

**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.)	
_____)	

**SUPPLEMENTAL DECLARATION OF AZRA Z. MEHDI IN SUPPORT OF THE
CLASS' OBJECTION TO THE MAGISTRATE'S JULY 6, 2006 ORDER REGARDING
THE APPLICATION OF THE WORK-PRODUCT DOCTRINE TO AUDIT LETTERS
AND RELATED DOCUMENTS BASED UPON THE DECEMBER 7, 2006 TESTIMONY
OF KENNETH H. ROBIN**

REDACTED VERSION

I, AZRA Z. MEHDI, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the States of California, New York and in the Northern District of Illinois. I am a member of the law firm of Lerach Coughlin Stoia Geller Rudman & Robbins LLP, counsel of record for lead plaintiffs and the certified Class in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto.

2. The Class submits four additional documents in support of its Objection To The Magistrate's July 6, 2006 Order Regarding The Application Of The Work-Product Doctrine To Audit Letters And Related Documents. The Class wishes to supplement the current record based upon the testimony of Household International, Inc.'s ("Household" or the "Company") General Counsel Kenneth H. Robin taken on December 7, 2006.

3. During the deposition of Mr. Robin on December 7, 2006, he testified that document Bates numbered HHS 03187270-71, which was marked as Exhibit 62 at the deposition, was a copy of a letter Mr. Robin wrote to John F. Curtis of the Office of the Comptroller of the Currency ("OCC") on March 1, 2002, enclosing a copy of the annual audit letter regarding pending or threatened litigation against Household and its subsidiaries as of December 2001. Attached hereto as Exhibit 1 is a true and correct copy of that document. Notably, Mr. Robin's letter says nothing of the audit letter being privileged material or work product. Rather, Mr. Robin states that the "enclosed materials contain confidential business and financial information concerning Household." Ex. 1 at HHS 03187270. Further, Mr. Robin testified that he could not recall if the 2001 annual audit letter was the only letter provided by Household to the OCC.

4. Significantly, Mr. Robin then testified that another document, Exhibit 63, which was produced by Arthur Andersen LLP ("Andersen") on August 20, 2004, bearing the Bates numbers KPMG 04313-52 was a copy of that annual audit letter regarding pending and threatened litigation

sent to the OCC. Attached hereto as Exhibit 2 is a true and correct copy of that document. Significantly, this document was never recalled by either Andersen or Household, despite the extensive motion practice surrounding the audit letters and related documents produced by both Household and Andersen. Accordingly, any privilege, if it existed at all has been waived. *See e.g., Trepanier v. Chamness*, No. 00 C 2393, 2005 U.S. Dist. LEXIS 23293, at **7-8 (N.D. Ill. Oct. 12, 2005) (disclosure of work product to a third party that is aligned with the party's adversary waives any privilege that might otherwise have existed); *Urban Outfitters, Inc. v. DPIC Cos.*, 203 F.R.D. 376, 380-81 (N.D. Ill. 2001) (the five factor balancing test "places responsibility for protecting the confidentiality of sensitive documents squarely on the party asserting the privilege" and the party who failed to take adequate measures to insure the confidentiality of its documents waived the privilege as to these documents); *MG Capital LLC v. Sullivan*, No. 01 C 5815, 2002 U.S. Dist. LEXIS 11803, at *10 (N.D. Ill. June 27, 2002) (failure to assert privilege for one month is unreasonable and favors waiver).¹

5. Of note are two points here, as argued extensively by the Class in its briefs before the Magistrate Judge as well as before this Court: (1) audit letters were part of the ordinary course of the audit process, and (2) even Household considered them to be business and financial information, that they shared with parties other than their auditors when necessary.

6. Further reinforcing the Class' point here that audit letters are not privileged and do not fall under the work product doctrine is Exhibit 3, Bates numbered PFG001436, a March 1, 2002 letter by Mr. Robin to Richard M. Riccobono of the Office of Thrift Supervision ("OTS") also

¹ The unreported cases cited herein are attached to the Motion For Leave To File Supplemental Declaration Of Azra Z. Mehdi In Support Of The Class' Objection To The Magistrate's Order Regarding The Application Of The Work-Product Doctrine To Audit Letters And Related Documents Based Upon The December 7, 2006 Testimony of Kenneth H. Robinas Tabs 1 and 2.

providing the OTS with a copy of the 2001 annual audit letter, advising the OTS that the “enclosed materials contain confidential business and financial information concerning Household.” Attached hereto as Exhibit 3 is a true and correct copy of that letter. This document was also produced by third party Promontory Financial Group (“Promontory”), a consulting firm hired by Household, demonstrating that the dissemination of the audit letters was not limited only to the Company’s outside auditors.

7. The Class also submits of the Court’s consideration Exhibit 4 Bates numbered PFG001434-35, a copy of Mr. Robin’s March 1, 2002 letter to the OCC. Attached hereto as Exhibit 4 is a true and correct copy of that document. This document was also produced by Promontory, again bolstering the Class’ argument that audit letters are not work product, but rather business and financial information created for the purpose of the annual audit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 11th day of December, 2006, at San Francisco, California.

s/ Azra Z. Mehdi

AZRA Z. MEHDI

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