

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

LAWRENCE E. JAFFE PENSION PLAN, On)	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly)	(Consolidated)
Situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) Judge Ronald A. Guzman
vs.)	Magistrate Judge Nan R. Nolan
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
_____)	

**MOTION PURSUANT TO LOCAL RULE 26.2 FOR LEAVE TO FILE THE CLASS'
REPLY BRIEF IN SUPPORT OF OBJECTION TO THE MAGISTRATE'S ORDER AS
A RESTRICTED DOCUMENT**

Lead Plaintiffs and the Class respectfully move this Court pursuant to Local Rule 26.2 for leave to file the Class' Reply Brief in Support of Objection to the Magistrate's Order Regarding the Application of the Work-Product Doctrine to Audit Letters and Related Documents (the "Reply Brief") as a Restricted Document.¹

Local Rule 26.2 prohibits parties from unilaterally restricting access to publicly filed documents. The Class believes it must file an unrestricted version of the Reply Brief to comply with this rule and its policy objectives. None of the information contained in the Reply Brief can properly be deemed confidential.

Defendants, however, maintain that some of the exhibits to the Reply Brief are confidential in their entirety. The Class is thus forced to file this motion pursuant to Local Rule 26.2.

1. On November 5, 2004, this Court entered a Protective Order (the "Protective Order") governing this action. Dkt. No. 193. The Protective Order provides that all pleadings and briefs must be filed publicly. Protective Order, ¶22. It further provides that a party filing a document "may only redact Confidential Information." *Id.*

2. The Reply Brief contains exhibits that defendants have designated as confidential under the Protective Order. Some of the information relates to the deposition of non-party KPMG LLP. KPMG has agreed to de-designate the information because it relates to general audit procedures followed by KPMG. These audit procedures relate to the process for KPMG's determination of the adequacy of Household International, Inc.'s ("Household") loss reserves for contingent liabilities and the disclosures made to the public regarding such information. This information does not infringe on any privacy or competitive interests. Notwithstanding the fact that

¹ The Class has filed the Reply Brief as a Restricted Document and has provided the Court under separate cover, the brief in its unredacted form. Once the Court denies this motion, the Class will file a public version of the Reply Brief in its entirety.

the entity deposed has waived confidentiality as to the relevant information, the Household defendants have refused to follow suit, contending instead that the entire transcript is confidential. This position is consistent with Household's past practice of designating everything "Confidential," but is contrary to the terms of the Protective Order and Local Rule 26.2.

3. The Reply Brief also contains other excerpts from depositions of Household witnesses. However, like the KPMG information, all of the information at issue in the Reply Brief is not Confidential Information as defined in the Protective Order. It simply discusses the reasons for the Board's review of certain information for accuracy of Household's financial statements as well as who has responsibility for ascertaining reserves. Since the information at issue is not Confidential Information (as defined by ¶3 of the Protective Order), the applicable portions of the Reply Brief do not invoke ¶¶22 and 23 of the Protective Order, which permit a party to file redacted materials with the Court.

4. However, because defendants continue to insist on designating everything, including deposition transcripts in their entirety as "Confidential," plaintiffs are forced to seek this relief from the Court under Local Rule 26.2. Under this rule, as amended on April 20, 2006, only the Court may determine that a particular document or exhibit merits restricted status before any party may file such materials under seal. *See* L.R. 26.2 (as amended on April 20, 2006); *see also* L.R. 26.2 Committee Comments ("only the particular document that has been previously determined by the court to be deserving of protection may be filed under seal").

5. The Court may restrict access to a document only for "good cause shown." *See* L.R. 26(b). To determine whether good cause exists "a district court must balance the harm to the party seeking the protective order against the importance of disclosure to [the] public." *Donny McGee v. City of Chicago*, Case No. 04 C 6352, 2005 U.S. Dist. LEXIS 30925, at *4 (N.D. Ill. June 23, 2005) (quoting *Doe v. White*, No. 00 C 0928, 2001 WL 649536, at *1 (N.D. Ill. June 8, 2001)). Defendant

will be hard pressed to articulate any harm it would suffer today as a result of the public disclosure of a non-party's audit procedures in effect more than four years ago (let alone the "clearly defined and very serious injury" required by courts in this district). *See Andrew Corp. v. Rossi*, 180 F.R.D. 338, 341 (N.D. Ill. 1998). The public interest weighs in favor of disclosure since it pays for the court, has a First Amendment interest in such proceedings, and is otherwise well served by vigorous oversight of accurate financial reporting by public companies. *See, e.g., Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943, 944-45 (7th Cir. 1999) ("the public at large pays for the courts and therefore has an interest in what goes on at all stages of a judicial proceeding").

6. Given defendants' easy resort to motions for sanctions (they have already filed three frivolous motions for sanctions – Dkt. Nos. 314, 477 and 619 – two of which were denied by Magistrate Judge Nolan and a third relating to the Class' refusal to file all briefs as restricted documents is currently pending before Magistrate Nolan), the Class files this motion, which it believes should be denied. No valid cause exists in this case to warrant an exception to the broadly accepted principle followed by the Seventh Circuit, and reflected in Local Rule 26.2 discouraging "parties from being overly-generous in designating documents to be filed under seal." *See* Committee Comment to L.R. 26.2.

7. Accordingly, the Class has filed this motion in compliance with L.R. 26.2, but believes that neither the Reply Brief, nor the exhibits should be restricted.

DATED: August 29, 2006

Respectfully submitted,

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

s/ Azra Z. Mehdi

AZRA Z. MEHDI

PATRICK J. COUGHLIN (90785466)
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
LUKE O. BROOKS (90785469)
MARIA V. MORRIS (223903)
BING Z. RYAN (228641)
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
WILLIAM S. LERACH
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Lead Counsel for Plaintiffs

MILLER FAUCHER AND CAFFERTY LLP
MARVIN A. MILLER
30 North LaSalle Street, Suite 3200
Chicago, IL 60602
Telephone: 312/782-4880
312/782-4485 (fax)

Liaison Counsel

LAW OFFICES OF LAWRENCE G.
SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff