UNITED STATES DISTRICT COURT

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) CLASS ACTION Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

HOUSEHOLD DEFENDANTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF ARTHUR ANDERSEN LLP'S MOTION FOR THE RETURN OF INADVERTENTLY PRODUCED PRIVILEGED DOCUMENTS AND PARTIAL RESPONSE TO PLAINTIFFS' CROSS MOTION TO COMPEL PRODUCTION OF CERTAIN DOCUMENTS PROVIDED TO OUTSIDE AUDITORS BY HOUSEHOLD

CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, New York 10005
(212) 701-3000

EIMER STAHL KLEVORN & SOLBERG LLP
224 South Michigan Ave.
Suite 1100
Chicago, Illinois 60604
(312) 660-7600

Attorneys for Defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

This reply memorandum is respectfully submitted on behalf of Defendants Household International, Inc. ("Household"), Household Finance Corp., William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar (collectively, "Defendants") in support of the Motion of Arthur Andersen LLP For Determination of the Court as to the Return of Privileged Documents Inadvertently Produced to Plaintiffs and to Set a Schedule for Further Briefing By the Parties, filed on April 27, 2006 (the "Andersen Motion"), and in partial response to The Class' Cross-Motion to Compel Production of Certain Documents Provided to Outside Auditors By Household Defendants, filed on May 26, 2006, (the "Cross Motion Brief").

INTRODUCTION

On the basis of authorities discussed below and in the Household Defendants' Memorandum of Law in Support of Arthur Andersen's LLP's Motion for the Return of Inadvertently Produced Privileged Documents (the "Opening Brief"), Defendants respectfully seek an Order requiring Lead Plaintiffs to return seventeen documents (the "Challenged AA Documents") that were inadvertently produced by Household's former outside auditor, Arthur Andersen ("Andersen"). This Memorandum will highlight the deficiencies in the Plaintiffs' opposition to motion.

Because Plaintiffs' Cross Motion seeks the production by Household of work product documents similar or identical to those at issue in the Andersen Motion (see Exhibit A to Plaintiffs' Cross Motion Brief)[1], and relies on the same rationale as in its opposition to the Andersen Motion, in order to avoid

---

[1] The Documents identified on Exhibit A are largely draft or final versions of audit letters, written by Kenneth H. Robin, Esq., Household's Executive Vice President and General Counsel, and addressed to either KPMG or Andersen. One document, No. 46 on Exhibit A, is a letter from Steven McDonald, Household International's Controller, to Mr. Robin requesting that Mr. Robin draft an audit letter to furnish to Andersen. If it would be helpful to the Court in considering this motion, Defendants will deliver a copy of these documents to the Court under seal for *in camera* inspection.

burdening the Court with duplicative briefs, this Memorandum will also serve as Defendants' opposition to Plaintiff' Cross Motion as it relates to such documents. [2]

The Challenged AA Documents and the counterpart Household Documents are not mere business documents as Plaintiffs contend. They are audit letters prepared by Household counsel and related workpapers that reveal attorneys' mental impressions, conclusions, summaries and theories of about various actions threatened or pending against Household, and describe the legal analysis supporting those conclusions. This is classic work product, directly related to pending or threatened litigation, and provided to outside auditors with no expectation of disclosure to Household's adversaries. The contents of all of the contested documents are protected by the attorney work product doctrine, which Household, as the entity entitled to such protection, has not waived.

COMPLIANCE WITH LOCAL RULE 37.2

Plaintiffs' introductory statement that Defendants refused to engage in a meet and confer in connection with the Challenged AA Documents is unusually disingenuous even for them. (Pl. Br. at 2.) In their March 24, 2006 letter to Andersen, Plaintiffs announced an end to all discussion as to whether or not the Challenged Documents were privileged, stating that "[w]e will consider this matter closed and your objections withdrawn unless you move to place the matter before the Court." *See* Andersen Motion at Exhibit 6, p. 2. Andersen therefore filed its motion on April 27, 2006, and on the next day the Court set a briefing schedule requiring Household's motion in support of the Andersen Motion be filed on May 12, 2006. *See* April 28, 2006 Docket Entry Text, attached to the June 1, 2006 Declaration of Patricia Farren, Esq. (the "Farren Declaration") at Exhibit 1.

