

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

DOCKETED  
APR 04 2003

LAWRENCE E. JAFFE, Pension Plan )  
and on behalf of all others )  
similarly situated, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HOUSEHOLD INTERNATIONAL, INC. )  
ARTHUR ANDERSEN, L.L.P, )  
 )  
Defendants. )

No. 02 C 5893

Judge Ronald A. Guzman  
Magistrate Judge Nan Nolan

FILED  
MAR 8 1 2003

MAGISTRATE JUDGE NAN R. NOLAN  
UNITED STATES DISTRICT COURT

FILED  
MAR 31 2003  
MICHAEL W. JOHNSON  
CLERK  
U.S. DISTRICT COURT

NOTICE OF MOTION

To: Counsel on the Attached Service List

PLEASE TAKE NOTICE that on Thursday, April 3, 2003 at 9:00 a.m., we shall appear before the Honorable Nan Nolan, or any judge sitting in her stead, in Courtroom 1858 of the United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois and then and there present the *Motion for an Order Requiring Defendants to Preserve and Maintain Relevant Documents in the United States*, a copy of which was previously served upon you.

Dated: March 31, 2003

Respectfully submitted,  
Plaintiffs

By:

*Marvin A. Miller*

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*Designated as Local Counsel*

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**DECLARATION OF SERVICE BY FACSIMILE AND OVERNIGHT DELIVERY**

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Francisco, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 24111.

2. That on March 31, 2003, declarant served by both facsimile and next day delivery the NOTICE OF MOTION AND MOTION FOR AN ORDER REQUIRING DEFENDANTS TO PRESERVE AND MAINTAIN RELEVANT DOCUMENTS IN THE UNITED STATES to the parties listed on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of March, 2003, at San Francisco, California.

  
DEBORAH R. DASH

**HOUSEHOLD INTERNATIONAL (LEAD)**

Service List - 3/12/2003 (02-0377)

Page 1 of 2

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**HOUSEHOLD INTERNATIONAL (LEAD)**

**Service List - 3/12/2003 (02-0377)**

**Page 2 of 2**

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**DOCKETED**

APR 04 2003

**FILED**

MAR 31 2003

MAGISTRATE JUDGE NAN R. NOLAN  
UNITED STATES DISTRICT COURT

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

LAWRENCE E. JAFFE PENSION PLAN, On )  
Behalf of Itself and All Others Similarly )  
Situating, )  
  
Plaintiff, )  
  
vs. )  
  
HOUSEHOLD INTERNATIONAL, INC., et al., )  
  
Defendants. )

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Lead Case No. 02-C-5893  
(Consolidated)  
  
CLASS ACTION  
  
Judge Ronald A. Guzman  
Magistrate Judge Nan R. Nolan

**MOTION FOR AN ORDER  
REQUIRING DEFENDANTS TO PRESERVE AND MAINTAIN  
RELEVANT DOCUMENTS IN THE UNITED STATES**

Lead Plaintiff, the Glickenhau Institutional Group, brings this motion seeking an Order requiring defendants to preserve and maintain within the United States all documents relevant to this action, including all electronic documents, files and all back-up tapes.

1. On March 7, 2003, plaintiffs filed an Amended Consolidated Class Action Complaint ("Complaint") alleging violations of the Securities Act of 1933 and the Securities Exchange Act of 1934 against Household International, Inc. ("Household" or the "Company"), its wholly-owned subsidiary Household Finance Corporation ("HFC"), its auditor Arthur Andersen LLP and numerous individuals, including current and former officers and directors of Household and HFC. The Complaint alleges, among other things, that throughout the Class Period (October 23, 1997-October 11, 2002), defendants engaged in scheme of predatory lending, improper re-aging of its customers' delinquent accounts and improper accounting of agreements with third parties, which, in combination with defendants' false and misleading statements, caused Household securities to trade at inflated values.

2. Under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), plaintiffs are prohibited from pursuing formal discovery until such time as this Court denies defendants' motion(s) to dismiss and upholds plaintiffs' Complaint. *See* 15 U.S.C. 77u-4(b)(3)(C)(i). While the PSLRA discovery stay can be lifted upon a showing that discovery is necessary to preserve evidence or to prevent undue prejudice, plaintiffs by this motion seek only an Order requiring defendants to preserve and maintain all relevant documents in the United States.

3. Plaintiffs' Complaint alleges that Household has in its possession, documents and other evidence relevant to plaintiffs' claims. Based upon plaintiffs' counsel's investigation, much of this evidence is contained within Household's computer system, Vision. It is crucial to the prosecution of plaintiffs' case that these documents, including, but not limited to, defendants' back-up tapes, retrieval software, intranet, individual computer hard drives (including laptops) and hard copy files are preserved and made readily available when discovery commences in this action.

4. This relief is necessary because on March 28, 2003, shareholders of defendant Household and HSBC Holdings Plc. ("HSBC"), Europe's largest bank, approved a deal pursuant to which HSBC acquired Household and took control of its operations (the "Merger"). As a result of the Merger, Household ceased to be a public company and will now file reports with the Securities and Exchange Commission on a reduced basis only. Plaintiffs, of course, cannot state with certainty what impact the Merger will have on the discoverable documents in defendants' possession; however, given that Household has been acquired by a massive foreign conglomerate in a \$13 billion merger, the possibility that documents critical to plaintiffs' case may be exported to HSBC's London, England headquarters (or other locations outside the United States) or destroyed or lost in the process of combining the two organizations, is well within the realm of possibility. It is because of this possibility, and the certainty that discovery in this action will not commence for at least several months (briefing on defendants' anticipated motion(s) to dismiss has not yet commenced and is not scheduled to be completed until July 7, 2003), that plaintiffs seek an Order requiring defendants to preserve and maintain all relevant documents in the United States.

