ii) were so extremely overinclusive as to capture an abundance of wholly irrelevant documents, and/or (iii) were

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clearly redundant insofar as any responsive documents would certainly be captured by other more focused terms. (See Owen Aff. Ex. 4 (Letter of Sylvia Sum, Esq. to Landis C. Best, Esq. dated March 1, 2005) (attachment).) Plaintiffs' 10-page list of custodians was equally overbroad, listing 335 individuals, the overwhelming majority of whom had no connection whatsoever to any of the individual defendants or claims in this case. (See Owen Aff. Ex. 5 (Letter of Sylvia Sum, Esq. to Landis C. Best, Esq. dated March 10, 2005) (attachment).)

In response to these proposals, Defendants offered more narrowed and focused lists designed to collect any potentially responsive documents without simultaneously causing a wasteful collection of reams of irrelevant material. (See Owen Aff. Ex. 6 (Letter of Landis C. Best, Esq. to Sylvia Sum, Esq. dated March 18, 2005).) Although Plaintiffs acknowledged "possible overbreadth" in their search term list, they rejected Defendants' proposed list and instead offered a revision to their original list that was only marginally shorter. (See Owen Aff. Ex. 7 (Letter of Sylvia Sum, Esq. to Landis Best, Esq. dated March 24, 2005).)⁴

The parties held a telephonic meet and confer on April 12, 2005, during which Defendants proposed that the parties go through each term still in dispute and exchange views as to why each term should or should not be added to the protocol. (See Owen Aff. ¶ 2.) Defendants agreed to add more than 40 additional terms, including the names of individuals listed in defendant Arthur Andersen's Initial Disclosures in which Plaintiffs had expressed particular interest. (See Owen Aff. Ex. 8 (Letter of Landis C. Best, Esq. to Monique C. Winkler, Esq. dated April 15, 2005).) Plaintiffs' *rejected* this proposal for resolving the issue, stating that "plaintiffs cannot accept a further narrowing of plaintiffs' proposed search term list." (See Owen Aff. Ex. 9 (Letter of Monique C. Winkler, Esq. to Landis C. Best, Esq. dated April 19, 2005).) In anticipa-

⁴ Plaintiffs slid back to their original 10-page list for this motion to compel. (See PM, Schedule B.)

tion of the (then) upcoming mediation on May 23, however, Plaintiffs temporarily dropped the issue. *See id.*⁵

On June 6, following the failure of the mediation, Plaintiffs filed the three motions that are now before this Court. During the June 9 status conference on Plaintiffs' motions, this Court directed the parties to further "meet and confer" in an effort to eliminate, or at least narrow, the "issues" identified therein. (*See Owen Aff.* ¶ 3; Ex. 10 (Order of Judge Nan R. Nolan dated June 10, 2005).)

During a phone conference on June 16, 2005, Defendants again proposed that the parties reconsider their positions regarding the search terms still in dispute and go through each term to exchange views regarding why each term should or should not be added to the protocol. (*Owen Aff.* ¶ 4.) Plaintiffs *refused*, stating that "[we] do not believe that [it] is reasonable" to discuss the search term list and "cannot agree to limit [the] custodian list to that proposed by the Household Defendants." (*See Owen Aff.* Ex. 11 (Letter of Monique C. Winkler, Esq. to Landis C. Best, Esq. dated June 20, 2005).)

By letter dated June 22, 2005, Defendants again urged Plaintiffs to "spend as much time on the phone as necessary" to resolve these issues, noting this Court's order to that effect. (*See Owen Aff.* Ex. 12 (Letter of David Owen, Esq. to Monique Winkler, Esq. dated June 22, 2005).) By letter dated June 28, Plaintiffs again *refused* and declined to have any further discussions unless Defendants provided "in writing the basis for [their] objections to the custodian list and the search term list" (*Owen Aff.* Ex. 15 (Letter of Monique C. Winkler, Esq. to Landis C. Best, Esq. dated June 28, 2005).)

⁵

There was no further discussion of this issue until the June 1 status conference with the Court, when Plaintiffs informed the Court they intended to file their motion to compel.

As a further effort to accommodate Plaintiffs, and despite the fact that the very purpose of meet and confer conferences is undermined by requiring lengthy written statements of position, Defendants promptly provided to Plaintiffs a detailed written objection to each of the search terms and custodians still in dispute. (*See* Owen Aff. Ex. 16 (Letter of David Owen, Esq. to Monique C. Winkler, Esq. dated June 29, 2005); Ex. 17 (Letter of David Owen, Esq. to Monique C. Winkler, Esq. dated June 30, 2005 (with attachments)) (the “June 30 Proposal”).) The June 30 Proposal offered a number of proposed compromises on both lists conditioned on a corresponding demonstration of good faith by Plaintiffs. *Id.*

Despite Plaintiffs’ promise to meet and confer by phone following receipt of Defendants’ written objections to each search term and custodian still in dispute (*see* Owen Aff. Exs. 15 (“We would like to schedule a meet and confer once we have received defendants’ responses.”)), Plaintiffs again declined to do so. Instead, Plaintiffs waited until 8 p.m. Eastern Standard Time on July 5 (two days before this brief was due) to send a letter to Defendants in which Plaintiffs made a very limited counter-offer to drop certain search terms and custodians. (*See* Owen Aff. Ex. 18 (Letter of Monique C. Winkler, Esq. to Landis C. Best, Esq. and David Owen, Esq. dated July 5, 2005).)

Notwithstanding (i) Defendants’ explicit June 29 request (also made on June 22 and June 30 (Owen Aff. Exs. 12, 17)) that Plaintiffs “promptly agree to engage in a good faith discussion . . . or agree to extend our time to respond so that the Court’s order can be effected” (Owen Aff. Ex. 16), and (ii) Plaintiffs’ explicit promise to meet and confer once they had received Defendants’ written statements (Owen Aff. Ex. 15), Plaintiffs’ July 5 letter did not address either of these concerns.⁶ Furthermore, unlike the detailed written explanations of objec-

⁶ Only days before, Plaintiffs had flatly stated to Defendants that they would refuse to consent to any extensions of time for the remainder of this case.

tions provided by Defendants (Owen Aff. Ex. 17 (attachments), Plaintiffs failed to provide any justification at all for the search terms and custodians still in dispute other than the boilerplate assertion that their lists were generally based upon a review of documents already produced. (Owen Aff. Ex. 18) Needless to say, this was not the “corresponding demonstration of good faith” Defendants had in mind.⁷ Notwithstanding Plaintiffs’ belated letter, and even after Defendants’ numerous accommodations to Plaintiffs’ position, there remain a total of nearly two hundred custodians and search terms in dispute, each of which stands to needlessly multiply the number of irrelevant documents that would be captured in the search for native format emails.⁸

ARGUMENT

Discovery in federal civil cases is governed by Rule 26 of the Federal Rules of Civil Procedure. This Court has wide discretion in ruling on discovery matters, and discovery requests may be limited by the Court if it concludes that “the discovery sought is unreasonably cumulative or duplicative . . . [or] the burden or expense of the proposed discovery outweighs its likely benefit” *See Murlas Living Trust v. Mobil Oil Corp.*, No. 93 C 6956, 1995 WL 124186, at *1 (N.D. Ill. Mar. 20, 1995) (*citing* Fed. R. Civ. P. 26(b)(2)).

The “Native Format Agreement” reached with Plaintiffs on March 14, 2005 (*see* Owen Aff. Exs. 1, 2) renders Points A through E of Plaintiffs’ brief asserting a “right” to “native format” discovery moot and needlessly vexatious. (*See id.*; PM at 1-14.) The only matter left to

⁷ Plaintiffs’ unprofessional behavior has not caused Defendants to withdraw the June 30 Proposal. *See* note 4, *supra*.

⁸ One example of Plaintiffs’ untenable position and the attendant burden their steadfast refusal to meet and confer places upon the Court is that, despite Defendants informing Plaintiffs that at least three of Plaintiffs’ proposed custodians appeared not to have been employed by Household, Plaintiffs not only failed to remove them from the list of custodians, but also refused to provide any information that would indicate otherwise.

be decided on this motion is the scope of the custodian and search term lists to be used. Plaintiffs' lists are grossly overbroad. This case is supposedly about a particularized securities fraud committed by four individuals named in Plaintiffs' Amended Complaint. The needs of discovery on such claims do not warrant a search of virtually every single email sent to or from well over three hundred different Household employees.

Unfocused "search terms" are virtually certain to turn up irrelevant emails, but only remotely likely to turn up relevant emails. For example, the search term "allegation" (*see* PM Schedule B at 1) might conceivably turn up an email relevant to Plaintiffs' claims, but such a generic term as "allegation" is certain to turn up many hundreds if not thousands of totally irrelevant emails in a company the size of Household. At the outset, such a generic term must be deemed insufficiently focused to warrant inclusion in a list of search terms. The problem, however, gets worse when similar generic terms are turning up the same relevant emails, but ever increasing numbers of totally irrelevant emails — for example "accusation." (*See* PM Schedule B at 1.) Even worse, where there are already more focused terms in the list (such as "Luna" — a particular litigation referenced in the Amended Complaint), such generic terms like "allegation" and "accusation" add nothing relevant at all. Other clearly problematic "search terms" demanded by Plaintiffs include: "complaint", "life insurance", "subpoena" and "trainer." This clearly inappropriate proposal is totally unwarranted, especially when hundreds of other such "terms" (plus other "iterations") are proposed to be searched simultaneously. Notwithstanding the supposed efficiency of a "search term" list, virtually nothing would end up being left out.

Likewise, a search of the email boxes of hundreds of individuals almost certain to have had *no interaction or communication whatsoever* with any individual defendant would be a futile and wasteful use of resources. Plaintiffs have included literally hundreds of lower level business unit, district and branch employees on their list. It is inconceivable that any such employees could possibly have had any role in a supposed "fraud" allegedly orchestrated by the

four individual senior executives named in the Complaint. Plaintiffs' list can only be deemed to be overbroad.

Defendants have sought to accommodate Plaintiffs in every reasonable way, and have now offered Plaintiffs a list of 119 custodians and 219 search terms. Attached hereto as Appendices A and B for the Court's convenience are two charts reflecting the custodians and search terms offered to Plaintiffs in the June 30 Proposal, as well as the custodians and search terms still in dispute along with a supporting explanation of the basis for each of Defendants' objections.⁹ Among other accommodations to Plaintiffs, Defendants have offered to search the email boxes of: (i) individuals insisted upon by Plaintiffs or in whom Plaintiffs appear to be particular interested and (ii) managers and/or supervisors of many lower level employees as a compromise that permits a substantial reduction in the total list of custodians. This proposal will collect the documents relevant to Plaintiffs' claims without simultaneously collecting a completely unmanageable number of irrelevant documents.

Accordingly, Defendants submit that *none* of the remaining search terms and custodians on Plaintiffs' overbroad lists need be searched. Defendants have made every effort to accommodate Plaintiffs' unreasonable and inflexible demands, and have proposed a compromise that should cover every conceivable email that might be relevant to Plaintiffs' claims (and then some).¹⁰ Defendants believe that this is what the Court had in mind when it directed the parties

⁹ Appendix A consists of the "Custodians Contained in the June 30 Proposal" followed by an explanation of Defendants' objections to each custodian still in dispute. Appendix B consists of the "Search Terms Contained in the June 30 Proposal" followed by an explanation of Defendants' objections to each search term still in dispute.

¹⁰ In fact, Defendants believe that the June 30 Proposal will also be significantly (though less egregiously) overbroad in scope, but, to avoid needless motion practice, nevertheless sought to propose a resolution that could not reasonably be objected to.

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to meet and confer. Defendants cannot, however, voluntarily undertake the pointless search of countless thousands of irrelevant emails from hundreds of individuals who have no apparent connection to any of Plaintiffs' claims of securities fraud by Household's top executives. Plaintiffs need not be rewarded for vexatious discovery demands and motions, nor should Plaintiffs benefit from total inflexibility and a refusal to compromise.

CONCLUSION

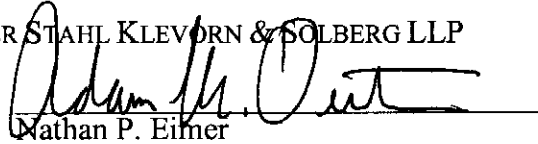
For the foregoing reasons the Court should deny Plaintiffs' motion to compel Defendants to produce electronic documents in "native format" as moot, and deny Plaintiffs' motion insofar as it seeks to compel Defendants to conduct any search for native format emails using search terms or custodians beyond those offered to Plaintiffs in the June 30 Proposal.