---

[2] Defendants will provide a separate response to Plaintiffs' cross-motion concerning The Class' [Corrected] Third Request For Production of Documents to Household International, Inc., William Aldinger, David Schoenholz, Gary Gilmer and J.A. Vozar at Requests 17 and 18 on June 9, 2006, the date set by the Court in its May 11, 2006 Order.

Plaintiffs' assertion in the Declaration of D. Cameron Baker Certifying Compliance With The Court's April 28, 2006 Order and Local Rule 37.2 that they sent an email to defense counsel "requesting to meet and confer on the disputed Andersen documents *prior to* May 12" does not tell the full story and is therefore misleading. Mr. Baker's initial request for a meet and confer was sent more than a week after the briefing schedule was already in place and related only to open issues from previous meet and confers and Household's response to Plaintiffs' Third Document Demand. (See May 8, 2006 email, annexed to the Farren Declaration at Exhibit 2). That May 8, 2006 email does not even mention the Challenged AA Documents. Although Plaintiffs did mention that subject in a follow-up email sent three days before Household's brief was due, they fail to inform the Court that they ignored Defendants' question, in a reply email, whether there was any change in Plaintiffs' "steadfast refusal to cooperate previously with Andersen's request to return the documents".[3] (See May 9, 2006 email, annexed as Exhibit A to the Baker Declaration). For Plaintiffs to declare an impasse and insist that this matter be brought before the Court, present a misleading account of a purported attempt to meet and confer thereafter, and then decry Household's supposed imposition of burden on this Court is disingenuous at best.

[3] Indeed, Plaintiffs only response was to propose a meet and confer the following week-after Household's brief was due.

ARGUMENT

I. Relevant Case Law Squarely Supports Work Product Protection for Contested Documents

This Court defines work product as any material prepared *because of* the prospect of litigation, not merely to assist in litigation[4]. *National Jockey Club* v. *Ganassi,* No. 04 C 3743, 2006 WL 733549, at *1 (N.D. Ill. Mar. 22, 2006) (Nolan, J.) ("The test for determining whether the work product doctrine protects materials from disclosure is whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained *because of* the prospect of litigation.") (emphasis added) (citation and internal quotation marks omitted). This is consistent with the views of the Seventh Circuit Court of Appeals. *See, e.g.*, *Logan* v. *Commercial Union Insurance Co.,* 96 F.3d 971, 976-77 (7th Cir. 1996) ("we look to whether in light of the factual context 'the document can fairly be said to have been prepared or obtained *because* of the prospect of litigation.'") (emphasis in original; internal citation omitted). Courts extend work product protection to documents prepared 'because of' existing or expected litigation, even where their purpose is not to 'assist in' such litigation, in recognition that this "formulation accords with the plain language of Rule 26(b)(3) and the purposes underlying the work-product doctrine." *United States* v. *Adlman*, 134 F.3d 1194, 1202 (2d Cir. 1998).

---

[4] Plaintiffs incorrectly cite *Binks Manufacturing Co.* v. *National Presto Industries, Inc.* for the proposition that the "'threshold determination' in the evaluation of the work product privilege is whether the documents were 'prepared in anticipation of litigation.'" (Pl. Br. at 2) While Plaintiffs claim that this quote "analyz[es] 8 Charles Wright & Arthur R. Miller, Federal Practice and Procedure Civil §2024," this is not the case. (Pl. Br. at 2) In fact, in *Binks* the Court quoted 8 Charles Wright & Arthur R. Miller, Federal Practice and Procedure Civil §2024 for the phrase "'the test should be whether, in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained *because of* the prospect of litigation,'" *Binks Manufacturing Co* v. *National Presto Industries, Inc.*, 709 F.2d 1109, 1119 (7th Cir.1983).

