

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 5893	DATE	3/13/2009
CASE TITLE	Lawrence E. Jaffe Pension Plan vs. Household International, Inc., et al.		

DOCKET ENTRY TEXT

For the reasons set forth in this Order, defendants' motion to preclude plaintiffs from advancing certain statements as a basis for liability [doc. no. 1317] is granted in part and denied in part.

Docketing to mail notices.

	Courtroom Deputy Initials:	LC/LM
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Defendants ask the Court to bar plaintiffs from presenting evidence with respect to allegedly misleading statements 1, 5, 7, 9, 11, 12, 13, 15, 16, 18, 19, 21, 22, 23, 25, 26, 28, 30, 31, 32, 35, 36, 37, 39-42 and 46-47. (*See* Kavalier Decl. Supp. Defs.' Mot. Limine Preclude Pls. Advancing Certain Statements Basis Liability Any Def., Ex. 5, Household International False Statements.) Defendants say the challenged statements are not actionable because they: (1) were made outside the class period; (2) are immaterial puffery; (3) are too vague to be material; and/or (4) cannot properly be attributed to them.

As the Court previously ruled, any statement alleged to have been made before the class period began on July 30, 1999 is not actionable. (*See* Mem. Opinion & Order of 2/28/06 at 6.) Thus, plaintiffs may not present evidence with respect to statement 1.

Defendants contend that evidence pertaining to all or part of statements 5, 7, 11, 15, 18, 21, 25, 30 and 35 should also be barred because they are just puffery. *See Searls v. Glasser*, 64 F.3d 1061, 1066 (7th Cir. 1995) (stating, in the context of section 10(b), that "promotional phrase[s] . . . devoid of any substantive information," "indefinite predictions of 'growth,'" and optimistic statements that "lack [] . . . specificity" are immaterial as a matter of law). Though there is no bright line that separates actionable statements from puffery, "[t]he key [to distinguishing them] is whether the proposition at issue can be proven or disproven using standard tools of evidence." *City of Monroe Employees Retirement Sys. v. Bridgestone Corp.*, 399 F.3d 651, 674 (6th Cir. 2005). Consequently, "vague statements not subject to verification by proof are generally deemed non-actionable puffery." *Id.* In light of these principles, the Court finds that: (1) the challenged portions of statements 5, 7, 15, 21, 30 and 35 contain some puffery, but it is entwined with verifiable assertions of fact, which are actionable despite the puffery; (2) the challenged portions of statements 9, 18 and 25 are inactionable puffery; (3) statement 11, which defendants challenge in full, contains actionable assertions of fact.

Defendants also seek to bar any evidence pertaining to statements 12, 13, 16, 19, 23, 26, 32, 37 and 39, in which Household denies that it engages in predatory lending practices, because "predatory lending" is too vague to be material. The Court disagrees. Though predatory lending encompasses a variety of practices, the list of which evolves as lenders devise new abusive tactics, the U.S. Treasury Department uses the term to describe lending practices that "involve[] engaging in deception or fraud, manipulating the borrower through aggressive sales tactics, or taking unfair advantage of a borrower's lack of understanding about loan terms." HUD-Treasury Task Force on Predatory Lending, *Curbing Predatory Home Mortgage Lending* at 1 (June 2000), available at <http://www.huduser.org/Publications/pdf/treasrpt.pdf> (last visited Mar. 5, 2009); *see* OCC Advisory Ltr. 2003-3 at 3, available at <http://www.occ.treas.gov/ftp/advisory/2003-3.pdf> (last visited Mar. 5, 2009) (saying that "predatory lending may often involve fraudulent, deceptive, or high-pressure sales tactics"). Courts and commentators use the term in the same sense. *See In re First Alliance Mortgage Co.*, 471 F.3d 977, 984 (9th Cir. 2006) (describing predatory lending as "the practice of making loans containing interest rates, fees or closing costs that are higher than they should be in light of the borrower's credit and net income, or containing other exploitative terms that the borrower does not comprehend."); Lynne F. Riley, *The Bankruptcy Perspective: Predatory Lending in the Home Mortgage Market*, Ann. Surv. Bankr. L. Part II § 13 (2007) ("The term 'predatory lending' generally refers to abusive lending practices involving fraud, deception, and unfairness" and includes "[m]aking unaffordable loans based on the borrower's home equity without regard to the borrower's ability to repay the loan" or "[i]nducing a borrower to repeatedly refinance a loan . . . and charging high points and fees for each refinance thereby depleting the homeowner's equity" or "[e]ngaging in fraud or deception to conceal the true nature of the loan obligation from a naive borrower"); Tania Davenport, *An American Nightmare: Predatory Lending in the Subprime Home Mortgage Industry*, 36 Suffolk U. L. Rev. 531, 541-42 (2003) (noting that there is no "all-encompassing list of predatory practices" but saying "[t]ypical predatory tactics involve deceiving the borrower as to the true terms and consequences of the loan, manipulating by aggressive or dishonest sales tactics, taking advantage of borrowers' lack of understanding of loan terms or their credit options, or forcing the borrower to purchase expensive 'optional' products"). Given the consensus on the nature of lending practices deemed to be predatory, the Court finds that Household's statements about predatory lending are not too vague to be actionable.

contend that these statements, which appeared in various newspapers, cannot be attributed to them because there is no evidence that they endorsed or were otherwise "entangled" with them. That might be true if the statements were third parties' interpretations of Household's business or statements. But they are not. Rather, they are, for the most part, quotes from Household's agents or statements directly attributed to them. Such statements can form the basis for a securities fraud claim. *In re Marion Merrell Dow, Inc.*, No. 92-0609-CV-W-6, 1993 WL 393810, at *3 (W.D. Mo. Oct. 19, 1993) (holding that a securities fraud claim can be based on statements attributed to the company if the speaker is identified); *see San Leandro Emergency Med. Group Profit Sharing Plan v. Philip Morris Cos., Inc.*, 75 F.3d 801, 810 (2d Cir. 1996) (stating in dicta that "it might be reasonable" to attribute to Philip Morris a statement that was not "attributed to any specific Philip Morris representative" but was "[i]n an article specifically about Philip Morris" that contain "numerous quotes from named company officials"). Applying that reasoning here, the Court holds that plaintiffs:

- (1) may present evidence regarding statements 19, 22, 23, 32, 39 40,¹ 41,² and 46;
- (2) may present evidence as to a portion of statement 12 ("Stroom says HFC never pressures people to buy life insurance.");
- (3) may present evidence as to a portion of statement 26 ("Household spokeswoman Megan Hayden denied the company engaged in predatory lending practices through its Beneficial and Household Finance subsidiaries[.]") and a portion of statement 42 ("We've made mistakes," said Megan Hayden, spokeswoman for the Prospect Heights, Ill., company. "Is there a companywide pattern of abuse? Absolutely not."");
- (4) may present evidence as to a portion of statement 37 ("Household denied that it misleads customers. 'Acorn continues to launch baseless accusations and lawsuits rather than work to enact real solutions to help eliminate predatory lending from the marketplace,' the lender's statement said[.]"), if plaintiffs identify the "lender's statement" to which it refers;
- (5) may present evidence as to statement 47, if plaintiffs can identify the Household spokeswoman to which it refers;
- (6) may present evidence as to statements 31 and 36, if plaintiffs can identify the speaker quoted in each;
- (7) may not present evidence as to the other portions of statements 26, 37 and 42 or statement 28 in its entirety.

¹In the full article, the quote is attributed to Craig Stroom.

²In the full article, the quotes are attributed to Megan Hayden.