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,	)	Lead Case No. 02-C-5893 (Consolidated)
Plaintiffs,	)	
v.	)	Hon. Ronald A. Guzman
	)	Magistrate Judge Nan R. Nolan
HOUSEHOLD INTERNATIONAL, INC., et al.,	)	
Defendants.	)	

NOTICE OF FILING

TO: Counsel on Attached Service List

PLEASE TAKE NOTICE that on May 13, 2003, Defendant Arthur Andersen LLP, by and through its attorneys, Mayer, Brown, Rowe & Maw, caused to be filed with the United States District Court for the Northern District of Illinois, **Defendant Arthur Andersen LLP's Motion to Strike Paragraphs 180 and 181 of Plaintiffs' [Corrected] Amended Consolidated Complaint, Defendant Arthur Andersen LLP's Motion to Dismiss Counts I, III and IV of Plaintiffs' [Corrected] Amended Consolidated Complaint** and **Memorandum of Law in Support of Defendant Arthur Andersen LLP'S Motion to Dismiss Counts I, III and IV of Plaintiffs' [Amended] Consolidated Class Action Complaint**, copies of which are attached and hereby served upon you.

Respectfully submitted,

By: _____
One of the Attorneys for Arthur Andersen LLP

Stanley J. Parzen
Lucia Nale
Susan Charles
Debra Bogo-Ernst
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street
Chicago, Illinois 60603
312-782-0600 (Phone)
312-701-7711 (Facsimile)

93

SERVICE LIST

Patrick J. Coughlin
Azra Z. Mehdi
Luke O. Brooks
MILBERG WEISS BERSHAD HYNES &
LERACH LLP
100 Pine Street, Suite 2600
San Francisco, CA 94111
(415) 288-4545
(415) 288-4534 (facsimile)

Marvin A. Miller
Jennifer Winter Sprengel
Lori A. Fanning
MILLER FAUCHER & CAFFERTY LLP
30 North LaSalle Street, Suite 3200
Chicago, Illinois 600602
(312) 782-4800
(312) 782-4485 (facsimile)

William S. Lerach
MILBERG WEISS BERSHAD HYNES &
LERACH LLP
401 B Street, Suite 1700
San Diego, CA 92101
(619) 231-1058
(619) 231-7423 (facsimile)

Counsel for Plaintiffs

Nathan P. Eimer
Adam B. Deutsch
EIMER STAHL KLEVORN & SOLBERG
224 South Michigan Avenue, Suite 110
Chicago, Illinois 60605
(312) 660-7600
(312) 692-1718 (facsimile)

Norman Beck
WINSTON & STRAWN
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-7422
(312) 558-5700 (facsimile)

Counsel for Defendants

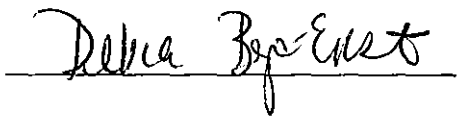
David F. Graham
SIDLEY AUSTIN BROWN & WOOD
Bank One Plaza
10 South Dearborn Street
Chicago, Illinois 60603
(312) 853-7000

Michael J. Chepiga
Allison R. Kimmel
SIMPSON THACHER & BARTLETT
425 Lexington Avenue
New York, NY 10017-3954
Telephone: (212) 455-2000
Facsimile: (212) 455-2502

Attorneys for Defendants
Goldman Sachs & Co. and Merrill Lynch, Pierce, Fenner & Smith, Inc.

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on May 13, 2003, I caused copies of the foregoing Notice of Filing, Defendant Arthur Andersen LLP's Motion to Strike Paragraphs 180 and 181 of Plaintiffs' [Corrected] Amended Consolidated Complaint, Defendant Arthur Andersen LLP's Motion to Dismiss Counts I, III and IV of Plaintiffs' [Corrected] Amended Consolidated Complaint, and Memorandum of Law in Support of Defendant Arthur Andersen LLP'S Motion to Dismiss Counts I, III and IV of Plaintiffs' [Amended] Consolidated Class Action Complaint to be served upon the persons on the attached service list by depositing same in the United States mail at 190 South LaSalle Street, Chicago, Illinois 60603 before 5:00 p.m. on the aforementioned date.