Not one of the four cases cited by Plaintiffs to suggest that "[n]umerous courts have held that documents prepared for an independent auditor . . . do not constitute attorney work product" uses this definition of work product. (See Pl. Br. at 5 and cases cited therein.) Rather, **each of Plaintiffs' cases defines work product only as material "prepared in anticipation of litigation or for trial." This is not the governing standard in this Circuit.** [5] *See Logan*, 96 F.3d at 976-77; *National Jockey Club*, 2006 WL 733549, at *1.

In contrast to Plaintiffs' more dated cases, the modern view is that work product includes material prepared "because of" actual or potential litigation, including audit letters of the type at issue here. *See, e.g., In re Honeywell International, Inc. Securities Litigation*, 230 F.R.D. 293, 300 (S.D.N.Y. 2003) ("Honeywell's assertion of work product protection for its audit letters and litigation reports prepared by its internal and external counsel, as well as PWC documents memorializing Honeywell's opinion work product, is proper."); *Southern Scrap Material Co.* v. *Fleming*, No. Civ. A. 01-2554, 2003 WL 21474516, at *9 (E.D. La. June 18, 2003) ("[T]he work product doctrine clearly applies to the audit letters. . . ."). Such cases comport with the reality that "[a]n audit letter is not prepared in the ordinary course of business but rather arises only in the event of litigation. It is prepared because of the litigation, and it is comprised of the sum total of the attorney's conclusions and legal

---

[5] *See United States* v. *Gulf Oil Corp.*, 760 F.2d 292, 296 (Temp. Emerg. Ct. App. 1985) ("If the primary motivating purpose behind the creation of the document is not to *assist in pending or impending litigation*, then a finding that the document enjoys work product immunity is not mandated.") (emphasis added); *United States* v. *El Paso Co.*, 682 F.2d 530, 543-44 (5th Cir. 1982) ("The tax pool analysis concocts theories about the results of possible litigation; *such analyses are not designed to prepare a specific case for trial or negotiation.")* (emphasis added); *Independent Petrochemical Corp.* v. *Aetna Casualty and Surety Co.*, 117 F.R.D. 292, 298 (D.C. Cir. 1987) ("The work product doctrine does not extend to every communication by an attorney that merely may concern litigation in some way, if such a communication was not made *as a part of the adversary trial process*.") (emphasis added) (footnote omitted); *McEwen* v. *Digitran Systems, Inc.*, 155 F.R.D. 678, 682 (D. Utah 1994) ("This court agrees with the '*primary motivating purpose*' formulation set forth in *Gulf Oil*.") (emphasis added).

theories concerning that litigation. Consequently, it should be protected by the work product privilege." *Tronitech, Inc.* v. *NCR Corp.*, 108 F.R.D. 655, 656 (S.D. Ind. 1985)

Work product protection for audit letters is not undermined by the fact that such documents may contain an attorney's reference to the facts underlying a pending litigation. Plaintiffs cite no authority for their remarkable suggestion to the contrary. (*See* Pl. Br. at 9-10) Under any definition of work product, an attorney's consideration of the facts regarding a pending or threatened litigation, as well as his legal opinions, constitutes work product. *See, e.g.*, *Hollinger International, Inc.* v. *Hollinger Inc.*, 230 F.R.D. 508, 512 (N.D. Ill. 2005) (Nolan, M.J.) ("[L]egal memoranda prepared by attorneys which analyze the facts under the applicable legal standards . . . constitute classic opinion work product"). *See also Southern Scrap*, 2003 WL 21474516, at *9 ("[T]he documents were generated at the request of general counsel for Southern Scrap and set forth a summary of all ongoing litigation, as well as counsel's mental impressions, opinions, and litigation strategy.")

II. The Fact That the Challenged Documents Were Created in Connection With An Audit Does Not Diminish Their Work Product Protection

Perhaps due to the dearth of relevant case law in their favor, Plaintiffs struggle to prove that the Challenged AA Documents and counterpart Household Documents are mere business documents, and thus not subject to work product production. Although Defendants do not dispute the proposition that documents created solely for business purposes are not work product, that principle has no application here.

