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RONALD A. GUZMAN, JUDGE
UNITED STATES DISTRICT COURT

**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)
Situating.)

Plaintiff,)

v.)

HOUSEHOLD INTERNATIONAL, INC., et)
al.,)

Defendants.)

No. 02 CV 5893

Judge Ronald A. Guzmán

PRELIMINARY INSTRUCTIONS

Introductory paragraphs

Ladies and gentlemen: You are now the jury in this case, and I want to take a few minutes to tell you something about your duties as jurors and to give you some instructions. At the end of the trial, I will give you more detailed instructions. Those instructions will control your deliberations.

One of my duties is to decide all questions of law and procedure. From time to time during the trial and at the end of the trial, I will instruct you on the rules of law that you must follow in making your decision. You, on the other hand, will decide all questions of fact.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be.

Order of Trial

The trial will proceed in the following manner:

First, Plaintiffs' attorney may make an opening statement. Next, Defendants' attorney may make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

After the opening statements, Plaintiffs will call witnesses and present evidence. Then, Defendants will have an opportunity to call witnesses and present evidence. At the end of each

week, the attorneys will be allowed to make a brief statement to summarize the evidence presented during that week.

After the evidence has been presented, the attorneys will make closing arguments and I will instruct you on the law that applies to the case.

After that, you will go to the jury room to deliberate on your verdict.

Elements Instructions

To help you follow the evidence that will be presented to you during the trial, I will give you a brief outline of what Plaintiffs must prove in order to win on each of their claims.

In order to win on their claim under Federal Securities Laws Section 10(b) and Rule 10b-5 against any Defendant, Plaintiffs must prove each of the following elements by a preponderance of the evidence as to that defendant:

- First, Plaintiffs must prove that, during the Class Period, the Defendant made a false statement of fact or omitted a fact that was necessary, in light of the circumstances, to prevent a statement that was made during the Class Period from being misleading.
- Second, Plaintiffs must prove that the false statement or the omitted fact was material. A fact is "material" if there is a substantial likelihood that a reasonable investor would consider it important in determining whether or not to purchase Household's stock.
- Third, Plaintiffs must prove that the Defendant acted with a particular state of mind which can be established by showing that the Defendant, in misrepresenting or omitting a material fact, acted either knowingly with an intent to manipulate or deceive or with recklessness. "Recklessness" an extreme departure from the standards of ordinary care, which presents a danger of misleading investors that is either known to the Defendant or so obvious that the Defendant must have been aware of it.
- The fourth element of Plaintiffs' 10b-5 claims is reliance. Because this case involves securities that were publicly traded, it will be presumed that, if a Defendant made a material false statement or omission, investors relied upon that statement or omission in deciding to purchase Household stock.
- Fifth, Plaintiffs must prove a causal connection between any material misrepresentation or omission and an economic loss by the Plaintiffs. To prove this plaintiffs must prove both (a) that they purchased Household stock at a price that was artificially inflated because a misrepresentation or omission during the Class Period and (b) that the subsequent disclosure of the truth during the Class caused the investment's decline in value and the Plaintiffs' loss.

To win on their claim under Section 20(a) against any Defendant, Plaintiffs must first establish that there was a violation of Section 10(b) and Rule 10b-5, by proving each of the elements I just described. That would be called a “primary violation.”

Then, in addition, Plaintiffs must prove by a preponderance of the evidence that the Defendant was a “controlling person” who can be held responsible for the actions of other persons who have violated Section 10(b). Remember that the word “person” can refer to a corporation or other legal entity; it does not need to be an individual.

To prove that a Defendant was a “controlling person,” Plaintiffs must satisfy a two-part test:

- First, they must prove that the Defendant actually exercised general control over the operations of the person or entity that committed a primary violation.
- And, second, they must prove that the Defendant had the power or ability, even if it was not exercised, to control the specific transaction or activity — in this case, the specific statement or omission — upon which the primary violation was based.

Plaintiffs must prove each of those facts separately as to each Defendant they allege was a controlling person.

Keep in mind that these instructions are only a preliminary outline of what Plaintiffs must prove in order to prevail on each of their claims. At the end of the trial I will give you final instructions on these matters, and the instructions given at the end of the trial will govern your deliberations.

When I say a particular party must prove something by a preponderance of the evidence, I mean that when you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person’s race, color, religion, national ancestry, or sex.

Evidence in the Case

I have mentioned the word “evidence.” The evidence in this case will consist of

- the testimony of the witnesses (whether in person or by videotape);
- the exhibits that are admitted in evidence;
- any facts that the parties may stipulate, or agree, to; and

- any facts that I may instruct you to find.