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Dated: July 7, 2005
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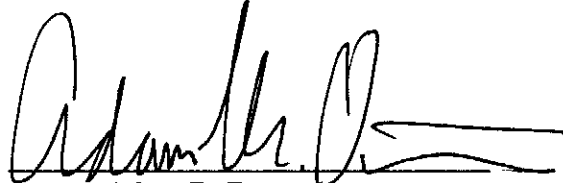
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CERTIFICATE OF SERVICE

Adam B. Deutsch, an attorney, certifies that on July 7, 2005, he served copies of a Memorandum of Law in Opposition to Lead Plaintiffs' Motion to Compel the Household Defendants to Produce Electronic Evidence in Native Electronic Format and Notice of Filing to the parties listed below via the manner stated.



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APPENDIX A

Custodians Contained in the June 30 Proposal

1. Aldinger, William F.
2. Allcock, Robin L.
3. Ancona, Edgar D.
4. Anderson, Dan W.
5. Balmes, Kathy
6. Bangs, Lawrence
7. Barnes, Elizabeth (Liz)
8. Basilotto, Stephen C.
9. Blenke, John W.
10. Bower, Tina
11. Bromley, Nancy
12. Brooke, Noelle
13. Carlson, Michael
14. Casey, Susan
15. Castelein, Craig L.
16. Chan, Joseph K.
17. Cliff, D.G.
18. Coleman, Onya
19. Colip, Chuck A.
20. Condon, Tim R.
21. Connaughton, James F.
22. Connell, Lawrence
23. Coppenrath, Joan
24. Cota, Gina
25. Cunningham, Curt
26. Davis, John R.
27. Derickson, Sandra L.
28. Detelich, Thomas M.
29. Dougherty, Michael
30. Ekholdt, Per
31. Elliott, Robert
32. Emerson, Traci
33. Fabiano, Rocco J.
34. Fitzpatrick, Michael
35. Foster, Christine
36. Friedrich, Douglas A.
37. Funk, Donna
38. Gale, Lori
39. Gang, Kenneth K.
40. Gibson, Gregory A.
41. Gilmer, Gary D.
42. Guglomo, Sasha
43. Guillette, Angela
44. Hansgen, Beth
45. Harman, Gary S.
46. Harmon, Thomas J.
47. Harvey, Ken
48. Hayden, Megan E.
49. Hennessey, Elizabeth
50. Hicks, Stephen L.

51. Hoff, Joseph W.
52. Hood, Jeff
53. Hueman, Dennis J.
54. Kauffman, James B.
55. Kelly, Colin P.
56. Kolb, Richard
57. Little, David B.
58. Makowski, Paul A.
59. Marcus, Michael E.
60. Markell, Elaine H.
61. Matasek, Steve
62. McClain, Thais
63. McDonald, Steve L.
64. Mehta, Bobby N.
65. Menezes, Walter G.
66. Mielitz, Doug
67. Millick, Lois
68. Mizialko, Cliff S.
69. Morris, Dennis D.
70. Morris, Loren J.
71. Morrison, Kathleen A.
72. Mulconrey, Michael
73. Murray, Moira
74. Neff, Michele
75. Nelson, Kay
76. Nicola, Jeff
77. Norman, Lisa
78. Nowlan, Regina
79. O'Brien, John J.
80. O'Han, Robert
81. O'Toole, J. Denis
82. Pantelis, Daniel J.
83. Peters, Craig S.
84. Peters, Rich
85. Privette, Melissa
86. Raisbeck, Jean
87. Reault, Eric
88. Reeves, Mike A.
89. Robin, Kenneth H.
90. Rodemoyer, Carin
91. Rogers, Derek
92. Root, Timothy
93. Ruhaak, Kathie
94. Rutland Drury, Melissa
95. Rybak, Walt
96. Schneider, Tom G.
97. Schoenholz, David A.
98. Seaton, Victor
99. Sesterhenn, Pete E.
100. Shrum, Jon

101. Skonning, Michael L.
102. Smith, Steven H.
103. Sodeika, Lisa M.
104. Spoden, Tom
105. Sprude, Margaret A.
106. Sterba, Ed
107. Sthrome, Russ
108. Stockdale, Dave K.
109. Stroom, Craig A.
110. Strybel, Jennifer A.
111. Turner, Steve
112. Uphoff, John F.
113. Vozar, Joe A.
114. Walloga, Michael L.
115. Weaver, Ken
116. Wilson, Bernie
117. Wilson, George O.
118. Worwa, Christine K.
119. Zell, Larry

Custodians Still in Dispute

CUSTODIAN	DISPUTE
1. Abanero, Jose T.	Mr. Abanero does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that John Uphoff, to whom Mr. Abanero reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
2. Adams, Gary M.	Mr. Adams does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
3. Adams, Lisa L.	Ms. Adams does not appear to have had a sufficiently high-level position in Retail Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Chuck Colip, to whom Ms. Adams reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
4. Aita, Marcelo A.	Mr. Aita does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that John Uphoff, to whom Mr. Aita reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
5. Allen, Cris	Mr. Allen, a district sales manager, does not appear to have had a sufficiently high-level position at the Company such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
6. Anderson, Aaron E.	Mr. Anderson does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.

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US OPIAN BANKS FOR THE DEPOSITORS PROTECTION	
7.	<p>Apostol, George M.</p> <p>Mr. Apostol was an employee of the Canada business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>
8.	<p>Ashley, Scott R.</p> <p>Mr. Ashley does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
9.	<p>Aspiras, Jay Walter P.</p> <p>Mr. Aspiras does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
10.	<p>Bales, Ronald K.</p> <p>Mr. Bales does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Thomas Harmon, to whom Mr. Bales reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
11.	<p>Batka, Jeffrey P.</p> <p>Mr. Batka does not appear to have had a sufficiently high-level position in Corporate Credit Management such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
12.	<p>Biester, Michael R.</p> <p>Mr. Biester does not appear to have had a sufficiently high-level position in Corporate Credit Management such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Daniel Pantelis, to whom Mr. Biester reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>

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CUSTODIAN RESPONSIBILITY DETERMINATION	
13.	<p>Ms. Black does not appear to have had a sufficiently high-level position in Internal Audit such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that John Davis, to whom Ms. Black reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
14.	<p>Mr. Boris does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Michael Marcus, to whom Mr. Boris reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
15.	<p>Mr. Bovington was an employee of the U.K. business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>
16.	<p>Mr. Bowman does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
17.	<p>Ms. Boyd does not appear to have had a sufficiently high-level position in Auto Finance such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
18.	<p>Mr. Bransford does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Gregory Gibson, to whom Mr. Bransford reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>

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CUSTODIAN	PLAINTIFFS FOR WHOM DISCOVERY IS BEING CONSIDERED	RELEVANT INFORMATION
19. Brown, Ron		Mr. Brown does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
20. Brugato, Jeffrey A.		Mr. Brugato, a branch sales manager, does not appear to have had a sufficiently high-level position at the Company such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
21. Buxbaum, Cathy		Ms. Buxbaum does not appear to have had a sufficiently high-level position in Retail Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
22. Carlson, Patricia A. or Carlson, Pat or Carlson, P.A.		Ms. Carlson, an assistant, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Joseph Vozar, to whom Ms. Carlson reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
23. Caulfield, Ramon		Defendants presume that this individual is the same as Ramon "Cofield," who has already been dropped from Plaintiffs' proposed custodian list.
24. Chacon, Yyonne		Ms. Chacon, an assistant, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Douglas Friedrich, to whom Ms. Chacon reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
25. Chadwick, Paisha		Ms. Chadwick, a branch account executive, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.

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CUSTODIAN		BASIS FOR IDENTIFYING OR EXCLUDING	
26.	Chase-Gura, Lynda A.	Ms. Chase-Gura does not appear to have had a sufficiently high-level position in Household Bank such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
27.	Chester, Pamela	Ms. Chester, an assistant, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Christine Worwa, to whom Ms. Chester reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
28.	Chow, Dan S.	Mr. Chow does not appear to have had a sufficiently high-level position in Internal Audit such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that John Davis, to whom Mr. Chow reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
29.	Christian, Pamela H.	Ms. Christian does not appear to have had a sufficiently high-level position in Credit Card Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
30.	Clarke, Lidney B.	Mr. Clarke does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
31.	Clements, Jim A.	Mr. Clements does not appear to have had a sufficiently high-level position in Credit Risk Management such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that James Connaughton, to whom Mr. Clements reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	

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32.	Cozza, Patrick A.	Mr. Cozza was an employee of Insurance Services, a division of Household that does not appear to have a significant connection to Plaintiffs' claims.
33.	Cruz, John	Mr. Cruz does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
34.	Cusenza, Rocco A.	Mr. Cusenza does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
35.	Custis, Robert M.	Mr. Custis does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
36.	Dahlin, Thomas C.	Mr. Dahlin does not appear to have had a sufficiently high-level position in Corporate Credit Management such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Gary Harman, to whom Mr. Dahlin reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
37.	Daskalakis, Christine	Ms. Daskalakis does not appear to have had a sufficiently high-level position in Retail Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
38.	DeLuca, Michael	Mr. DeLuca was an employee of the Tax department, a division of Household that does not appear to have a significant connection to Plaintiffs' claims.

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CUSTODIAN	
39.	<p>Dibble, Parkes C.</p> <p>Mr. Dibble does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Ken Harvey, to whom Mr. Dibble reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
40.	<p>Dominski, Thomas S.</p> <p>Mr. Dominski does not appear to have had a sufficiently high-level position in Technology & Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
41.	<p>Dunlap, Rafe B.</p> <p>Mr. Dunlap does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that John Uphoff, to whom Mr. Dunlap reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
42.	<p>Eckert, Barbara L.</p> <p>Ms. Eckert does not appear to have had a sufficiently high-level position in Accounting such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Cliff Mizialko, to whom Ms. Eckert reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
43.	<p>Esposito, Gary R.</p> <p>Mr. Esposito does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Thomas Detelich, to whom Mr. Esposito reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>

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CUSTODIAN		BASIS FOR DEFENDANTS' OBJECTION	
44.	Evans, Sandra	Ms. Evans, a branch account executive, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
45.	Farrell, Diana S.	Ms. Farrell does not appear to have had a sufficiently high-level position in Internal Audit such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
46.	Fatina, David J.	Mr. Fatina does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Douglas Friedrich, to whom Mr. Fatina reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
47.	Foster, Bruce A.	Mr. Foster does not appear to have had a sufficiently high-level position in Treasury such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Edgar Ancona, to whom Mr. Foster reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
48.	Francis, Jim	Mr. Francis does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
49.	Garcia, Anabelle	Ms. Garcia, a branch account executive, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	

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50.	Gargul, Elisa M.	Ms. Gargul does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Michael Skomning, to whom Ms. Gargul reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
51.	Gibbs, Anthony R.	Mr. Gibbs does not appear to have had a sufficiently high-level position in Policy and Compliance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that James Kauffman, to whom Mr. Gibbs reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
52.	Gillan-Myer, Maure (*correct spelling of first name = Maureen)	Ms. Gillan-Myer does not appear to have had a sufficiently high-level position in Beneficial Sales such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
53.	Goldstein, Eric	Mr. Goldstein does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
54.	Hamilton, John R.	Mr. Hamilton does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
55.	Hammersley, Bruce	Mr. Hammersley was an employee of the Canada business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.