Plaintiffs base much of their argument on the Declaration of Kristine L. Flanagan, CPA, which generally states that the Challenged AA Documents and the counterpart Household Documents (i) were required to be prepared in accordance with GAAP and GAAS, (ii) were part of the auditor's workpapers, and (iii) may have constituted evidential matter to provide Andersen with

necessary corroboration. However, none of this changes or detracts from the fact that the subject documents exist because of pending or threatened litigation, and reveal the opinions, mental impressions, summaries, conclusions, and theories of Household's counsel about those litigations or threatened actions. Under these indisputable circumstances, it is frivolous for Plaintiffs to suggest that the subject audit letters are "unrelated to litigation". (Pl. Br. at 7).

Indeed, the Flanagan Declaration itself confirms that the letters relate to litigation and implicitly defines their contents as work product. In Ms. Flanagan's words, "an auditor ordinarily does not possess legal skills and, therefore, cannot make legal judgments concerning information coming to his attention in this area. AU 337, 6. Accordingly, the auditor should request the company's management to send a letter of inquiry to those lawyers with whom management consulted concerning litigation, claims, and assessments." Flanagan Decl. at 24; *See also* Pl. Br. at 6. It is precisely because neither accountants nor management can make "legal judgments" that it is necessary for Household's attorneys to draft audit letters that summarize pending and threatened litigation against Household, and discuss the attorney's evaluation of such claims. That is classic work product.

The fact that Household had a business reason to cooperate with its outside auditors does not change that analysis. *See, e.g., In re Honeywell International, Inc. Securities Litigation*, 230 F.R.D. 293. In denying plaintiffs' motion to compel production of audit letters and litigation reports, the *Honeywell* court held that where "[a] document [is] created because of anticipated litigation, which tends to reveal mental impressions, conclusions, opinions or theories concerning the litigation, [it] does not lose work-product protection merely because it is intended to assist in the making of a business decision. . ." *Id.* at 300, *quoting Adlman*, 134 F.3d at 1202. As the Court of Appeals observed in *Adlman,* were it to utilize a narrower definition of work product, "documents assessing the strengths and weaknesses of one's case, or the likelihood of settlement and its expected cost, would

be unprotected if prepared for a business purpose rather than to assist in litigation. This result is unwarranted." *Id.*

Although Plaintiffs rely upon *Medinol, Ltd.* v. *Boston Scientific Corp.*, 214 F.R.D. 113 (S.D.N.Y 2000) for the argument that audit letters are mere business documents prepared in the ordinary course, that case has been rejected even within its own district because it conflicts with governing precedent.[6] *See American Steamship Owners Mutual Protection and Indemnity Ass'n.* v. *Alcoa Steamship Co., Inc.* No. 04 Civ. 4309 LAKJCF, 2006 WL 278131, at *1-*2 (S.D.N.Y, Feb. 2, 2006). In holding that audit letters are indeed work product, the court explained its rejection of Medinol in the following passage:

> "'A business entity prepares financial statements to assist its executives, stockholders, prospective investors, business partners, and others in evaluating future courses of action. Financial statements include reserves for projected litigation. The company's independent auditor requests a memorandum prepared by the company's attorneys estimating the likelihood of success in litigation and an accompanying analysis of the company's legal strategies and options to assist it in estimating what should be reserved for litigation losses.' . . . .[T]he opinion letters . . . are work product. . . .I respectfully decline to follow *Medinol* . . . because it appears to be directly in conflict with *Adlman*."

Id. at *1-*2 (quoting *Adlman*, 134 F.3d at 1200).