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, Plaintiffs, v. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) Hon. Ronald A. Guzman Magistrate Judge Nan R. Nolan

DEFENDANT ARTHUR ANDERSEN LLP'S MOTION TO STRIKE PARAGRAPHS 180 AND 181 OF PLAINTIFFS' [CORRECTED] AMENDED CONSOLIDATED COMPLAINT

Defendant Arthur Andersen LLP ("Andersen") respectfully moves, pursuant to Federal Rules of Civil Procedure 12(f) for an order striking paragraphs 180 and 181 of plaintiffs' [Corrected] Amended Consolidated Complaint ("Complaint").

In support of its motion, Andersen states the following grounds:

1. Paragraph 180 of the Complaint alleges that Andersen's "conduct surrounding the Household affair is hardly an isolated incident" (Cmplt. at ¶ 180) and makes various allegations that refer to other "cases" where the plaintiffs allege that there were problems with audit work which Andersen performed for other audit clients. Paragraph 181 asserts that these "cases" show that Andersen has disregarded its duty to investors in other audit engagements. These pages and pages of allegations are an obvious effort to have the Court decide this motion to dismiss and this case on what allegedly occurred *elsewhere* rather than on the audit work Andersen conducted for Household. Many of these other audit clients may be known to the Court since there have been

93

reports about the litigation relating to these other cases. However, as the plaintiffs must admit (because there have be no adjudications that any of Andersen's audit work was at all improper in any of these other cases), the other cases are only "allegations" and the allegations made in the other cases, as well as those in this Complaint are just that – allegations which Andersen has denied. Hence, the allegations relating to Andersen's other audit work are immaterial to the allegations in this case. The fact that plaintiffs have sunk to such a blatant attempt to poison the well merely highlights the fact that they can allege no facts to state a claim against Andersen in connection with Andersen's audits of the financial statements of Household. As this Court is well aware, accounting firms are sued frequently. Often, as in this case, those suits are without merit, and the existence of such other cases has no bearing here. Permitting these allegations to remain in the Complaint in this case not only will permit irrelevant and immaterial matters to remain in the Complaint, but will require this Court to spend time on extraneous matters, and will prejudice Andersen.

2. Andersen requests, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, that this Court strike paragraphs 180(a)-(j) and 181 of the Complaint as immaterial, impertinent and scandalous. Rule 12(f) permits a court to strike allegations that are "devoid of merit, unworthy of consideration and prejudicial." *See, e.g., Carroll v. CTA*, No. 01C 8300, 2002 WL 206064, at *1 (N.D. Ill. Feb. 8, 2002) (citations omitted).[1] It also permits the Court to strike allegations which are impertinent or redundant. *See Porter v. IBM,* 21 F.Supp.2d 829, 831-32 (N.D. Ill. 1998).

3. The allegations of paragraphs 180 and 181 should be stricken pursuant to Rule 12(f) for two compelling reasons. *First*, what Andersen did or did not do on other audits of the

[1] All unpublished opinions cited in this motion are attached as Ex. A hereto.

financial statements of other companies has no relevance to what was done during its audits of the financial statements of Household. Indeed, what an auditor has done with respect to the audits of another company's financial statements is so far off point that it is not only irrelevant, but it is also not even discoverable. *See In Re The One Bankcorp Securities Litigation,* 134 F.R.D. 4, 11 (D. Me. 1991) (requests for information on other audits "do not seek relevant evidence or information reasonably calculated to lead to admissible evidence"); *WAIT Radio v. Century Broadcasting Corp.*, No. 85 C 07579, 1989 WL 135005, at *5 (N.D. Ill. Oct. 12, 1989) ("analysis of the properties and transactions of an accounting firm's other clients are unrelated to the subject matter of this cause of action. . ."); *CalPers v. Arthur Andersen LLP*, No. Civ. 97-1899, at p. 3 (D. Ariz. June 7, 1999) ("Whatever might have been done or not done on an unrelated audit is completely irrelevant to the issue of the quality of Arthur Andersen's [audit] work [here]").