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MUSKOPF, JAMES N. / BASIS FOR THE DAVIS, JEFFREY	
56.	<p>Handy, Catherine C.</p> <p>Ms. Handy, an assistant, does not appear to have had a sufficiently high-level position such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Per Ekholdt, to whom Ms. Handy reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
57.	<p>Harris, Greg H.</p> <p>Mr. Harris does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Joseph Hoff, to whom Mr. Harris reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
58.	<p>Haynes, Bob</p> <p>Mr. Haynes was an employee of the U.K. business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>
59.	<p>Helmer, Charles (Chuck) J.</p> <p>Mr. Helmer does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Chuck Colip, to whom Mr. Helmer reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
60.	<p>Hill, Adrian</p> <p>Mr. Hill was an employee of the U.K. business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>
61.	<p>Hopkins, James N.</p> <p>Mr. Hopkins does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>

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CUSTODIAN: BRISFORD DAVIS OFFICE	
62.	<p>Ibrahim, Ashraf R.</p> <p>Mr. Ibrahim does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
63.	<p>Innis, Joe</p> <p>Mr. Innis does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
64.	<p>Jainette, Peter (*correct spelling of last name = Jianette)</p> <p>Mr. Jianette does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
65.	<p>Jebson, Alan</p> <p>Mr. Jebson appears to have been an employee of HSBC (and not of Household) and thus would not be expected to have any documents relevant to Plaintiffs' claims.</p>
66.	<p>Johnston, Andy</p> <p>Mr. Johnston does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that John Uphoff, to whom Mr. Johnston reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
67.	<p>Johnston, Mary B.</p> <p>Ms. Johnston does not appear to have had a sufficiently high-level position in Household Finance Corporation such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Robin Allcock, to whom Ms. Johnston reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
68.	<p>Jones, Brad</p> <p>Mr. Jones was an employee of the Canada business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>

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CUSTODIAN		BASIS FOR DEFENDANTS' OBJECTION	
69.	Kaminski, Jadwiga	Ms. Kaminski does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Per Ekholdt, to whom Ms. Kaminski reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
70.	Kasarda, Andrew G.	Mr. Kasarda does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
71.	Kelly, Joe J.	Mr. Kelly does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Joan Coppenrath, to whom Mr. Kelly reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
72.	Klesse, Dick	Mr. Klesse does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that both Sandra Derickson and Rocco Fabiano, to whom Mr. Klesse reported, will be custodians whose email boxes will be searched and responsive, non-privileged emails produced to Plaintiffs.	
73.	Knox, Deana C.	Ms. Knox does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	

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JUSTICE		DANIEL O'NEILL	
74.	Kong, Xiang	Mr. Kong does not appear to have had a sufficiently high-level position in Corporate Credit Management such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Daniel Pantelis, to whom Mr. Kong reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
75.	Krupowicz, Phil L.	Mr. Krupowicz does not appear to have had a sufficiently high-level position in Specialty Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Steven Smith, to whom Mr. Krupowicz reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
76.	Lee, Jimmy S.	Mr. Lee does not appear to have had a sufficiently high-level position in Internal Audit such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
77.	Lenz, Lionel P.	Mr. Lenz does not appear to have had a sufficiently high-level position in Technology & Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Ken Harvey, to whom Mr. Lenz reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
78.	Leopold, Mark F.	Mr. Leopold, of the Office of General Counsel, does not appear to have had a significant involvement with the issues in dispute in this case such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims. In any event, Defendants have agreed that Kenneth Robin, to whom Mr. Leopold reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	

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US TODAY BASIS FOR DEFENDANT'S OBJECTION	
79.	<p>Leski, Anita L.</p> <p>Ms. Leski, a secretary, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Thomas Harmon, to whom Ms. Leski reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
80.	<p>Lin, Linda</p> <p>Ms. Lin does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
81.	<p>Littrell, Wayne</p> <p>Mr. Littrell does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Per Ekholdt, to whom Mr. Littrell reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
82.	<p>Loots, Joseph G.</p> <p>Mr. Loots does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Elaine Markell, to whom Mr. Loots reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
83.	<p>Lubiana, Walter</p> <p>Mr. Lubiana was an employee of the Canada business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>
84.	<p>Lynn, Stacey D. aka Lynn-Cravotta, Stacey</p> <p>Ms. Lynn does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>

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CUS OD N BASIS FOR DEFENDANTS OBLIGATION	
85.	<p>MacAlpine, Sharon A.</p> <p>Ms. MacAlpine was an employee of the Canada business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>
86.	<p>Madison, Kathryn</p> <p>Ms. Madison does not appear to have had a sufficiently high-level position in Consumer Lending such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Thomas Detelich, to whom Ms. Madison reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
87.	<p>Malchev, Hristo T.</p> <p>Mr. Malchev does not appear to have had a sufficiently high-level position in Corporate Credit Management such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Daniel Pantelis, to whom Mr. Malchev reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
88.	<p>Malik, Paul</p> <p>Mr. Malik does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Michael Dougherty, to whom Mr. Malik reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
89.	<p>Marks, Mike</p> <p>Mr. Marks does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that George Wilson, to whom Mr. Marks reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>

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CUSTODIAN BASIS FOR DEPENDANT OFFER TO	
90. Marsh, David G.	Mr. Marsh does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Curt Cunningham, to whom Mr. Marsh reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
91. Martinez, Richard J.	Mr. Martinez does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Dennis Morris, to whom Mr. Martinez reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
92. Mauk, Tom M.	Mr. Mauk does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
93. McCracken, Robert W.	Mr. McCracken does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
94. McEvoy, Kent D.	Mr. McEvoy does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Thomas Harmon, to whom Mr. McEvoy reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
95. McGinnis, Iris C.	Ms. McGinnis does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.

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C S T D N	96. Mr. McKay, Chris J.	Mr. McKay does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
97.	Mr. McPhee, Bert	Mr. McPhee appears to have been an employee of HSBC (and not of Household) and thus would not be expected to have any documents relevant to Plaintiffs' claims.
98.	Mr. Melcer, David	Mr. Melcer, of Household Retail Services, does not appear to have had a significant involvement with the issues in dispute in this case such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
99.	Mr. Miles, Grant F.	Mr. Miles does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Michael Marcus, to whom Mr. Miles reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
100.	Ms. Minarik, Porsia	Ms. Minarik, an assistant, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Rich Peters, to whom Ms. Minarik reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
101.	Mr. Mirabella, Timothy R.	Mr. Mirabella does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Gregory Gibson, to whom Mr. Mirabella reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.

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DISCOVERY BASIS FOR DEFENDANT'S OBJECTION	
102. Monaco, Paula E.	Ms. Monaco, an assistant, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that both Paul Makowski and Daniel Pantelis, to whom Ms. Monaco reported, will be custodians whose email boxes will be searched and responsive, non-privileged emails produced to Plaintiffs.
103. Mowry, Scott S.	Mr. Mowry does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Elaine Markell, to whom Mr. Mowry reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
104. Naikine, Oleg N.	Mr. Naikine does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
105. Nauman, David J.	Mr. Nauman does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Thomas Harmon, to whom Mr. Nauman reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
106. Nicholson, Maria A.	Ms. Nicholson does not appear to have had a sufficiently high-level position in Credit Card Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
107. Noel, Elizabeth K.	Ms. Noel does not appear to have had a sufficiently high-level position in Retail Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.

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SODAN BANKS FOR FURTHER INFORMATION	
108.	<p>O'Brien, David M.</p> <p>Mr. O'Brien does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
109.	<p>O'Neill, Christopher</p> <p>Mr. O'Neill does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that John Uphoff, to whom Mr. O'Neill reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
110.	<p>Ochoa, Louis</p> <p>Mr. Ochoa does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
111.	<p>Orman, Rudy A.</p> <p>Mr. Orman does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Douglas Friedrich, to whom Mr. Orman reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
112.	<p>Owens, Merle L.</p> <p>Ms. Owens does not appear to have had a sufficiently high-level position in Retail Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Chuck Colip, to whom Ms. Owens reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
113.	<p>Payne, Lauren</p> <p>Ms. Payne does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>

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CUSTODIAN BASIS FOR DETERMINING DISCLOSURE	
114.	<p>Peart, Steve J.</p> <p>Mr. Peart does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Michael Skonning, to whom Mr. Peart reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
115.	<p>Pendergast, John C.</p> <p>Mr. Pendergast does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
116.	<p>Perillo, Tom M.</p> <p>Mr. Perillo does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Christine Worwa, to whom Mr. Perillo reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
117.	<p>Pesicka, Robert J.</p> <p>Mr. Pesicka does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
118.	<p>Phan, Cong T.</p> <p>Mr. Phan does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Per Ekholdt, to whom Mr. Phan reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
119.	<p>Pinto, Mike</p> <p>Mr. Pinto, a district sales manager, does not appear to have had a sufficiently high-level position at the Company such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>

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U.S. BANK OF DEPOSITORS CORPORATION	
120.	Price, Terry Mr. Price does not appear to have had a sufficiently high-level position in Household Finance Corporation such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.
121.	Qu, Yingbin Mr. Qu does not appear to have had a sufficiently high-level position in Corporate Credit Management such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Kenneth Gang, to whom Mr. Qu reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
122.	Quiriconi, Kathy R. Ms. Quiriconi does not appear to have had a sufficiently high-level position in Policy and Compliance such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that James Kauffman, to whom Ms. Quiriconi reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
123.	Rafferty, Mike M. (*correct spelling of last name = Rafferty) Mr. Rafferty does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Chuck Colip, to whom Mr. Rafferty reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
124.	Reuter, Rick A. Mr. Reuter does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Walt Rybak, to whom Mr. Reuter reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.

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CUSTODIAN BASIS FOR DEPENDENCY OBJECTION	
125.	<p>Rhinehart, Scott K.</p> <p>Mr. Rhinehart does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Joseph Hoff, to whom Mr. Rhinehart reported, will be a custodian whose email box will be searched, and responsive non-privileged emails produced to Plaintiffs.</p>
126.	<p>Rockaway, Sean (*correct spelling of last name = Rockway)</p> <p>Mr. Rockway does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Curt Cunningham, to whom Mr. Rockway reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
127.	<p>Rodgers, Carolyn S.</p> <p>Ms. Rodgers does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
128.	<p>Rogers, Bill R.</p> <p>Mr. Rogers does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
129.	<p>Rogers, Conne F. (*correct spelling of first name = Connie)</p> <p>Ms. Rogers does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Gregory Gibson, to whom Ms. Rogers reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
130.	<p>Rossi, Ron</p> <p>Mr. Rossi does not appear to have had a sufficiently high-level position in Household Finance Corporation such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>

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GUYANIAN BASIS FOR DEFENDANTS' OBJECTION	
131.	<p>Rubino, Paul G.</p> <p>Mr. Rubino does not appear to have had a sufficiently high-level position in Consumer Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
132.	<p>Scherbaum, Brian J.</p> <p>Mr. Scherbaum does not appear to have had a sufficiently high-level position in Internal Audit such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
133.	<p>Schriever, Sharon</p> <p>Ms. Schriever does not appear to have had a sufficiently high-level position in Credit Card Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
134.	<p>Schrum, Edward J.</p> <p>Mr. Schrum does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that James Connaughton, to whom Mr. Schrum reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
135.	<p>Sekany, Bob</p> <p>Mr. Sekany does not appear to have had a sufficiently high-level position in Direct Lending such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that D.G. Cliff, to whom Mr. Sekany reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
136.	<p>Siddique, Tariq S.</p> <p>Mr. Siddique was an employee of the U.K. business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>
137.	<p>Smith, Connie A.</p> <p>Ms. Smith was an employee of the U.K. business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>

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CLASSIFIED BY: [REDACTED] DATE: [REDACTED] AUTHORITY: [REDACTED]	
138.	<p>Snyder, Chris A.</p> <p>Mr. Snyder does not appear to have had a sufficiently high-level position in Policy and Compliance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that James Kauffman, to whom Mr. Snyder reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
139.	<p>Starke, Nancy L.</p> <p>Ms. Starke does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Gregory Gibson, to whom Ms. Starke reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
140.	<p>Starke, Robert (Bob) E.</p> <p>Mr. Starke does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
141.	<p>Sullivan, Marilou E.</p> <p>Ms. Sullivan does not appear to have had a sufficiently high-level position in Retail Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Chuck Colip, to whom Ms. Sullivan reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
142.	<p>Teng, Tom Q.</p> <p>Mr. Teng does not appear to have had a sufficiently high-level position in Corporate Credit Management such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Gary Harman, to whom Mr. Teng reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>

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US ODAN SASA GUGLON	
143.	<p>Thiemann, Daniel E.</p> <p>Mr. Thiemann does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
144.	<p>Titus, Tim J.</p> <p>Mr. Titus was an employee of Insurance Services, a division of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>
145.	<p>Tomasula, Steve</p> <p>Mr. Tomasula does not appear to have had a sufficiently high-level position in Accounting such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Steve McDonald, to whom Mr. Tomasula reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.</p>
146.	<p>Tomlinson, Sasha</p> <p>Defendants note that Sasha Tomlinson is the same person as Sasha Guglomo, whose mailbox Defendants have already agreed to search.</p>
147.	<p>Tyra, David W.</p> <p>Mr. Tyra does not appear to have had a sufficiently high-level position in Credit Card Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
148.	<p>Urbance, Dave W.</p> <p>Mr. Urbance does not appear to have had a sufficiently high-level position in Mortgage Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.</p>
149.	<p>Vertolli, Sero A.</p> <p>Mr. Vertolli was an employee of the Canada business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.</p>

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CUSTODIAN		BASE FORFEITMENT OBJECTION	
150.	Vires, Michael A.	Mr. Vires does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that James Connaughton, to whom Mr. Vires reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
151.	Viswanathan, Mahesh	Mr. Viswanathan does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
152.	Waghmare, Tushar M.	Mr. Waghmare does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that James Connaughton, to whom Mr. Waghmare reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.	
153.	Watson, Gail	Ms. Watson does not appear to have had a sufficiently high-level position in Retail Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
154.	Weinstein, Bill	Mr. Weinstein does not appear to have been employed by Household. Plaintiffs have refused to provide any information suggesting otherwise.	
155.	Wheeler, Michael S.	Mr. Wheeler does not appear to have had a sufficiently high-level position in Treasury such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	
156.	Wilson, Peter S.	Mr. Wilson does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives.	