Further, Plaintiffs mischaracterize the holding in *Logan*, 96 F.3d at 976-77. They assert that *Logan* requires courts to distinguish between documents "developed in the ordinary course of business" and documents "prepared or obtained because of the prospect of litigation," from which they mistakenly conclude that the "because of" standard adopted by the Seventh Circuit actually means that the "primary purpose of the creation of a document must have been litigation." (Pl. Br. at 4) In fact, the discussion in *Logan* of documents created in the "ordinary course of business" distin-

---

[6] In addition, no court citing *Medinol* has used the case to hold that disclosure to an outside auditor waived work product protection.

guishes between documents created when the prospect of litigation is "remote" and those created when litigation is "likely." *Logan*, 96 F.3d at 977. The clear implication is that documents created in the ordinary course of business *can* be protected as work product if the risk of litigation is substantial. Here, the documents at issue all deal with pending or actually threatened litigation; it obviously cannot be said that at the time of their creation the possibility of litigation was "remote."

III. The Provision of the Challenged Documents To Household's Outside Auditors Does Not Diminish Their Work Product Privilege

Plaintiffs understandably do not devote much space in their brief to arguing that disclosure of materials to outside auditors waives the work product protection [7]. (Pl. Br. at 10-11). This is because, as this Court has clearly stated, the disclosure of work product to a third party only waives work product protection if "the protected communications are disclosed in a manner which substantially increases the opportunity for *potential adversaries* to obtain the information." *Smithkline Beecham Corp.* v. *Pentech Pharmaceuticals, Inc.*, No. 00 C 2855, 2001 WL 1397876, at *3 (N.D. Ill. Nov. 6, 2001) (Nolan, M.J.) (emphasis added) (citations and internal quotation marks omitted). Such reasoning has been extended to audit letters. *See, e.g.*, *Gutter* v. *E.I. Dupont de Nemours and Co.*, No. 95-CV-2152, 1998 WL 2017926, at *5 (S.D. Fla. May 18, 1998) ("Waiver of work product only occurs if the disclosure substantially increases the opportunity for potential adversaries to obtain the information. Transmittal of documents to a company's outside auditors does not waive the work product privilege because such a disclosure cannot be said to have posed a substantial danger at the

[7] Needless to say, Plaintiffs' arguments on waiver do not apply at all to draft documents in Households' files that were never disclosed to its outside auditors, such as documents numbered 22-24, 26-28, 30, 31, 44, 45, 48, and 49 on Exhibit A to Plaintiffs' Cross Motion Brief.

time that the document would be disclosed to plaintiffs.") (citations and internal quotation marks omitted); *Gramm* v. *Horsehead Industries, Inc.*, No. 87 Civ. 5122, 1990 WL 142404, at *5 (S.D.N.Y Jan. 25, 1990) ("[D]isclosure to another person who has an interest in the information but who is not reasonably viewed as a conduit to a potential adversary will not be deemed a waiver of protection of the rule."); *see also In re Pfizer Inc. Securities Litigation*, No. 90 Civ. 1260, 1993 WL 561125, at *6 (S.D.N.Y Dec. 23, 1993) (lawyers and independent auditors "obviously shared common interests in the information, and [the independent auditor] is not reasonably viewed as a conduit to a potential adversary. Therefore, no waiver of work product protection occurred by the provision of these documents to [the independent auditor]."); *Southern Scrap*, 2003 WL 21474516, at *9 (no waiver because disclosure of the audit letters to auditors is distinguishable from "those cases where a party deliberately disclosed work-product in order to obtain a tactical advantage or where a party made testimonial use of work-product and then attempted to invoke the work-product doctrine in order to avoid cross-examination").

Plaintiffs' argument that "[d]isclosure of work product to a third party that is aligned with the party's adversary waives any privilege that might otherwise have existed" (Pl. Br. at 10-11) is inapposite because Arthur Andersen was not aligned with any adversary of Household. As the court explained in *Merrill Lynch & Co.* v. *Allegheny Energy, Inc.*, 229 F.R.D. 441, 446-48 (S.D.N.Y. 2004), "any tension between an auditor and a corporation that arises from an auditor's need to scrutinize and investigate a corporation's records and book-keeping practices simply is not the equivalent of an adversarial relationship contemplated by the work product doctrine." *Trepanier* v. *Chamness*, No. 00 C 2393, 2005 U.S. Dist. LEXIS 23293, at *7-8 (N.D. Ill. Oct. 12, 2005) is not to the contrary. To begin with, *Trepanier* did not involve disclosure of work product to an outside auditor. In addition, the *Trepanier* court did not find waiver of work product protection with respect to *any* of the documents at issue in that case. *See id.* at *9-*23. In fact, for each and every document with respect