Second, the fact that there may be allegations about a defendant's conduct made by another plaintiff in a different case has no relevance to a lawsuit and does not belong in a complaint. Indeed, two Judges from this district have stricken references to other litigation and to other allegations made by regulators from complaints. These decisions support the striking of paragraphs 180 and 181 here. *See Beck v. Cantor Fitzgerald*, 621 F. Supp. 1547, 1565 (N.D. Ill. 1985), *called into question on other grounds, Schlifke v. Seafirst Corp.*, 866 F.2d 935, 939-40 (7th Cir. 1989); *State of Illinois v. Sperry Rand Corp.*, 237 F. Supp. 520, 522-23 (N.D. Ill. 1965). *Sperry Rand Corp.* was an antitrust action brought by the State of Illinois against Sperry Rand Corporation. In the complaint in that case, the State of Illinois referred to a civil action brought by the United States against the same defendant seeking to enjoin those same defendants from violations of the antitrust laws. The complaint also referred to a criminal proceeding brought

against the same defendant. Judge Will struck from the complaint all references to both the criminal case and the civil case, noting as to the civil case that "surely the bare allegations relating to the pendency of a suit have no place in the complaint and serve no useful purpose." *Id.* at 523. *Beck* involved a securities fraud complaint against an accounting firm and the company whose financial statements the auditor had reported upon. The complaint in that case referenced the fact that there had been an SEC investigation of the company, the SEC had concluded that the company's accounting was incorrect, and that the company and the auditor had purportedly acquiesced in the SEC's position. The accounting firm moved to strike these allegations. Judge Conlon granted the motion to strike holding these allegations were irrelevant and immaterial for several reasons, including the fact that the defendants had not agreed with the opinion of the SEC and that regardless the material was not admissible pursuant to Federal Rules of Evidence 408 and 410. *Beck*, 621 F. Supp. at 1565-66. Just as in *Sperry Rand Corp.* and *Beck,* what the plaintiffs here reference in paragraphs 180 and 181 is nothing more than allegations made by sundry people about other work. Those allegations are not relevant or material to the allegations in this case. Allegations are just that — allegations[2] — and they should be stricken under the law in this district.[3]

---

[2] Since the matters referenced are not adjudications but allegations (or, in one instance, a consent agreement), the Court need not reach the question of whether the matters should nonetheless be stricken because they are merely other bad act evidence designed to argue that Andersen must have done something wrong here. Nevertheless, Andersen notes that, should the Court reach this issue, Rule 404 of the Federal Rules of Evidence precludes plaintiffs from doing what they are seeking to do here. *See* Fed. R. Evid. 404; *see e.g., Berkovich v. Hicks,* 922 F.2d 1018, 1022 (2d Cir. 1991): *Johnson v. Ford Motor Co.*, 988 F.2d 573, 579 (5th Cir. 1993); *Roberts v. Harnishfeger Corp.*, 901 F.2d 42, 44-45 (5th Cir. 1989). Paragraphs 180-181 should be stricken from the Complaint for this reason as well.

[3] Paragraph 180 also refers to the fact that Andersen reached a consent agreement with the SEC in relation to Waste Management. Cmplt. at ¶ 180 (f). As Judge Conlon held in *Beck, see* 621 F. Supp. at 1566, and as confirmed by Judge Will in *Sperry Rand Corp., see* 237 F. Supp. at 522-23, such a consent agreement is not admissible and should be stricken from the complaint. *See also Petruzzi's IGA* (cont'd)

4. In the end, what plaintiffs are trying to do is to deprive Andersen of a fair hearing on this motion to dismiss by alleging that Andersen committed other bad acts. In this regard, it is exceedingly noteworthy that with respect to one of the matters that plaintiffs reference, Baptist Foundation, *see* Compl. at ¶180(h), the United States Court of Appeals for the Ninth Circuit recently affirmed dismissal of claims brought by certain of the investors on Rule 9(b) grounds. *See Bartlett v. Arthur Andersen,* No. 01-17327, 2003 WL 173521, at *2 (9th Cir. Jan. 24, 2003). Likewise, counsel for the Special Committee relating to another one of the matters, Global Crossing, *see* Cmplt. at ¶ 180(e), recently concluded that there was nothing inappropriate about the accounting referenced in this Complaint.[4]

5. It may well be that in other situations the auditing work performed by Andersen has been challenged. The fact that such challenges have been made does not mean, however, as plaintiffs hope, that this Court should ignore its obligation to apply the requirements of the

---

(... cont'd)

Supermarkets, Inc. v. Darling-Delaware Co., 998 F.2d 1224, 1246-47 (3d Cir. 1993) (evidence of settlements in two antitrust actions inadmissible).

Plaintiffs also reference the fact that Andersen was convicted of obstruction of justice charges with respect to Enron. Of course, this has nothing to do with Household. But even more than that, the conviction is on appeal and, therefore, not only has no relevance to the allegations before this Court, but is not an adjudication which can be introduced at trial, even if it otherwise were acceptable to include such allegations (which it is not). *Hutchins & Hutchins v. Int'l Paper Co.*, 6 F.R.D. 510, 512 (W.D. La. 1947) (in lawsuit against defendant for draining chemicals into streams and killing livestock, court struck allegations that the defendant had been convicted for discharging liquid into the streams).

[4] It is noteworthy that while plaintiffs' attorneys seek to poison the well with unsubstantiated allegations against Andersen, there is a judicial determination in this district that the same plaintiffs' attorneys who filed the Complaint filed a securities fraud case (indeed, the very Lincoln Savings case that they reference in their allegations) so meritless and in such outrageous conduct that the jury entered a $45,000,000 verdict against these plaintiffs' attorneys. *See* Verdict Form for *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, Case No. 92 C 7768 (N.D. Ill., April 12, 1999), attached as Ex. B. If it were appropriate for this Court to consider allegations against Andersen that had been asserted in other cases to determine whether fraud was pled with particularity in this case, then it certainly would also be appropriate for this Court to consider an actual determination against plaintiffs' counsel that allegations in another complaint should never have been brought.

PSLRA to the Complaint to determine whether the allegations relating to the Household audits are sufficient to comply with the PSLRA. Indeed, that was the conclusion recently of Judge Gettleman in a similar case against Andersen alleging Section 10(b) violations based on a restatement of earnings. Judge Gettleman found that those plaintiffs could not meet their pleading obligations and dismissed the complaint against Andersen. *Riggs Partners, LLC*, No. 02 C 1188, 2002 WL 3145721, at *9 (N.D. Ill. Oct. 25, 2002); *see also Rothman v. Gregor*, 220 F.3d 81 (2d Cir. 2000) (dismissing defendant Andersen for failure to sufficiently plead scienter).

WHEREFORE, Andersen respectfully requests that this Court strike paragraphs 180 and 181 from plaintiffs' Complaint.

Dated: May 13, 2003

ARTHUR ANDERSEN LLP

By: _____
One of the Attorneys for Arthur Andersen LLP

Stanley J. Parzen
Lucia Nale
Susan Charles
Debra Bogo-Ernst
MAYER, BROWN, ROWE & MAW
190 South LaSalle Street
Chicago, Illinois 60603
312-782-0600 (Phone)
312-701-7711 (Facsimile)

SEE CASE FILE FOR EXHIBITS