

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.		

DOCKET ENTRY TEXT

For the reasons set forth in this order, the Court grants plaintiff's motion in limine no. 9 to exclude certain testimony of defendants' expert Roman Weil [doc. no. 1345].

Docketing to mail notices.

	Courtroom Deputy Initials:	LC/LM
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Plaintiffs move to bar defense expert Roman Weil from testifying: (1) about Household's motivation for re-aging accounts (2) that re-aging increases cash flow and net income; (3) that Household's loss reserves were adequate; and (4) that fraudulent financial reporting was not the reason that Household had to restate its financials.

The motion is granted with respect to the first and fourth opinions. Weil can explain what re-aging means to accountants, the extent to which consumer finance businesses like Household use re-aging, and why and when, from an accounting perspective, the practice may be necessary or desirable. He has no basis, however, for testifying about Household's reasons for using the practice. Similarly, Weil can testify that financial restatements can be prompted by errors, and thus, do not necessarily imply that a company has intentionally misrepresented its financial status. However, he has no basis for opining that error, rather than intentional misrepresentation, was the cause of Household's restatement.

Weil's opinion that re-aging is demonstrably beneficial for cash flow is also unsupported. The only evidence he cites for that proposition are statements by Household and those made by securities analysts based on information from Household. (*See* Pls.' Mem. Law Supp. Mot. Exclude Certain Testimony Defs.' Expert Roman Weil, Ex. A, Weil Report at 21-24.) The essence of this opinion – re-aging is good because Household says so – is not appropriate expert testimony.

Weil also cannot testify that Household had adequate loss reserves. (*Id.* at 28.) He draws that conclusion from a comparison of Household's ratios of year-end credit loss reserves to net charge offs and year-end reserves to loans receivable/held in the years 1999-2002 to those of nine other subprime lenders in the same period. (*Id.* at 28 n.64 & Exs. 3 & 4.) He does not, however, opine on the accuracy or limitations of this method or say that it is a common or acceptable method of determining the adequacy of loss reserves among accounting professionals. In fact, his deposition testimony suggests that it is not:

- A. . . . The only analysis that I was able to do was to compare Household's allowances as ratios to other financial statement items in contrast to other comparable companies
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- Q. Who decided to analyze the adequacy of reserves in this fashion?
- A. I did.
- Q. And would this analysis be sufficient for an auditor to rely upon in determining the adequacy of Household's reserves?
- A. No.

(Pls.' Mem. Law Supp. Mot. Exclude Certain Testimony Defs.' Expert Roman Weil, Ex. B, Weil Dep. at 124-25.) Because defendants have not established that the "methodology underlying [Weil's loss reserves] testimony is . . . valid," *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-93 (1993), it is inadmissible under Rule 702.