

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	3/17/2009
CASE TITLE	Lawrence E. Jaffe Pension Plan vs. Household International, Inc.		

DOCKET ENTRY TEXT

For the reasons set forth in this Order, defendants' motion to exclude testimony of plaintiffs' expert Charles Cross is denied.

Docketing to mail notices.

	Courtroom Deputy Initials:	LC/LM
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Defendants seek to bar plaintiffs' expert Charles Cross from testifying. Cross was the Enforcement Chief of the division of Washington's Department of Financial Institutions ("DFI") who did the investigation underlying the DFI's Expanded Report of Examination For Household Finance Corporation III as of April 30, 2002. Defendants say Cross cannot opine that Household engaged in certain practices nationwide because those are conclusions he extrapolated from only a few consumer complaints in one state. Cross testified, however, that his conclusions were based not only on the investigation he conducted in Washington but on documents and information he received from regulators in thirty-nine other states. (Owen Decl. Supp. Defs.' *Daubert* Mot. Exclude Expert Testimony Ghiglieri, Cross & Devor, Ex. 2, Cross Dep. at 145-46.) Thus, defendants' extrapolation objection is overruled.

Alternatively, defendants say that Cross' reliance on hearsay from other regulators renders his testimony inadmissible. Cross testified, however, that regulators ordinarily consult with, and rely on the findings of, their peers. (*Id.* at 76) Thus, his reliance on such evidence is permitted by Rule 703.

Defendants also argue that Cross' testimony should be barred under Rule 403 because it will create "mini-trials" on each of the complaints Cross investigated and could lead the jury to believe that the findings in the DFI Report constitute binding adjudications. The latter concern can be addressed by a jury instruction. The former concern is really illusory. The complaints that Cross investigated concerned the lending practices about which Household is alleged to have made misstatements. As a result, defendants will not need any new or additional evidence to rebut Cross' testimony.

Finally, defendants say that Cross cannot testify because, as a state regulator, he was biased in favor of consumers. Cross' alleged bias, which defendants explored on cross-examination, goes to the weight of his testimony not its admissibility.