5. The prejudicial impact of the destruction of relevant documents is obvious. If defendants are allowed to ship relevant documents abroad, plaintiffs will be similarly prejudiced by

the inability to obtain all necessary documents through discovery, the expenditure of money and time litigating issues surrounding the Hague Convention (including sensitive issues of international comity) and the cost conducting discovery in a foreign country.

6. Household is obligated, as are all other defendants, to preserve all documents relevant to the allegations in the Complaint pursuant to the PSLRA, 15 U.S.C. §§ 78u-4(b)(3)(c)(i). Defendants also have "a common law duty not to spoil documents that might be discoverable in the litigation." *See Danis v. UNS Communs., Inc.*, No. 98 C 7482, 2000 U.S. Dist. LEXIS 16900, at \*37 (N.D. Ill. Oct. 20, 2000) (citing *Barnhill v. United States*, 11 F.3d 1360, 1368 (7th Cir. 1993)). Defendants' "[p]reservation duties do not exist in the abstract, but to serve a purpose: that is, *to ensure that discoverable documents are available to be produced.*" *Id.* at \*100 (emphasis added). If, however, documents relevant to plaintiffs' claims are exported from the United States, they will potentially cease to be available to plaintiff and the purpose behind defendants' preservation duties will be subverted.

7. For example, the United Kingdom, pursuant to Article 23 of the Hague Convention, places severe restrictions on the type and scope of pre-trial discovery, only allowing discovery if each document sought is separately described with particularity. Accordingly, if plaintiffs are forced to resort to the Hague Convention, the export of documents will render most, if not all, relevant documents non-discoverable.

8. Before invoking the Federal Rules of Civil Procedure ("Federal Rules") to obtain discovery of documents located abroad, it must be determined whether plaintiffs first need to resort to the Hague Convention.<sup>1</sup> *See Societe Nationale Industrielle Aerospatiale v. United States Dist. Court for Southern Dist.*, 482 U.S. 522, 544 (1987). By this motion, plaintiffs seek to avoid, among other things, litigating the issue of whether it must first resort to the Hague Convention to obtain documents from Household (or HSBC). Plaintiffs also seek to avoid the unnecessary cost and delay

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<sup>1</sup>The determination of whether plaintiffs must first resort to the Hague Convention is governed by a three-part test, including "(1) the intrusiveness of the discovery requests given the facts of the particular case, (2) the Sovereign interests involved and, (3) the likelihood that resort to the Convention would be an effective discovery device." *In re Aircrash Near Roselawn, Indiana on October 31, 1994*, 172 F.R.D. 295, 309 (N.D. Ill. 1997).

that pursuing discovery through the Hague Convention, followed by pursuing discovery under the Federal Rules, would inevitably entail.

9. Even if plaintiffs are able to obtain pre-trial discovery overseas through means other than the Hague Convention, *i.e.*, under the Federal Rules, the export of relevant documents would severely prejudice plaintiffs by potentially limiting the scope of available discovery and causing them to incur the exorbitant expense of conducting discovery in this complex action in a foreign country.

10. In addition, requiring defendants to preserve and maintain all relevant documents in the United States will avoid potentially infringing on the sovereignty of the United Kingdom (and/or other foreign states). Although clearly outweighed by the sovereign interest the United States has in protecting its citizens and markets from corporate fraud, the United Kingdom by invoking Article 23 of the Hague Convention has manifested a disinclination to allow pre-trial discovery of the type anticipated by plaintiffs. This policy is likely to be especially acute here, where plaintiffs intend to seek discovery from the United Kingdom's largest banking institution – HSBC. Granting this motion will avoid any need to potentially infringe on the United Kingdom's sovereignty in prosecuting this case.

11. Moreover, although it is plaintiffs' position that discovery of documents located abroad under the Federal Rules is subject to the same wide scope of inquiry as domestic discovery, some courts have opined that the scope of discovery sought from foreign litigants should be less intrusive than that which is normally available under the Federal Rules. *See, e.g., Valois of Am. v. Risdon Corp.* 183 F.R.D. 344, 349 (D. Conn. 1997) ("The Court need not decide whether Risdon's discovery requests [containing ninety-six items] are reasonable under the Federal Rules, if they were submitted to an American litigant. Given the concerns articulated by the Supreme Court in [*Aerospatiale*], they clearly are 'too burdensome and too "intrusive."') Thus, if plaintiffs are forced to seek documents abroad, the scope of discovery could potentially be narrowed, again, inhibiting their ability to prosecute this action.

12. Finally, the cost of conducting discovery in this action will be greatly inflated if plaintiffs are forced to pursue, review and copy documents overseas, then ship them back to the

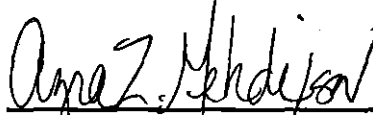


United States. Inevitably, such a process will also increase the time spent litigating this action and delay its resolution, further prejudicing plaintiffs and the class.

13. Thus, given the impending Merger, the complexity of this action and the size of the Company, an Order requiring Household to preserve and maintain all relevant documents in the United States is warranted and necessary.

DATED: March 31, 2003

Respectfully submitted,



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