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CUSTODIAN BASIS FOR DEFENDANT'S OBJECTION	
157. Windle, David H.	Mr. Windle does not appear to have had a sufficiently high-level position in Auto Finance such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Walter Menezes, to whom Mr. Windle reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
158. Wojcik, Gina M.	Ms. Wojcik does not appear to have had a sufficiently high-level position in Retail Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Derek Rogers, to whom Ms. Wojcik reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
159. Worrell, Victoria	Ms. Worrell does not appear to have had a sufficiently high-level position in Mortgage Services such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Christine Worwa, to whom Ms. Worrell reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
160. Wright, Douglas N.	Mr. Wright does not appear to have had a sufficiently high-level position in Internal Audit such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that John Davis, to whom Mr. Wright reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
161. Wright, Jennifer I.	Ms. Wright, a secretary, does not appear to have had a sufficiently high-level position at the Company such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Elaine Markell, to whom Ms. Wright reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.

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CUSTODIAN BASIS FOR RELEVANCE DISCLOSURE	
162. Ye, Lynn L.	Ms. Ye does not appear to have had a sufficiently high-level position in Corporate Credit Management such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Dave Stockdale, to whom Ms. Ye reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
163. Young, Stephen J.	Mr. Young was an employee of the U.K. business unit, a segment of Household that does not appear to have a significant connection to Plaintiffs' claims.
164. Youngberg, Lisa A.	Ms. Youngberg does not appear to have had a sufficiently high-level position in Consumer Lending such that she might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Pete Sesterhenn, to whom Ms. Youngberg reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.
165. Zugehar, Alan M.	Mr. Zugehar does not appear to have had a sufficiently high-level position in Retail Services such that he might reasonably be expected to have any documents relevant to Plaintiffs' claims relating to an alleged fraud by Household's top executives. In any event, Defendants have agreed that Thomas Harmon, to whom Mr. Zugehar reported, will be a custodian whose email box will be searched and responsive, non-privileged emails produced to Plaintiffs.

APPENDIX B

Search Terms Contained in the June 30 Proposal

1. 10-K
2. 10-Q
3. 2+
4. 4 star
5. 4*star
6. 8-K
7. AA
8. abuse
9. accounting principle board
10. ACORN
11. advocates for responsible lending
12. affinity
13. AFL-CIO
14. AG
15. aging
16. Aldinger
17. Andersen
18. Archibald
19. Association of Community Organizations for Reform Now
20. attorney general
21. attorneys general
22. audit (and all other iterate forms of this term)
23. auto reage
24. automatic
25. automator
26. back door (and all other iterate forms of this term)
27. backdate
28. back-end (and all other iterate forms of this term)
29. bank like (and all other iterate forms of this term)
30. bankruptcy (and all other iterate forms of this term)
31. barracuda
32. Barron's
33. Bellingham
34. Belz
35. best practices
36. bi monthly (and all other iterate forms of this term)
37. bi weekly (and all other iterate forms of this term)
38. Bianucci
39. bk
40. blended rate
41. board of directors
42. bonus
43. Borchert
44. Bowden
45. branch audit
46. branch visit tracking system

47. bucket (and all other iterate forms of this term)
48. Bullard
49. buy down (and all other iterate forms of this term)
50. bvts
51. Callahan
52. champion challenger
53. chapter 13
54. chapter 7
55. charge off (and all other iterate forms of this term)
56. Cheronis
57. Chuck Cross
58. clean desk policy
59. closed ended (and all other iterate forms of this term)
60. co-brand (and all other iterate forms of this term)
61. collection (and all other iterate forms of this term)
62. comparable rate
63. comparative rate
64. comprehensive audit
65. confusion
66. consent decree
67. counter
68. Crizpiuo
69. DAS
70. defer
71. delay codes
72. delinquency (and all other iterate forms of this term)
73. Department of Financial Institutions
74. destruction
75. DFI
76. directive discharge
77. disclosure (and all other iterate forms of this term)
78. discount points
79. earnings per share (and all other iterate forms of this term)
80. effective interest rate
81. equivalent interest rate
82. extension (and all other iterate forms of this term)
83. EZ Pay
84. Feeney
85. financial relations conference
86. Fitch
87. Forbes
88. forbearance (and all other iterate forms of this term)
89. foreclosure (and all other iterate forms of this term)
90. four star
91. fraud (and all other iterate forms of this term)
92. front-end (and all other iterate forms of this term)
93. GAAP

- 94. GAAS
- 95. Garwall
- 96. generally accepted accounting principles
- 97. generally accepted auditing standards
- 98. gfe
- 99. Gilmer
- 100. gm
- 101. good faith estimate
- 102. Gorrell
- 103. Gregoire
- 104. Gunderson
- 105. Hayden
- 106. Hedges
- 107. Hills
- 108. HIP
- 109. hip pocket
- 110. hoepa
- 111. Hoey
- 112. holp
- 113. home owners loan proposal
- 114. Household Initiated Payment
- 115. Huey
- 116. Huggins
- 117. ICP
- 118. illegal
- 119. incentive (and all other iterate forms of this term)
- 120. incentivize
- 121. interest short
- 122. investigation (and all other iterate forms of this term)
- 123. Janeway
- 124. Keckman
- 125. Kessler
- 126. KPMG
- 127. Kuipers
- 128. Kustenda
- 129. Lechtenberg
- 130. legendary performers
- 131. LTV
- 132. Luisi
- 133. Luna
- 134. manipulation
- 135. Markell
- 136. mastercard
- 137. MBO
- 138. McClayton
- 139. McCormick
- 140. McGrane

141. mischaracterization
142. misrepresentation (and all other iterate forms of this term)
143. modification (and all other iterate forms of this term)
144. Moody's
145. Moravy
146. multi state (and all other iterate forms of this term)
147. Musil
148. net interest margin
149. nim
150. OCC
151. open ended (and all other iterate forms of this term)
152. OTS
153. overappraised
154. Overstreet
155. Parlette
156. pay down (and all other iterate forms of this term)
157. pay right rewards
158. Peteren
159. piggyback (and all other iterate forms of this term)
160. Plack
161. Potter
162. PPP
163. predatory
164. prepayment (and all other iterate forms of this term)
165. prohibited sales practices
166. qac (and all other iterate forms of this term)
167. rapid response team
168. rating (and all other iterate forms of this term)
169. re age (and all other iterate forms of this term)
170. re write (and all other iterate forms of this term)
171. Real estate owned
172. recidivism
173. REO
174. re-reage
175. rescission
176. reserve (and all other iterate forms of this term)
177. reset (and all other iterate forms of this term)
178. restatement (and all other iterate forms of this term)
179. restructure (and all other iterate forms of this term)
180. retribution
181. Rhainnon
182. right rewards
183. rogue
184. roll rates (and all other iterate forms of this term)
185. run rates (and all other iterate forms of this term)
186. S&P (and all other iterate forms of this term)
187. Scapegoat

- 188. Schoenholz
- 189. Schwager
- 190. script (and all other iterate forms of this term)
- 191. scrum
- 192. SEC
- 193. senior credit risk update meeting
- 194. senior management
- 195. sfas
- 196. Shrarovsky
- 197. shred
- 198. skip a pay (and all other iterate forms of this term)
- 199. Sonenthol
- 200. stoc
- 201. Stroom
- 202. T chart
- 203. T presentation
- 204. T sale
- 205. tangible benefits
- 206. T-chart
- 207. TDR
- 208. Troubled Debt Restructure
- 209. unauthorized
- 210. Union Privilege
- 211. unlawful
- 212. up selling (and all other iterate forms of this term)
- 213. Visa
- 214. Vision
- 215. Vozar
- 216. Wehrenberg
- 217. wfa
- 218. whistleblower
- 219. write-down

Search Terms Still in Dispute

TERM	REASON FOR THE TERM'S RELEVANCE
1. accusation (and all other iterate forms of this term)	This term would capture all references, regardless of context, to "accusation," including, for example, references to accusations made in any action in which the Company was involved, the majority of which would likely be unrelated to any of Plaintiffs' claims.
2. allegation (and all other iterate forms of this term)	This term would capture all references, regardless of context, to "allegation" including, for example, references to allegations made in any action in which the Company was involved, the majority of which would likely be unrelated to any of Plaintiffs' claims.
3. amortization (and all other iterate forms of this term)	This term would capture all references, regardless of context, to "amortization," including, for example, its many uses in the Company in connection with the repayment schedules of loans, amortization of goodwill, and amortization of properties and equipment, the majority of which would likely be unrelated to any of Plaintiffs' claims.
4. Cahill	This term would capture all references, regardless of context, to "Cahill," including, for example, references to Cahill Gordon & Reindel LLP, which has advised and/or acted as counsel for Defendants regarding matters unrelated to Plaintiffs' claims, as well as references to anyone with the name Cahill, the majority of which would likely be unrelated to any of Plaintiffs' claims.
5. complaint	This term would capture all references, regardless of context, to "complaint," including, for example, references to complaints in any action in which the Company was involved, the majority of which would likely be unrelated to any of Plaintiffs' claims.
6. Drury	This term would capture all references, regardless of context, to "Drury," including references to Melissa Rutland Drury, a former employee of the Company, as well as any emails that include Rutland Drury's signature block, the majority of which would likely be unrelated to any of Plaintiffs' claims. Moreover, relevant documents, if any, would likely be captured by terms such as "Luna" and "Bellingham," both of which Defendants have already agreed will be searched. Furthermore, Defendants have already agreed that Rutland Drury will be a custodian whose email box will be searched and responsive, non-privileged documents produced to Plaintiffs; accordingly, there is no need to include this term.

TERM	BASIS FOR DEFENDANTS' OBJECTION
13. Rutland	<p>This term would capture all references, regardless of context, to "Rutland," including references to Melissa Rutland Drury, a former employee of the Company, as well as any emails that include Rutland Drury's signature block, the majority of which would likely be unrelated to any of Plaintiffs' claims. Moreover, relevant documents, if any, would likely be captured by terms such as "Luna" and "Bellingham," both of which Defendants have already agreed will be searched.</p> <p>Furthermore, Defendants have already agreed that Rutland Drury will be a custodian whose email box will be searched and responsive, non-privileged documents produced to Plaintiffs; accordingly, there is no need to include this term.</p>
14. self serving (and all other iterate forms of this term)	<p>Because it bears no discernible connection to the dispute between the parties, this term is highly unlikely to lead to the discovery of relevant evidence.</p>
15. subpoena (and all other iterate forms of this term)	<p>This term would capture all references, regardless of context, to "subpoena," including, for example, references to subpoenas in any action in which the Company was involved, the majority of which would likely be unrelated to any of Plaintiffs' claims.</p>
16. trainer (and all other iterate forms of this term)	<p>Because it bears no discernible connection to the dispute between the parties, this term is highly unlikely to lead to the discovery of relevant evidence.</p>
17. White knight	<p>This term would capture all references, regardless of context, to "white knight," including, for example, references to the commonly used financial term white knight, the majority of which would likely be unrelated to any of Plaintiffs' claims.</p>
18. Wilmer Cutler (and all other iterate forms of this term)	<p>This term would capture all references, regardless of context, to Wilmer Cutler & Pickering, which has advised and/or acted as counsel for the Company regarding matters unrelated to Plaintiffs' claims.</p>

**IN THE 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,

Plaintiff,

- against -

HOUSEHOLD INTERNATIONAL, INC., ET AL.,

Defendants.

Lead Case No. 02-C-5893
(Consolidated)

Judge Ronald A. Guzman
Magistrate Judge Nan R. Nolan

**APPENDIX OF UNREPORTED CASES IN CONNECTION
WITH DEFENDANTS' MEMORANDUM OF LAW IN
OPPOSITION TO LEAD PLAINTIFFS' MOTION TO
COMPEL THE HOUSEHOLD DEFENDANTS TO
PRODUCE ELECTRONIC EVIDENCE IN NATIVE
ELECTRONIC FORMAT**

APPENDIX OF UNREPORTED CASES

1. *In re Honeywell International, Inc. Securities Litigation*, No. M8-85 WHP, 2003 WL 22722961 (S.D.N.Y. Nov. 18, 2003).
2. *Murlas Living Trust v. Mobil Oil Corp.*, No. 93 C 6956, 1995 WL 124186 (N.D. Ill. Mar. 20, 1995).

TAB 1

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(Cite as: 2003 WL 22722961 (S.D.N.Y.))

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Only the Westlaw citation is currently available.

United States District Court,
S.D. New York.
In re HONEYWELL INTERNATIONAL, INC.
SECURITIES LITIGATION,
No. M8-85 WHP.

Nov. 18, 2003.

Shareholders brought action against corporation and its directors alleging violation of federal securities laws. On plaintiffs' motion to compel production of certain documents from non-party public accountant, the District Court, Pauley, J., held that: (1) accountant was required to produce electronic version of its audit workpapers and quarterly reviews of corporation's financial statements; (2) corporation waived whatever attorney work product privilege it may have had to communications between public accountant and corporation; (3) corporation's assertion of work product protection for its audit letters and litigation reports prepared by its internal and external counsel, as well documents from its public auditor memorializing corporation's opinion work product, was proper; (4) accountant's "carryforward" or "permanent" files for its engagements with corporation were relevant and discoverable; (5) documents and workpapers concerning public accountant's audits of other corporation prior to its acquisition, as well as consulting workpapers and documents, were discoverable; (6) documents related to professional services performed by corporation's public accountant, other than documents concerning audits, were not relevant; and (7) documents relating to public accountant's independence vis-a-vis its engagements with corporation were relevant to possible defense by corporation.

Motion granted in part and denied in part.

West Headnotes

[1] Witnesses ⇌ 16

410k16 Most Cited Cases

Non-party public accountant, of corporation that was sued for violation of federal securities laws, was required, under subpoena, to produce electronic version of its audit workpapers and quarterly

reviews of corporation's financial statements; accountant's prior production of its workpapers was insufficient because they were not produced as kept in usual course of business and accountant did not provide shareholder plaintiffs with adequate means to decipher how the documents were kept in usual course of business. Fed.Rules Civ.Proc.Rule 34(b), 45, 28 U.S.C.A.

[2] Witnesses ⇌ 217

410k217 Most Cited Cases

Corporation, as client of public accountant, had standing to assert and defend its attorney-client privilege regardless of fact that documents at issue were documents of its accountant, in shareholders' lawsuit against corporation alleging violation of federal securities laws, since client was holder of privilege, and was required to decide when to assert or waive the privilege.

[3] Witnesses ⇌ 198(1)

410k198(1) Most Cited Cases

The attorney-client privilege does not extend to communications between a company and its accountants or auditors.

[4] Federal Civil Procedure ⇌ 1600(5)

170Ak1600(5) Most Cited Cases

Corporation waived whatever attorney work product privilege it may have had to communications between public accountant and corporation, in shareholders' lawsuit against corporation alleging violation of federal securities laws, where corporation twice asserted attorney-client privilege to particular documents, but not work product privilege, and, yet, corporation asserted work product privilege to other documents at that time, and accountant and corporation waited three weeks after shareholder plaintiffs filed their motion to compel to revise accountant's log to add new assertions of attorney work product protection. Fed.Rules Civ.Proc.Rule 26(b)(5), 28 U.S.C.A.

[5] Federal Civil Procedure ⇌ 1600(3)

170Ak1600(3) Most Cited Cases

Corporation's assertion of work product protection for its audit letters and litigation reports prepared by its internal and external counsel, as well documents from its public auditor memorializing corporation's opinion work product, was proper, in shareholders'

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lawsuit against corporation alleging violation of federal securities laws, although shareholder plaintiffs asserted that pre-eminent business purpose of public accountant's audits rendered work product doctrine inapplicable.

[6] Witnesses ⇌ 16

410k16 Most Cited Cases

Non-party public auditor's "carryforward" or "permanent" files for its engagements with corporation were relevant and discoverable under subpoena, in shareholders' lawsuit against corporation alleging violation of federal securities laws, although same documents may have been available from corporation; documents in accountant's possession may have differed slightly from corporation's copies, accountant's copies could have included handwritten notes, and fact that accountant had copies of documents itself could have been relevant. Fed.Rules Civ.Proc.Rule 26(b)(1), 34, 45, 28 U.S.C.A.

[7] Witnesses ⇌ 16

410k16 Most Cited Cases

Documents and workpapers concerning non-party, public accountant's audits of other corporation prior to its acquisition, as well as consulting workpapers and documents, were discoverable under subpoena as relevant to claims of shareholder plaintiffs that acquired corporation was subject-matter of some of alleged fraudulent misrepresentations, since post-acquisition acquiring corporation would have had access to them, although accountant asserted that it already produced all documents that it previously provided to corporation on behalf of acquired corporation as part of pre-acquisition due diligence. Fed.Rules Civ.Proc.Rule 34, 45, 28 U.S.C.A.

[8] Witnesses ⇌ 16

410k16 Most Cited Cases

Document production request of shareholder plaintiffs via subpoena, to compel production of all communications in possession of non-party, public accountant for over two year period concerning corporation that it audited, was overly broad, in shareholders' lawsuit against corporation alleging violation of federal securities laws, since production request did not contain any limitation as to subject-matter or individual. Fed.Rules Civ.Proc.Rule 34, 45, 28 U.S.C.A.

[9] Witnesses ⇌ 16

410k16 Most Cited Cases

Documents related to professional services performed by corporation's non-party, public accountant, other than documents concerning audits, were not relevant, and, thus, they were not discoverable through subpoena, in shareholders' lawsuit against corporation alleging violation of federal securities laws.

[10] Witnesses ⇌ 16

410k16 Most Cited Cases

Documents relating to non-party, public accountant's independence vis-a-vis its engagements with corporation were relevant to possible defense by corporation, and could be obtained via subpoena, in shareholders' lawsuit against corporation alleging violation of federal securities laws, since shareholders had good faith belief that similar documents existed. Fed.Rules Civ.Proc.Rule 34, 45, 28 U.S.C.A.

[11] Witnesses ⇌ 16

410k16 Most Cited Cases

Documents related to non-party, public accountant's document retention and destruction policies, and its efforts to preserve, maintain, and collect documents were not discoverable under subpoena, in shareholders' lawsuit against corporation alleging violation of federal securities laws, since shareholders lacked concrete basis for making production request. Fed.Rules Civ.Proc.Rule 34, 45, 28 U.S.C.A.

[12] Witnesses ⇌ 16

410k16 Most Cited Cases

Shareholder plaintiffs were not required to pay for costs incurred by non-party, public accountant in gathering and copying documents pursuant to subpoena, in shareholders' lawsuit against corporation alleging violation of federal securities laws, since accountant was not classic disinterested non-party, and accountant did not offer any basis for determining reasonable costs for its compliance with request for production of documents. Fed.Rules Civ.Proc.Rule 34, 45(c)(2)(B), 28 U.S.C.A.

Kathleen A. Herkenhoff, Milberg Weiss Bershad Hynes & Lerach LLP, San Diego, California, for Plaintiffs.

Siobhan A. Handley, Orrick, Herrington & Sutcliffe LLP, New York, New York, for PriceWaterhouseCoopers.

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Yosef J. Riemer, Kirkland & Ellis LLP, New York, New York, for Defendant Honeywell International, Inc.

MEMORANDUM AND ORDER

PAULEY, J.

*1 This Document Relates to: ALL ACTIONS

Presently before this Court is plaintiffs' motion to compel production of certain documents in a putative securities class action styled *In re Honeywell International, Inc. Securities Litigation*, 00 Civ. 3605(DRD), pending in the District of New Jersey. The defendants in that action include Honeywell International, Inc. ("Honeywell") and several former directors of that company. The putative class of plaintiffs ("plaintiffs") allege in the underlying action that defendants made materially false and misleading statements about Honeywell's financial condition and results, the integration of its merger with AlliedSignal, Inc. ("Allied"), and its acquisition of Pittway Corporation ("Pittway").

On March 15, 2002, as part of a discovery barrage, plaintiffs served a subpoena on non-party PriceWaterhouseCoopers ("PWC"). PWC was Honeywell's financial auditor during portions of the class period. The subpoena was issued from the Southern District of New York because PWC's New York office performed the Honeywell audits. Plaintiffs contend that because Honeywell's fraud was effectuated through accounting machinations, the integrity and accuracy of Honeywell's accounting practices, financial statements and internal controls are squarely at issue.

In response to that subpoena, PWC produced approximately 63,500 pages of documents. Plaintiffs move this Court to compel production of certain categories of documents withheld by PWC from that production, while PWC cross-moves to quash the subpoena. Specifically, plaintiffs seek production of the following categories of documents: (1) an electronic version of PWC's workpapers for the 1999 and 2000 audits and quarterly reviews of Honeywell financial statements; (2) all of PWC's "permanent" and "carryforward" files for its Honeywell engagements; (3) all workpapers for PWC's 1999 audits of Pittway's financial statements; (4) all correspondence, memoranda,

electronic documents, e-mail and other documents concerning Honeywell for the period of January 1, 1999, through March 31, 2001; (5) all consulting workpapers and documents concerning Honeywell, Pittway or Allied for the period of January 1, 1999, through March 31, 2001; (6) all documents relating to PWC's independence in Honeywell engagements during the period June 20, 1999 through March 31, 2001; (7) PWC's document retention and destruction policies; and (8) all documents identified on PWC's privilege log. Since both attorney-client privilege and attorney work product protection were asserted by Honeywell, these privileges are defended by Honeywell, not PWC.

For the reasons stated below, plaintiffs motion is granted in part and denied in part, and PWC's motion is granted in part and denied in part. PWC is directed to comply with plaintiffs' subpoena in accord with this Memorandum and Order.

Electronic Version of PWC's Workpapers

[1] Plaintiffs seek an electronic version of PWC's audit workpapers for the 1999 and 2000 audits, and quarterly reviews of Honeywell's financial statements. Alternatively, plaintiffs seek a complete hardcopy set of the workpapers produced in the order they are kept in the ordinary course of business. There is no dispute that PWC has produced hardcopies of the workpapers that plaintiffs are seeking. However, plaintiffs claim that PWC did not produce the workpapers in the manner in which the documents are maintained in the usual course of business, namely in an electronic form. Specifically, plaintiffs argue that the workpapers were produced in a way that makes it impossible to determine which attachment belongs with a particular workpaper. Plaintiffs complain that they are unable to review the workpapers as they are kept in the ordinary course of business because they cannot read a specific workpaper and then refer to any attachment it references.

*2 PWC contends that it produced all of the workpapers in hardcopy, and that plaintiffs should be required to pay for any other expense imposed on the non-party PWC. PWC also argues that it has addressed plaintiffs' concerns by providing a complete index of workpapers and attachments, as well as annotated charts that reference the indices and production numbers for corresponding

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workpapers and attachments. PWC's main argument, however, is that electronic copies of its workpapers are only accessible with the aid of its proprietary software, and therefore any production of the electronic files would reveal PWC's trade secrets.

This Court finds that PWC's prior production of its workpapers is insufficient because they were not produced as kept in the usual course of business. (Transcript of Oral Argument, dated Aug. 28, 2003 ("Tr."), at 10-15.) Moreover, PWC has not provided plaintiffs with an adequate means to decipher how the documents are kept in the usual course of business. (Tr. at 10-15.) Under Rule 34(b) of the Federal Rules of Civil Procedure, PWC is obligated to produce its workpapers in their electronic form.

At oral argument, this Court directed the parties to meet and confer concerning the most efficient manner in which PWC could produce the workpapers electronically, and invited the parties to submit further memoranda on that issue. After reviewing the parties' additional submissions, this Court directs PWC to produce electronically its workpapers by either: (1) producing a copy of its workpapers on CD-ROMs that could be viewed using commercially-available software; or (2) producing a copy of its workpapers on CD-ROMs that could be viewed using PWC's proprietary software, as well as producing the proprietary software to the extent it is necessary to view the workpapers.

PWC contends that the first option would be time-consuming and cost in excess of \$30,000. It requests that this Court require plaintiffs to defray those costs. (Letter from Siobhan A. Handley, Esq., dated Sept. 9, 2003, at 2.) However, an offset or reimbursement on the part of plaintiffs is not warranted for two reasons: (1) if PWC desires to save time and money on its production it may opt for the second electronic production alternative, which PWC recognizes would not be time-consuming or excessively costly; [FN1] and (2) PWC could have avoided the added expense it now faces by producing the workpapers in electronic form at the outset, rather than choosing to produce hardcopies of its workpapers with hieroglyphic indices that render the workpapers essentially incomprehensible.

FN1. PWC's concerns regarding the proprietary nature of its software are unavailing. As PWC acknowledged at oral argument, there is a Stipulated Confidentiality Order in effect in the New Jersey litigation, which would encompass PWC's production of its proprietary software. (Tr. at 9-10.) That protective order obviates PWC's proprietary software concerns. *See In re Livent, Inc. Noteholders Sec. Litig.*, No. 98 Civ. 7161(VM)(DFE), 2003 WL 23254, at *2 (S.D.N.Y. Jan. 2, 2003) ("The Court need not reach the issue of whether KPMG's audit materials constitute trade secrets because the Confidentiality Order ... will serve to protect any proprietary information contained in KPMG's audit manual and materials."). In addition, plaintiffs are not in the auditing business and do not otherwise compete against PWC. Thus, the concern that PWC's proprietary software will be acquired by one of its rivals and used to its competitive disadvantage is de minimis.

Finally, this Court declines plaintiffs' invitation to rule on whether PWC may convert some its workpapers to a PDF file format to protect their integrity. (Letter from Kathleen A. Herkenhoff, Esq., dated Sept. 8, 2003, at 7-8.) At this stage of discovery, this Court does not deem it necessary to direct PWC to adopt any particular procedure.