to which the *Trepanier* plaintiffs claimed that work product protection had been waived through disclosure to a third party, the court expressly found that the disclosure was not inconsistent with the adversarial system, and thus that no waiver had occurred.[8] *Id.* at *14-*15, *15-*16, *20, *21-*22.

Medinol, the other case Plaintiffs invoke for their argument that disclosure of work product to outside accountants creates a waiver, has not been followed by any court for that proposition. (Pl. Br. at 11). Moreover, as noted above, the holding in *Medinol* has been repudiated within its own district due to its inconsistency with controlling authority.

Plaintiffs' insistence that Arthur Andersen somehow waived Household's work product protection is also unavailing because such protection was not Arthur Andersen's to waive. *See Hanson* v. *U.S. Agency for Int'l Devel.*, 372 F.3d 286, 293-94 (4th Cir. 2004) (holding that defendant's consultant/attorney "may not unilaterally waive the [work product protection] that his client enjoys" by disclosing the document to the plaintiff); *see also In re Honeywell International, Inc., Securities Litigation*, 230 F.R.D. 297 n.2 ("The client is the holder of the privilege, and must decide when to assert or waive the privilege."). Household took effective steps to preserve the confidentiality of this material by withholding it from production, listing audit letters on its own privilege log and working closely with Arthur Andersen to secure the return of Arthur Andersen's copies when their inadvertent production was discovered. This Court has already declined to equate an inadvertent production with a waiver, by recognizing at the May 11, 2006 status conference, "[c]onsidering that 5 million documents have been turned over, there is going to be inadvertent disclosure." Transcript of Proceedings—Motions before the Honorable Nan R. Nolan, Magistrate Judge, May 11, 2006, at 47:21-23.

---

[8] The *Trepanier* Court explained that waiver or work product protection "occurs only if the disclosure to a third party 'is inconsistent with the maintenance of secrecy from the disclosing party's adversary.'" *Id.* at *7 (internal citation omitted). In the instances considered by the court, the disclosures of work product were all made to employees or agents of the government agency whose officials were being sued by the plaintiff, which the court concluded did not amount to a waiver. *Id.* at *14-*15, *15-*16, *20, *21-*22.

IV. The Challenged Documents Are Not Relevant, and Their Disclosure Would Prejudice Defendants

In response to Plaintiffs' First Document Demand Request Nos. 17 and 18, the Household Defendants produced thousands of documents that had been provided to Andersen, including documents concerning work performed by Andersen related to lending, reaging, and the restatement, work performed by Andersen on Household's financial reports during the Class Period, consulting work performed by Andersen, and compensation paid to Andersen in connection with the foregoing. Further, Andersen itself has produced over 70,000 pages of documents in response to Plaintiffs' document demands. Of these, the only documents that Household seeks to protect from disclosure contain its counsel's analysis of pending or threatened litigation against the Company, Arthur Andersen memos based primarily on the legal analysis of Household's counsel, and documents that facilitated the creation of Household's counsel's letters. Despite Plaintiffs' attempt to attach some relevance to these documents by broadly generalizing that "[i]n securities fraud litigation, documents relating to the accuracy and completeness of financial statements are relevant" (Pl. Br. at 9), the Challenged AA Documents and the counterpart Household Documents have no bearing on Plaintiffs' theories of securities fraud.