When I say that something has been “admitted into evidence” or “received into evidence,” I mean that the particular testimony or the particular exhibit may be considered by you in making the decisions you must make at the end of the case.

A “stipulation” is an agreement among the parties on both sides of the case that certain facts are true. You must accept those facts as proved, without the presentation of evidence.

In addition, I may take what is called “judicial notice” of certain facts. Judicial notice is a rule of evidence that allows a court to accept a fact in evidence if it cannot reasonably be disputed. You must also accept those facts as proved, without the presentation of evidence.

Inferences

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an inference. A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

Direct and Circumstantial Evidence

You may have heard the phrases direct evidence and circumstantial evidence. Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a the witness who says, I was outside a minute ago and I saw it raining. Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. When the time comes to deliberate on your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

What Is Not Evidence

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

- the attorneys' opening statements, their interim statements at the end of each week of trial, and their closing arguments;
- the questions and objections of the attorneys;
- any rulings I make on those objections;
- any testimony that I instruct you to disregard; and
- anything you may see or hear when the court is not in session (even if what you see or hear is done or said by one of the parties or by one of the witnesses or by one of the attorneys).

During the course of the trial I may instruct you that certain evidence is being admitted for a limited purpose only. When I do so, you must consider this evidence only for that limited purpose and no other.

Credibility of Witness

You will have to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also have to decide what weight, if any, you give to the testimony of each witness.

Rulings on Objections

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers.

When I "sustain" an objection, I am excluding that evidence from this trial for a good reason. When you hear me say that I have "overruled" an objection, that means that I am permitting that evidence to be admitted.

You should not infer or conclude from any ruling or other comment I may make that I have any opinions about how you should decide this case. And if I sustain an objection and a question then goes unanswered by a witness, you should not guess or speculate what the answer might have been, and you should not draw any inferences or conclusions from the question itself or from my ruling.

Bench Conferences

At times during the trial it may be necessary for me to talk with the lawyers here at the bench out of your hearing, or by calling a recess. We meet because often during a trial something comes up that doesn't involve the jury. During the bench conferences, or sidebars, you must remain seated in the jury box.

We will, of course, do what we can to keep the number and length of these conferences to a minimum, but you should remember the importance of the matter you are here to determine and be patient even though the case may seem to go slowly.

Note-Taking Allowed

You will be provided with paper and pencils for taking notes. You are not required to take notes. If you feel that taking notes will distract you from paying attention to the testimony and the witnesses, do not take notes.

Any notes you take during this trial are only aids to your memory. The notes are not evidence.

If you do not take notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

If you decide to take notes, mark your note pad with your name. When you leave the courthouse during the trial, your notes should be left in the courtroom/jury room. When you leave at night, your notes will be secured and not read by anyone. At the end of the trial, your notes will be destroyed, and no one will be allowed to read the notes before they are destroyed.

You must not read the notes taken by your fellow jurors, for the same reason that you are not to discuss the case until after all of the evidence has been presented.

No Transcript Available to Jury

You should pay close attention to the testimony as it is given. At the end of the trial you will have to make your decision based on what you recall of what the testimony was. You will have a copy of all the exhibits that are admitted into evidence, but you will not have a written transcript of the testimony to consult.

If you are unable to hear a witness or a lawyer, please raise your hand immediately and I will see that this is corrected.

Jury Conduct

All jurors must follow certain rules of conduct, and you must follow them, too.

First, you must not discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. You must not let others discuss the case with you. If anyone tries to talk to you about the case, please let me know about it immediately.

Second, it is not likely that there will be any news media coverage of this case, it is not that kind of case. However, if there is, you must not read any news stories or articles, or listen to any radio or television reports, or read any blogs or other Internet sources about the case or about anyone who has anything to do with it.

Third, you must not do any research, such as consulting dictionaries, searching the Internet or using other reference materials, and you are not to make any investigation about the case on your own.

Fourth, if you need to communicate with me, simply give a signed note to the [clerk/marshal] to give to me.

Fifth, you must not make up your mind about what the verdict should be until after you have heard all the evidence and gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Remember, what I have just given you in these preliminary instructions is only a brief outline. I have not covered every issue of law that will be important to you when you deliberate. At the end of the trial, I will give you a complete charge on the law. You will be given a copy of my final instructions that you can take into the jury room for use during your deliberations. If there is any difference between what I just told you and what I tell you in the instructions I give you at the end of the trial, the instructions given at the end of the trial will govern. It will be your job to determine each of the facts of the case fairly and impartially, under my explanation of the law.