PWC's Privilege Log

*3 [2][3] In their initial brief in support of their motion to compel, plaintiffs sought production of all documents on PWC's privilege log since there is no basis for any attorney-client privilege for communications between PWC and Honeywell, and because the pre-eminent business purpose of the audits renders work product protection inapplicable. Since the privileges asserted in PWC's privilege log belong to Honeywell, it is Honeywell that opposes plaintiffs' motion on this issue. [FN2] Honeywell offers no support for the assertion of attorney-client privilege in PWC's log, and as a result fails to satisfy its burden to establish the privilege. *von Bulow v. von Bulow*, 811 F.2d 136, 144 (2d Cir.1987) (proponent of privilege bears the burden of proving its application). Even if Honeywell had attempted to support the application of the attorney-client privilege, however, it would have failed because the privilege does not extend to communications between a company and its accountants or auditors. *See United States v. Arthur*

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Young & Co., 465 U.S. 805, 818-20 & n. 15, 104 S.Ct. 1495, 79 L.Ed.2d 826 (1984). Therefore, any attorney-client privilege attaching to a Honeywell communication was waived when that communication was conveyed to third-party PWC. *In re Willkie Farr & Gallagher*, No. M8-85 (JSM), 1997 WL 118369, at *3-4 (S.D.N.Y. Mar.14, 1997).

FN2. Honeywell has standing to assert and defend its privilege regardless of the fact that the documents at issue are PWC documents. The client is the holder of the privilege, and must decide when to assert or waive the privilege. *Application of Sarrio, S.A.*, 119 F.3d 143, 147-48 (2d Cir.1997).

The work product doctrine is distinct from, and broader than, the attorney-client privilege. See *United States v. Nobles*, 422 U.S. 225, 238 n. 11, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975). In contrast to the attorney-client privilege, which is intended to encourage full disclosure by the client, the work-product doctrine "is intended to preserve a zone of privacy in which a lawyer can prepare and develop legal theories and strategy 'with an eye toward litigation,' free from unnecessary intrusion by his adversaries." *United States v. Adlman*, 134 F.3d 1194, 1196 (2d Cir.1998) (quoting *Hickman v. Taylor*, 329 U.S. 495, 511, 67 S.Ct. 385, 91 L.Ed. 451 (1947)).

"Under Rule 26(b)(3) [of the Federal Rules of Civil Procedure], three conditions must be satisfied in order to establish work product protection. The material in question must: (1) be a document or tangible thing, (2) which was prepared in anticipation of litigation, and (3) was prepared by or for a party, or by or for its representative." *Compagnie Francaise d'Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co.*, 105 F.R.D. 16, 41 (S.D.N.Y.1984); accord *Nat'l Educ. Training Group, Inc. v. Skillsoft Corp.*, No. M8-85 (WHP), 1999 WL 378337, at *5 (S.D.N.Y. Jun.10, 1998). Rule 26(b)(3) expressly provides that a party's "representative" may include an "attorney, consultant, surety, indemnitor, insurer, or agent." The burden of establishing all three elements of the work product doctrine rests with the party invoking it. See *von Bulow*, 811 F.2d at 144; *Resort of World, N.V. v. Clarendon Am. Ins. Co.*, No. 96 Civ. 1752(JSR), 1997 WL 739586, at *1 (S.D.N.Y. Nov.25, 1997).

*4 Once a document is deemed to be covered by the work product privilege, it is discoverable only upon a showing that the requesting party has a "substantial need" for the materials to prepare his case and that the party "is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Fed.R.Civ.P. 26(b)(3). Opinion work product, defined as "the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation," is afforded heightened protection. Fed.R.Civ.P. 26(b)(3); accord *Upjohn Co. v. United States*, 449 U.S. 383, 398-402, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981); *Skillsoft*, 1999 WL 378337, at *6.

[4] In their moving papers, filed on July 15, 2003, plaintiffs rely on two versions of the PWC privilege log, the May 2, 2003 privilege log and the May 27, 2003 supplemental log, to argue that attorney work product protection is inapplicable. Honeywell and PWC also rely on these versions of the log to support their argument that certain documents are protected by the work product doctrine. However, on August 8, 2003--two days after Honeywell and PWC filed their opposition to plaintiffs' motion to compel--PWC served a third version of its privilege log. (Pls.' Reply at 1 n. 1.) Notably, the August 8 log engrafted an assertion of attorney work product protection for certain documents previously identified as protected solely by the attorney-client privilege. The August 8 log is a transparent effort to conform PWC's privilege log with Honeywell's arguments in opposition to the motion to compel. Plaintiffs contend that Honeywell's failure to identify attorney work product as a specific ground for withholding each document effects a waiver of the attorney work product protection for those documents, and that the belated assertion of that privilege in the August 8 log is ineffective.

Rule 26(b)(5) of the Federal Rules of Civil Procedure requires a party asserting a privilege or protection to "make the claim expressly and ... describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." Further, the Advisory Committee Notes to the 1993 Amendments of Rule 26 state that a party's failure to notify other parties

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that it is withholding documents because of an assertion of a privilege or work product protection "may be viewed as a waiver of the privilege or protection." Local Civil Rule 26.2 also requires a party to "identify the nature of the privilege (including work product) which is being claimed."

Some courts in this district have found that a party waives work product protection if it fails to assert it in a privilege log, but instead asserts a different privilege. See, e.g., *Bowne, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 489-90 (S.D.N.Y.1993); *Carte Blanche PTE., Ltd. v. Diners Club Int'l, Inc.*, 130 F.R.D. 28, 32 (S.D.N.Y.1990). The district court in *Bowne* held that:

*5 In its answering motion papers AmBase seeks to invoke the work-product rule for a variety of documents that were listed in its privilege log as subject only to the attorney-client privilege. This belated invocation of work-product protection runs afoul of the explicit requirements of S.D.N.Y. Civil Rule 46(e)(1) [predecessor rule to current Local Civil Rule 26.2], which provides that "[a]ny ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived." AmBase did not seek an extension and has not explained its failure to invoke the work-product rule for those documents on a timely basis. Accordingly, that ground must be deemed waived.

150 F.R.D. at 489-90 (second alteration in original). In *Carte Blanche*, the court held that "[i]n failing to specify work product as the particular privilege protecting its various documents, [non-party law firm], through its attorney ... waived the work product immunity for the documents." 130 F.R.D. at 32. The *Carte Blanche* court further acknowledged that although the result of waiver is harsh, the federal and local rules' "importance should not be diminished by skirting their application when the results prove harsh to a party." 130 F.R.D. at 32. The Second Circuit has noted its preference that parties "raise all objections at once, rather than in staggered batches, so that discovery does not become a 'game.'" *In re DG Acquisition Corp.*, 151 F.3d 75, 81 (2d Cir.1998) (citing *United States v. Bryan*, 339 U.S. 323, 331, 70 S.Ct. 724, 94 L.Ed. 884 (1950)).

Some courts in this district have applied a more flexible standard before finding waiver based on a violation of the federal or local rules. Those courts

have reviewed "the nature of the violation, its willfulness or cavalier disregard for the rule's requirements, and the harm which results to other parties." *AFP Imaging Corp v. Philips Medizin Sys.*, No. 92 Civ. 6211(LMM) (THK), 1993 WL 541194, at *3 (S.D.N.Y. Dec. 28, 1993); *accord RMED Int'l, Inc. v. Sloan's Supermarkets, Inc.*, No. 94 Civ. 5587(PKL), 2003 WL 41996, at *3 (S.D.N.Y. Jan.6, 2003).

Utilizing either the *Bowne* standard or the more flexible *AFP Imaging* standard, this Court finds that waiver is warranted on the particular facts and circumstances of this case. Twice in May 2003, Honeywell interposed the attorney-client privilege alone, and decided not to stake any claim of attorney work product privilege, concerning the documents at issue. Tellingly, Honeywell had asserted attorney work product privilege for other documents on the May logs. Plaintiffs were entitled to rely on Honeywell's privilege assertions when they served a motion to compel forty-five days after PWC interposed its supplemental log. More importantly, PWC and Honeywell waited three weeks after plaintiffs filed their motion to compel to revise PWC's log to add the new assertions of attorney work product protection. Those new assertions only surfaced on the August 8 log after Honeywell filed its opposition to plaintiffs' motion to compel. Parties should not be permitted to re-engineer privilege logs to align their privilege assertions with their legal arguments. In this case, PWC and Honeywell waited until after they briefed the issues, and only then amended PWC's log *nunc pro tunc*. Such a practice undermines the very purpose of privilege logs, and promotes the kind of gamesmanship that courts discourage in discovery. Therefore, plaintiffs' motion to compel the production of documents to which Honeywell added a claim of work product protection in the August 8, 2003 privilege log is granted. [FN3]

FN3. Nothing in this Memorandum and Order, however, should be read as inviting a broader subject-matter waiver.

*6 In their reply, plaintiffs raise alleged deficiencies in PWC's privilege log descriptions of the documents withheld. As previously noted, PWC served a revised privilege log on August 8, 2003, after Honeywell and PWC filed their opposition papers. Plaintiffs do not address the August 8 log in

their reply brief. As such, this Court denies plaintiffs' application concerning the deficient descriptions of privilege and work product on PWC's logs at this time. The parties are directed to meet and confer to attempt to resolve this issue without judicial intervention.

Plaintiffs also argue that Honeywell waived all privileges for documents added to the August 8 privilege log that were withheld from the production in early July 2003. Plaintiffs argue that the privileges have been waived because Honeywell did not produce a privilege log within a reasonable time. This Court disagrees and finds that the documents withheld from the production in early July were properly added to the August 8 revision of the privilege log, and the delay between the early July production of documents and the early August privilege log is reasonable. See *Rizzo v. McManus Group, Inc.*, No. 00 Civ. 772(WHP), slip op. at 2-3 (S.D.N.Y. Feb. 8, 2002).

Moreover, this Court declines plaintiffs' invitation to review "the few remaining improperly withheld" documents on PWC's privilege logs. As the Court advised counsel, it will not review unspecified allegedly privileged documents because the parties bear the burden of directing the Court to the specific documents and log entries they argue are withheld incorrectly. (Tr. at 22.) Thus, to the extent plaintiffs' motion asked this Court to review unspecified documents *in camera*, the motion is denied.

[5] Lastly, plaintiffs seek production of documents listed on the May 2003 privilege logs as protected by the attorney work product privilege. Plaintiffs, however, do not seriously question the legitimacy of Honeywell's assertion of the work product privilege in the May 2003 privilege logs. Initially, plaintiffs argue that the pre-eminent business purpose of PWC's audits renders the work product doctrine inapplicable. However, Honeywell's assertion of work product protection for its audit letters and litigation reports prepared by its internal and external counsel, as well PWC documents memorializing Honeywell's opinion work product, is proper. See *United States v. Adlman*, 134 F.3d 1194, 1995 (2d Cir.1998) ("[A] document created because of anticipated litigation, which tends to reveal mental impressions, conclusions, opinions or theories concerning the litigation, does not lose

work-product protection merely because it is intended to assist in the making of a business decision influenced by the likely outcome of the anticipated litigation. Where a document was created because of anticipated litigation, and would not have been prepared in substantially similar form but for the prospect of that litigation, it falls within Rule 26(b)(3)."). Plaintiffs do not argue otherwise in their reply briefs. Accordingly, plaintiffs' motion to compel production of the documents listed on PWC's privilege log is denied except with respect to those documents to which the attorney work product protection has been waived.

PWC's "Permanent" and "Carryforward" Files on Honeywell

*7 [6] Plaintiffs seek to compel production of PWC's "permanent files," which consist of "certain client documents that are of use to the auditors on an ongoing basis." PWC argues that any documents contained in the permanent files are equally available from Honeywell itself since anything in the permanent files was given to PWC by Honeywell. Further, PWC contends that plaintiffs have not explained how these files are relevant to their claims against Honeywell.

Federal Rule of Civil Procedure 26(b)(1) authorizes a party to obtain information "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" and information "reasonably calculated to lead to discovery of admissible evidence." A district court "whose only connection with a case is supervision of discovery ancillary to an action in another district should be especially hesitant to pass judgment on what constitutes relevant evidence thereunder." *Truswal Sys. Corp. v. Hydro Eng'g, Inc.*, 813 F.2d 1207, 1211-12 (Fed.Cir.1987); accord *Compag Computer Corp. v. Packard Bell Elecs., Inc.*, 163 F.R.D. 329, 335 (N.D.Cal.1995). Where relevance is in doubt, the district court is to be permissive. *Truswal*, 813 F.2d at 1212; *Compag Computer*, 163 F.R.D. at 335.

This Court finds that PWC's "carryforward" or "permanent" files are relevant and the fact that the same documents may be available from Honeywell is not persuasive. The documents in PWC's possession may differ slightly from Honeywell's copies. The PWC copies could include handwritten

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notes, and the fact that PWC has copies of documents itself can be relevant. Thus, plaintiffs' motion to compel the "carryforward" or "permanent" documents is granted, and PWC is directed to produce documents responsive to that request.