Indeed, although Plaintiffs unpersuasively attempt to distinguish cases cited by Household, they are unable to refer this Court to any authority holding that documents evaluating largely unrelated litigations are relevant to a securities fraud claim. Nor do they dispute the existence of case law in this Circuit finding that such documents are *not* intrinsically relevant. *See Tronitech*, 108 F.R.D. at 655-656 ("An attorney's opinion as to liability or settlement value of a case would not be admissible at trial. . . . [T]he expression of such opinion would not be proper argument. . . . [n]either is there anything in this opinion which conceivably would lead to admissible evidence."). Plaintiffs make no effort to demonstrate a substantial need for these audit letters, or to show that any

probative value of these documents would overcome the prejudice that would result from their disclosure. *See United States* v. *Arthur Young*, , No. 84-C-606-B, 1984 U.S. Dist. LEXIS 22991, at *11-12 (N.D. Okla. Oct. 5, 1984) ("[Even if] a theory of relevance can be advanced concerning the [audit letters] under review, the Court would conclude its probative value is substantially outweighed by the danger of unfair prejudice and public interest concerns.").[9]

Here, an order requiring the disclosure of counsel's legal analysis of actual and threatened litigation would set a troubling precedent — particularly in this contentious litigation, where Plaintiffs' appetite for prejudicial-sounding but ultimately irrelevant evidence seems insatiable. The prejudice to Household from disclosure of its confidential legal analyses would greatly outweigh the minimal probative value (if any) of the subject documents. Plaintiffs have made no showing to the contrary, much less the showing of substantial need required to support an invasion of attorney work product. *See* Fed. R. Civ. P. 26(b)(3).

---

[9] Plaintiffs' attempt to distinguish *Tronitech* and *Arthur Young & Co.* is nothing short of bizarre. Plaintiffs contend that in those cases, "the primary purpose for seeking the documents was to obtain the attorneys' opinion" concerning the lawsuits at issue. (Pl. Br. at 9) However, the motivation of the party seeking discovery of a document has no bearing on whether the document is entitled to protection. Plaintiffs' non-sequitur is compounded by the next sentence of their brief, which states that, "[i]n contrast, all of the Disputed Documents at issue here were prepared in connection with the regular examination of Household's financial statements. . . ." *Id.* This description offers no contrast at all because the documents at issue in *Tronitech* and *Arthur Young* were also audit letters prepared for exactly the same purpose as those at issue here.

CONCLUSION

For the reasons stated herein and in Household's Opening Brief, Arthur Andersen's motion for the return of work product it inadvertently produced to Plaintiffs should be granted in its entirety, and Plaintiffs' cross-motion to compel production of similar or identical documents from Household's files should be denied in full.

Dated: June 2, 2006
Chicago, Illinois

EIMER STAHL KLEVORN & SOLBERG LLP
By: Adam B. Deutsch
Nathan P. Eimer
Adam B. Deutsch

224 South Michigan Ave.
Suite 1100
Chicago, Illinois 60604
(312) 660-7600

CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, New York 10005
(212) 701-3000

Attorneys for Defendants Household International, Inc., Household Finance Corporation, William F. Aldinger, David A. Schoenholz, Gary Gilmer and J.A. Vozar

CERTIFICATE OF SERVICE

Adam B. Deutsch, an attorney, certifies that on June 2, 2006, he caused to be served copies of Household Defendants' Reply Memorandum of Law in Support of Arthur Andersen LLP's Motion for the Return of Inadvertently Produced Privileged Documents and Partial Response to Plaintiffs' Cross Motion to Compel Production of Certain Documents Provided to Outside Auditors by Household Defendants, to the parties listed below via the manner stated.

/s/ Adam B. Deutsch
Adam B. Deutsch

Via E-mail and Fed-Ex

Marvin A. Miller
Lori A. Fanning
MILLER FAUCHER and CAFFERTY LLP
30 North LaSalle Street, Suite 3200
Chicago, Illinois 60602
(312) 782-4880
(312) 782-4485 (fax)

Via E-mail and Fed-Ex

Patrick J. Coughlin
Azra Z. Mehdi
Cameron Baker
Luke O. Brooks
LERACH COUGHLIN STOIA
& ROBBINS LLP
100 Pine Street, Suite 2600
San Francisco, California 94111
(415) 288-4545
(415) 288-4534 (fax)