PWC's Workpapers and All Related Documents for Pittway

[7] PWC was the auditor for Pittway before it was acquired by Honeywell. Plaintiffs seek all documents and workpapers concerning PWC's audits of Pittway prior to its acquisition, as well as consulting workpapers and documents, on the grounds that the Pittway divisions were a source of uncollectible receivables about which Honeywell made misrepresentations. PWC argues that it has already produced all documents that it previously provided to Honeywell on behalf of Pittway as part of the pre-acquisition due diligence.

This Court finds that the Pittway audit workpapers are relevant since post-acquisition Honeywell would have access to them, making them relevant to plaintiffs' claims that Pittway was the subject-matter of some of the alleged fraudulent misrepresentations. Thus, plaintiffs' motion to compel production of the Pittway audit workpapers is granted, and PWC is directed to produce documents responsive to that request.

PWC Correspondence, Memoranda, E-mail, etc., Concerning Honeywell

[8] Plaintiffs also seek essentially all communications in PWC's possession concerning Honeywell for the period January 1999 through March 2001. Plaintiffs argue that they are entitled to see the entirety of PWC's files on Honeywell in order to determine what information Honeywell and third parties provided to-- and concealed from-- PWC. Moreover, plaintiffs argue that auditors are routinely required to produce all responsive e-mails, not just those in the workpapers. Lastly, plaintiffs argue that PWC's claim of substantial burden is unfounded because it has not submitted evidence or an affidavit establishing the burden, and has not explained why this demand is different from all other demands for correspondence in other cases that are routinely responded to by other parties.

*8 PWC contends that they have already produced the "most relevant" correspondence, memoranda, and electronic documents as part of the workpapers. Further, PWC notes that it has already produced the "desk files" of the six senior engagement personnel on the Honeywell audits, documents relating to PWC's due diligence work, and all correspondence that PWC claims is even arguably relevant to any claims or defenses.

Plaintiff's request, as currently framed, is overly broad. It contains absolutely no limitation as to subject-matter or individual. Thus, plaintiffs' motion to compel production of all correspondence, memoranda, e-mail, etc., is denied.

PWC's Honeywell Consulting Documents

[9] Plaintiffs seek all documents and workpapers relating to professional services performed by PWC for Honeywell other than audits, including documents related to consulting work, due diligence, assurance, accounting and attestation, tax preparation and agreed upon procedures. Specifically, plaintiffs request all documents relating to any due diligence or consulting work performed by PWC for Honeywell concerning its failed merger with General Electric ("GE"). Plaintiffs argue that one of the reasons the merger failed was because GE found accurate financial information concerning Honeywell. PWC asserts that it has repeatedly informed plaintiffs that "to the extent that it has any documents relating to any due diligence conducted in connection with a proposed merger between Honeywell and General Electric, they were contained within the Honeywell workpapers produced." (PWC Opp. at 20.)

This Court finds that the Honeywell consulting documents are not relevant and thus not discoverable. Plaintiffs have not persuaded this Court that these documents are relevant to any claim or defense in their complaint. Indeed, their reliance on issues concerning pension plans is unavailing since there are no related allegations in their complaint. Further, this Court is satisfied with PWC's assertion that to the extent it has any GE due diligence documents it has already produced them. Thus, plaintiffs' motion to compel production of documents related to professional services performed by PWC for Honeywell other than documents concerning audits is denied.

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PWC's Independence vis-a-vis Honeywell

[10] Plaintiffs seek all documents relating to PWC's independence vis-a-vis its Honeywell engagements. Plaintiffs argue that these documents are relevant to a possible or anticipated defense for PWC--reliance on independent audits. Plaintiffs have already found one document in PWC's production that purports to be a letter to Honeywell alerting it that certain professionals at PWC had investments in AlliedSignal, Inc. ("Allied"), which merged with Honeywell, when PWC was performing audit services for Allied.

PWC argues that the letter cited by plaintiffs does not demonstrate that PWC's independence was "compromised." Rather, PWC contends that the letter indicates that PWC was attentive to independence issues in connection with the Honeywell audit, and undertook to adhere to applicable rules.

*9 PWC's independence is clearly relevant to a possible Honeywell defense. Moreover, this request is not a fishing expedition. Plaintiffs have persuaded this Court that they have a good faith belief that similar documents may exist. Thus, plaintiffs' motion to compel documents concerning PWC's independence vis-a-vis Honeywell is granted, and PWC is directed to produce documents responsive to that request.

Document Retention Policies

[11] Plaintiffs seek a copy of PWC's document retention policies from January 1999 to the present, as well as all documents reflecting how the documents sought by the subpoena were preserved, maintained and collected by PWC for production to plaintiffs. To support their motion, plaintiffs refer to a recent SEC administrative settlement in an unrelated matter where PWC allegedly altered and destroyed workpapers. Moreover, plaintiffs insist that there are documents missing from PWC's production that should have been produced.

PWC labels plaintiffs' reliance on the SEC administrative settlement as "transparent and inflammatory." (PWC Opp. at 22-23.) PWC further argues that plaintiffs' sparring over document retention rests on the misapprehension that certain documents should exist. PWC claims it has advised

plaintiffs that it retains workpapers for a period of seven years. Finally, PWC maintains that there is no basis for plaintiffs to demand documents reflecting PWC's efforts to comply with the subpoena.

Plaintiffs lack a concrete basis for this request. Therefore, their motion to compel production of documents related to PWC's document retention and destruction policies, and the efforts to preserve, maintain and collect documents, is denied.

Costs

[12] Finally, PWC requests that the Court direct plaintiffs to pay for costs incurred in gathering and copying documents. PWC claims that as a non-party to the underlying litigation, plaintiffs should share in the costs of copying and searching for documents. Rule 45 of the Federal Rules of Civil Procedure requires the Court to protect non-parties from "significant expense resulting from the inspection and copying commanded." Fed.R.Civ.P. 45(c)(2)(B). "However, the required '[p]rotection from significant expense does not mean that the requesting party necessarily must bear the entire cost of compliance.... [A] non-party can be required to bear some or all of its expense where the equities of a particular case demand it." *In re Law Firm of McCourts*, No. M19-96 (JSM), 2001 WL 345233, at *1 (S.D.N.Y. Apr.9, 2001) (quoting *In re Exxon Valdez*, 142 F.R.D. 380, 383 (D.D.C.1992)). To determine who should bear the costs, courts consider three factors: "whether the nonparty actually has an interest in the outcome of the case, whether the nonparty can more readily bear the costs than the requesting party and whether the litigation is of public importance." *Linder v. Calero-Portocarrero*, 180 F.R.D. 168, 177 (D.D.C.1998). Here, PWC is not a classic disinterested non-party. See *In re First Am. Corp.*, 184 F.R.D. 234, 241-42 (S.D.N.Y.1998). Moreover, PWC has not offered any basis for determining the reasonable costs for compliance with the subpoena. Accordingly, this Court denies PWC's request.

Conclusion

*10 For the reasons set forth above, plaintiffs' motion to compel production of certain PWC documents is granted in part and denied in part, and PWC's motion to quash the subpoena is granted in part and denied in part.

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END OF DOCUMENT

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Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court, N.D. Illinois, Eastern
Division.
NICHOLAS J. MURLAS LIVING TRUST, et al.
Plaintiffs,
v.
MOBIL OIL CORPORATION, et al. Defendants.
93 C 6956.

March 20, 1995.

MEMORANDUM OPINION AND ORDER

COAR, District Judge.

*1 Plaintiffs the Nicholas J. Murlas Living Trust, the Mary Lou Murlas Living Trust, and the George J. Murlas Living Trust (collectively "Murlas" or "plaintiffs") have moved to compel discovery against Mobil Oil Corporation ("Mobil"). [Docket number 56]. This motion to compel is now fully briefed and ripe for decision. After having reviewed the pleadings, exhibits, and discovery submitted, this court decides as follows.

Background [FN1]

The complaint arises out of a lease agreement in which Mobil leased real property from plaintiffs and operated a gas station thereon. Plaintiffs subsequently discovered that the property was contaminated with hydrocarbons which had leaked from Mobil's underground storage tanks into the soil and groundwater. Plaintiffs allege violations of the Resource Conservation and Recovery Act ("RCRA"), breach of lease covenant, breach of certain indemnity agreements, breach of the Mobil-Groundwater Technology, Inc. ("GTI") contract as a third-party beneficiary, intentional misrepresentation, negligent misrepresentation, negligence, restitution, quasi-contract, and unjust enrichment.

Permissible Scope of Discovery

Discovery in federal civil cases is governed by Rule 26 of the Federal Rules of Civil Procedure. Rule 26 allows parties to have discovery regarding any matter, not privileged, which is relevant to the

subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed.R.Civ.P. 26(b)(1). Discovery may be limited by local rule. Fed.R.Civ.P. 26(b)(2). Discovery will also be limited by the court if it concludes that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues....

Fed.R.Civ.P. 26(b)(2).

Discussion

Murlas moves to compel the answer or production to several different potentially discoverable items. The court will address each seriatim.

1. Production of Charles Sutter for Deposition

Plaintiffs allege that Mobil has failed to produce Charles Sutter, an in-house attorney with Mobil, for deposition in Chicago. Judge Plunkett ordered that Sutter and several other Mobil employees be produced for deposition. (See Response at p. 5). Plaintiffs state that they have already made one trip to Fairfax, Virginia to depose witnesses, and do not wish to travel to Virginia again to depose Mr. Sutter. Sutter was allegedly on the schedule to be deposed during plaintiffs' trip until two or three days before the trip, when plaintiffs were informed that he was going to Japan on business. Plaintiff requests that Sutter now be produced for deposition in Chicago.

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*2 Mobil does not contest that Sutter may be deposed. However, Mobil requests that he be deposed in Fairfax instead of Chicago. Mobil points to Fed.R.Civ.P. 30, governing the taking of depositions, and notes that the rule allows a party to take the deposition of any person without leave of the court, and that the attendance of that witness may be compelled by subpoena pursuant to Rule 45. Rule 45(B)(iii) states that a court may quash or modify a subpoena that requires a person who is not a "party or an officer of a party" to incur substantial expense or travel more than 100 miles. However, that rule also states that if the party in whose behalf the subpoena is issued shows a "substantial need" for the testimony that cannot be otherwise met without substantial hardship, and that person assures the potential deponent that he will be reasonably compensated, the court may order appearance of that person. Fed.R.Civ.P. 45(B)(iii).

Neither Murlas nor Mobil has alleged that Sutter is an officer of Mobil. As a non-party deponent to this action, Sutter is not subject to the jurisdiction of this court. *In re Corrugated Container Antitrust Litigation*, 655 F.2d 748, 750 n. 2, *rev'd other grounds*, 661 F.2d 1145 (7th Cir.1981). A deponent can be required to appear at a deposition only in the county in which he resides or is employed or transacts business in person. *See* Fed.R.Civ.P. 45(3)(A)(ii). Thus, this court cannot compel Sutter to appear at a deposition here in Chicago. Judge Plunkett has ordered Mobil, who is subject to the jurisdiction of this court, to produce Sutter. Mobil has affirmed this duty. The plaintiffs have alleged no undue hardship that could occur by conducting the deposition in Fairfax, except that plaintiffs' counsel is unwilling to make the trip. The court concludes that the plaintiffs should travel to Fairfax to complete Sutter's deposition, or conduct a telephonic deposition pursuant to Fed.R.Civ.P. 30(b)(7). Mobil is cautioned, however, that *Sutter is to be available on the date set for the deposition.*

2. Production of Documents Used to Refresh Recollection

Plaintiffs next argue that they are entitled to certain documents that were used by Tom Rush, Robert Johnson, and Craig LaBelle to refresh their recollection of events pertaining to this litigation prior to their depositions. Mobil asserts that those documents are protected by the attorney-client

privilege and the work-product doctrines, but has agreed to tender the documents. Nonetheless, Mobil does not concede that plaintiffs have a right to reopen the depositions. Plaintiffs contend that they have a right to reopen the depositions and question the deponents on the documents.

Rule 612 of the Federal Rules of Evidence provides that if a writing used to refresh a witness' memory before a hearing, "an adverse party is entitled to have the writing produced *at the hearing*, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. [Emphasis added]" Fed.R.Evid. 612. This entitlement is created so the adverse party may search out any discrepancies between the writing and the testimony. *Wheeling-Pittsburgh Steel Corp. v. Underwriters Laboratories, Inc. et al.*, 81 F.R.D. 8, 10 (N.D.Ill.1978). This rule furthers the purpose of the federal discovery rules to ascertain the truth. *See id.*

*3 The court concludes that the depositions of Rush, Johnson, and LaBelle should be reopened for the limited purpose of cross-examining them on the documents they used to refresh their recollection of this matter. Mobil should have produced those documents *at the time of the depositions*, and now gives no reason for not doing so. Further, plaintiffs are entitled to cross-examine the witnesses on the documents and so doing may aid in the ascertainment of the truth.

The case cited by Mobil, *U.S. v. Blas*, 947 F.2d 1320 (7th Cir.1991), does not counsel to the contrary. In *Blas*, the Court of Appeals reviewed a district court's decision to deny access to several documents used to refresh the recollection of a DEA agent. The trial court was concerned with its role as arbiter of what portions of the documents would have to be redacted in order to turn those documents over to the defense, and the resultant delay of the trial. *U.S. v. Blas*, 947 F.2d at 1326. The appeals court concluded that the denial was not a clear abuse of the trial court's discretion, and therefore declined to reverse the trial court's decision. *U.S. v. Blas*, 947 F.2d at 1326. *Blas* is distinguishable from the case at bar not only because the "clear abuse of discretion" standard does not apply but because here, Mobil has already agreed to turn over the documents intact. This court will not have to use

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judicial resources in wading through and redacting them.

However, this court will not require Mobil to pay the plaintiffs' expenses with regard to these additional depositions. Plaintiffs must travel to Fairfax in any event to depose Mr. Sutter. Imposition of costs is a drastic measure, and one that this court does not take lightly. Plaintiffs have not alleged, nor does this court surmise, that Mobil acted in bad faith or with wrongful intent in not producing the documents at the time of the depositions. Therefore, the costs of returning to Fairfax will not be imposed on Mobil. However, the court cautions Mobil that it should make every reasonable effort to schedule *all* the depositions so that plaintiffs will only have to make one return trip to Fairfax. Given the nature of these disputes and briefs, the court sees that discovery in this litigation has the flavor of two kindergartners arguing over a crayon. Such childish antics will not be tolerated and any future failure to follow the requirements of the discovery rules will result in escalating sanctions.

3. Mobil Documents Not Produced

a. Mobil Design Memo 31

Plaintiff requests production of a document discussed in the depositions of LaBelle and Johnson titled either "Mobil Design Memo 31" or "Mobil's Guidelines for Assessment and Remediation." Mobil responds that the document has been offered to plaintiffs by a "letter dated November 16." Plaintiffs report in their reply memorandum that documents titled both "Mobil Design Memo 31" and "Mobil's Guidelines for Assessment and Remediation" have been produced. Thus, this issue is moot.

b. Made Environmental Report

*4 Plaintiffs seek discovery of an environmental consultant's report generated by "Maude Environmental" which one of Mobil's former project engineers Sharon Gallagher testified about in her deposition. Gallagher stated in her deposition that she relied on this report in deciding to apply "passive remediation" to the property at issue. (Plaintiff's exhibit M, Gallagher deposition at 123, 195, 215). Plaintiffs thus contend that the report is relevant and discoverable under Fed.R.Evid. 26.

Mobil disagrees with plaintiffs' characterization of

both the deposition testimony and the relevance of the document. Mobil points to plaintiff's exhibit E, a letter from Mobil's counsel to plaintiffs' counsel in which Mobil's counsel states that the document at issue has been located and not only was it prepared after Gallagher left Mobil's employ, but it was prepared by "Hazardous Substance and Waste Management Research, Inc." (Plaintiffs' exhibit E p. 3). Further, Mobil's counsel states that the document is a "site specific risk assessment" prepared for a location in Wheaton, Illinois. (*Id.*).

Although Mobil correctly states that the statements of Gallagher do not necessarily bind Mobil, Gallagher at least implied that she relied on the "Maude Environmental" report in making decisions regarding the subject property. Thus, the document, whether prepared by Maude or by Waste Management Research, is relevant and discoverable under Rule 26. Of course, this does not mean that the report will ultimately be admitted into evidence. Rule 26 plainly states that documents need only be "reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26. That document may lead to such discoverable evidence regarding the subject property. Perhaps, for example, the authors of the document will have relevant information regarding discussions with Mobil employees regarding the subject property.

Plaintiff reports in its reply memorandum that several documents, including documents relating to issues discussed by Gallagher, were produced on December 20, 1994. If those documents contain the documents discussed in Gallagher's deposition, this issue is moot. However, if Mobil holds additional documents which could be the ones Gallagher discussed, Mobil should produce them.

c. Robert Johnson's Refusal to Answer

Plaintiffs request that Robert Johnson be required to divulge information regarding the settlement of other litigation having nothing to do with the subject property. Mobil replies that that settlement is irrelevant to this litigation and could not reasonably lead to the discovery of admissible information. The court agrees with Mobil. Settlement discussions in another, distinct matter are irrelevant to this litigation and need not be produced. Fed.R.Civ.P. 26.

d. Tank Removal Report

During the course of depositions, some deponents referred to "tank pull reports" and plaintiffs have requested that these reports be produced. Mobil responds that they have searched and re-searched for these documents, and they could not be found or no longer exist. The court will require that Mobil search one, final time for these documents before they are declared lost. If they are found they should be produced. Plaintiff should not make further requests for the "tank removal report."

e. Computer Database Model

*5 Plaintiffs request production of an entire computer database which inventories materials and equipment at all of Mobil's various leaking underground storage tank facilities throughout the country. Mobil responds that they have produced the portions of the database that are relevant to this litigation and that producing the entire database is "outrageous." The court agrees with Mobil. Producing an entire computer database would indeed be unduly burdensome on Mobil and the court cannot see how information regarding other contaminated sites would be relevant to this litigation. Plaintiffs argue that "the information from other sites may be relevant to show that Mobil failed to follow its own directives at the subject property and that plaintiffs were not the only parties to suffer the 'bait and switch' deception." (Plaintiffs' Sur-Reply at p. 14). This is a recurrent theme in this litigation. Murlas seeks to widen the scope of the action by asserting alternately that Mobil has conspired to dupe an entire universe of people that it was engaged in clean-up activities when only "passive remediation" was contemplated, or that Mobil has violated its own guidelines used to determine when "passive" (as opposed to "active") remediation was to be used. Murlas has never articulated a coherent theory which would explain how or what Mobil did or did not do at another property has anything to do with the instant action. The fact that "Mobil's use of passive remediation of plaintiffs' property is similar to its use of passive remediation at property sites of other owners" is not an explanation of why this information is relevant. It is irrelevant to this litigation whether other parties "suffered from an [alleged] 'bait and switch' deception." See *Pirela v. Village of North Aurora*, 935 F.2d 909, 914 (7th Cir.1991) (citing with approval *Reich v. Board of Fire and Police Comm'rs*, 13 Ill.App.3d 1031, 301 N.E.2d 501, 505 (1973), which allowed a party to subpoena

documents relevant to a hearing, but declared that it was not error to deny subpoena to plaintiff who could not establish relevancy of requested document.). Mobil is hereby directed to re-search the database for all information relevant to the subject property, and if further information is discovered to produce it. However, Mobil is not required to produce the entire database.

4. Plaintiffs' Second Request for Production

Plaintiffs have requested that all Mobil documents stating that the property was not contaminated by hydrocarbons be produced. Plaintiff contends that this request has not been fully completed. Mobil responds that it has produced the requisite documents to the extent that they exist. Again, the court cannot compel disclosure where nothing exists. Mobil has averred, under penalty of Fed.R.Civ.P. 11, that it has produced all the relevant documents. This court can do no more to satisfy the plaintiffs.

Plaintiffs have also requested production of "all documents relating to Mobil's policy, programs, and plans relating to Mobil's response to [hydrocarbon] leaks." Mobil objects to this request as being overbroad and vexatious. "Read literally," Mobil asserts, "compliance with this request would be a mammoth undertaking encompassing virtually every document worldwide that deals with underground storage tanks." (Response p. 11). Further, Mobil states that it has offered certain policy documents related to its "LUST" program in Illinois, and plaintiffs had not availed themselves of the opportunity to discover those documents. (*Id.*).

*6 Judge Plunkett has already once denied this motion without prejudice because the request was overbroad. (Plaintiffs' exhibit K, Transcript of hearing on June 15, 1994 p. 16). Judge Plunkett expressed his concern that the information regarding other sites would not be relevant to these proceedings because each contamination site is very different. Judge Plunkett specifically directed plaintiffs, if they wished to present this motion again, to submit evidence or testimony from their experts showing that the requested production would be relevant to this proceeding. To date, plaintiffs have not done so. This court concurs with the previous ruling and concludes that discovery encompassing all Mobil policy is overbroad and the expense of such production would outweigh the

likely benefit of such production. Fed.R.Civ.P. 26(b)(2). Plaintiffs' motion to compel will be denied in this regard. See *Pirela v. Village of North Aurora*, 935 F.2d 909, 914 (7th Cir.1991).

5. Response to Plaintiffs' Interrogatories

Plaintiffs next ask that this court examine each and every interrogatory served on Mobil and the responses to each to ascertain their adequacy. To begin with, the parties should have been able to resolve this dispute between themselves. Reasonable and conscientious attorneys routinely deal with these disputes without involving the court; that is what the Federal Rules of Civil Procedure envision. In the future, this court orders both parties to attempt to settle these discovery tantrums without the involvement of this court. As to the instant motion, Mobil is directed to answer interrogatories 1-10 by April 10, 1995. Mobil is not required to answer interrogatories 11-19. The court has made plain in this memorandum opinion that discovery into sites other than the subject property will not be allowed. (See *supra*). Thus, to the extent that interrogatories 11-19 deal with production of information regarding other contamination sites, they are irrelevant and inappropriate. See *Pirela v. Village of North Aurora*, 935 F.2d 909, 914 (7th Cir.1991).

6. Plaintiffs' Motion for Rule 37 Sanctions

Plaintiffs contend that Mobil's "pattern of refusal to comply" merits the imposition of sanctions under Rule 37. Mobil contends that plaintiffs' motion is "impertinent, scandalous, and internally contradicted" and request that the motion be stricken with costs awarded to Mobil.

Neither party have acted with civility or maturity regarding these discovery disagreements. However, pettiness does not necessarily equal bad faith. Fed.R.Civ.P. 37 is flexible and this court has great discretion in deciding whether to impose sanctions. 8 Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure* § 2284 (1970). The rule is designed to encourage discovery, and not to simply punish for general misbehavior. *Id.*; *Dorsey v. Academy Moving & Storage, Inc.*, 423 F.2d 858, 860-61 (5th Cir.1970). This court is not inclined, therefore, to impose sanctions on either party *at this time*. The parties should focus on completing discovery in as effective and efficient manner as possible.

Conclusion

*7 For reasons stated in this memorandum opinion, **IT IS HEREBY ORDERED THAT** plaintiffs' motion to compel discovery is denied in part and granted in part as follows:

1. Plaintiffs' motion to produce Charles Sutter for deposition is **GRANTED**, but it is further ordered that such deposition will take place in Fairfax, Virginia within thirty days.

2. Plaintiffs' motion to compel the production of documents used to refresh the recollection of Messrs. Rush, Johnson, and LaBelle is **GRANTED**. It is further ordered that the depositions of Messrs. Rush, Johnson, and LaBelle be reopened for the limited purpose of cross-examination on the documents used to refresh their individual recollections on the subject property. Plaintiffs' motion for fees and expenses in the taking of these reopened depositions is **DENIED** with prejudice.

3(a). Plaintiffs' motion to compel production of the "Mobil Design Memo 31" is moot.

3(b). Plaintiffs' motion to compel production of the "Maude Environmental Report" is **GRANTED** to the extent it has not been made moot by a subsequent production of the document.

3(c). Plaintiffs' motion to compel Robert Johnson to answer questions regarding a separate settlement of wholly different contamination site is **DENIED** with prejudice.

3(d). Plaintiffs' motion to compel production of a "Tank Removal Report" is **GRANTED** to the extent that Mobil should search one final time for the document, and if it is not located, the motion is **DENIED** with prejudice.

3(e). Plaintiffs' motion to compel production of Mobil's entire computer database model is **DENIED** with prejudice except that Mobil is hereby ordered to search the database one final time for any additional information regarding the subject property, and if any such information is found, to produce it to the plaintiffs.

4. Plaintiffs' motion to compel documents relating to its second request for production is **DENIED** with prejudice.

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5. Plaintiffs' motion to compel more complete answers to its interrogatories is GRANTED in part and DENIED in part. Mobil shall provide complete answers to interrogatories 1-10 by April 3, 1995. Mobil is not required to answer interrogatories 11-19.

As a final note, this court cautions the parties that briefs are to be used with discretion. The parties seem to believe that every paper submitted to the court may argue any part of the case or any legal theory that the parties desire. Such is not the case. Parties should limit their arguments to the issue(s) before the court.

FN1. For a more thorough statement of the background facts of this litigation, see *Nicholas J. Murlas Living Trust, et al. v. Mobil Oil Corp. et al.*, 1994 WL 130778 (N.D.Ill. Apr. 13, 1994).

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