UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED, Plaintiff, *- against -* HOUSEHOLD INTERNATIONAL, INC., ET AL., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman

DEFENDANTS' REQUESTED FINAL JURY INSTRUCTIONS (INCLUDING AUTHORITIES)

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April 15, 2009

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 1
[COURT'S INSTRUCTION #1]

The Function of the Court and the Jury

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. 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.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.01 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 2
[COURT'S INSTRUCTION #2 (modified)]

All Litigants Equal Before the Law

In this case, some of the parties are corporations. All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.03 (2005) (modified pursuant to the Court's instructions during the Final Pretrial Conference (Transcript 530:17–531:06 (Mar. 18, 2009)).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 3
[COURT'S INSTRUCTION #3 (modified)]

The Evidence (includes Deposition Testimony)

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

During the trial, certain testimony was presented to you by showing you video recordings of depositions. You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

A stipulation is an agreement between both sides that certain facts are true.

If I have taken judicial notice of certain facts, you must accept those facts as proved.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.04 (2005) (modified by adding the second paragraph concerning deposition testimony). The Court's Instruction #3 is modified to reflect the fact that multiple depositions, and only videotaped depositions, were presented during the trial.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 4
[COURT'S INSTRUCTION #4]

Consideration of All Evidence Regardless of Which Party Produced

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.08 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 5
[COURT'S INSTRUCTION #5]

What Is Not Evidence

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. That includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements, periodic summations and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.06 (2005) (modified by adding a reference to "periodic summations" in the last paragraph).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 6
[COURT'S INSTRUCTION #6 (modified)]

Limited Purpose of Evidence

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

During the trial I provided you with a written copy of the limiting instructions that apply to certain categories of evidence, including analyst reports, investor relations reports, presentations to investors, ratings agency reports, newspaper and magazine articles, complaints and settlements in other legal proceedings, and individual customer complaints. I will not read those instructions again, but they are included in the instructions that [you will take / will be sent] to the jury room and that you must follow in your deliberations. Some of the evidence that was admitted for a limited purpose does not fit into any of those categories.

Some evidence was admitted for the limited purpose of assisting you to evaluate an expert witness's opinion. The underlying information must not be used by you for any other purpose.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.09 (2005) (modified by referring to written limiting instructions provided during trial). The Court's Instruction #6 is modified by adding the second paragraph to make clear (a) that the limiting instructions provided during trial are to be followed and (b) that the categories in those instructions are not all-inclusive.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 6-1

Evidence Admitted for a Limited Purpose — To Show That Information Was Publicly Available

Certain evidence in this case is admitted for a limited purpose only to show that the contents were publicly available, whether they affected the price of Household stock, or that Defendants were on notice of the contents. You must consider this evidence only for the limited purpose for which it was admitted.

First, a number of documents known as analyst reports will be offered. Analyst reports are written by market analysts employed by investment banks or brokerage firms, who comment on Household's business, its securities, and the economy in general. These exhibits are not admitted to show that what the analysts said was true. This evidence is admitted only to show that the contents of the analyst reports were publicly available, whether they affected the price of Household stock, or that Defendants were on notice of the contents, and for no other purpose.

Second, certain documents called investor relations reports will be offered. Household's investor relations reports were prepared by Household employees for internal use within the company. The investor relations reports typically include quotations or excerpts from selected analyst reports. To the extent the investor relations reports quote from, attach or paraphrase statements made by analysts, you may consider those portions of the investor relations reports only for the limited

purpose of showing that the contents of the analyst reports were publicly available, whether they affected the price of Household stock, or that Defendants were on notice of the contents, and for no other purpose.

Third, evidence will be offered about certain presentations that Household executives made to analysts and investors, either in person or on conference calls. This evidence is admitted for the limited purpose of showing that the contents of the presentations were publicly available or whether they affected the price of Household stock, and for no other purpose.

Fourth, some reports prepared by ratings agencies that relate to Household's financial condition may be offered. These reports are not admitted to show that what the ratings agencies said was true. This evidence is admitted only to show that the contents of the ratings agencies' reports were publicly available, whether they affected the price of Household stock, or that Defendants were on notice of the contents, and for no other purpose.

Fifth, a number of newspaper and magazine articles will be offered. These articles are not admitted to show that the contents of the articles were true. Unless I instruct you to the contrary, you are to consider newspaper or magazine articles only for the limited purpose of showing that the contents of the articles were publicly available, whether they affected the price of Household stock, or that Defendants were on notice of the contents, and for no other purpose.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 6-2

Evidence Admitted for a Limited Purpose — To Show What Defendants Knew

Certain evidence in this case is admitted only for the limited purpose of showing what one or more of the Defendants knew when they made the public statements that Plaintiffs allege were false or misleading. You must consider this evidence only for the limited purpose for which it was admitted.

First, evidence may be offered about complaints that were filed publicly against Household in certain other lawsuits during the relevant time period. This evidence is not admitted to show that the allegations asserted against Household in those prior lawsuits were true. These litigation documents, and any testimony about them, are admitted only for the limited purpose of (a) showing that the existence and nature of the prior lawsuits were known to one or more of the Defendants, (b) showing that this information was publicly available, or (c) showing whether the complaints affected the price of Household stock. You are not to consider this evidence for any other purpose.

Second, evidence may be offered about complaints made by certain individual customers of Household. The evidence about individual customer complaints is not admitted to show that the customers' statements were true. This evidence is admitted only for the limited purpose of showing that the existence and

nature of the complaints were known to one or more of the Defendants, and for no other purpose.

Third, evidence may be offered about settlements that Household entered into to resolve certain legal proceedings during the relevant time period. Evidence about a settlement is not admitted to show that Household was at fault or admitted any wrongdoing in the matter that was settled. The evidence is admitted only for the limited purpose of showing whether a settlement affected the price of Household stock, and you must not consider this evidence for any other purpose.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 7
[COURT'S INSTRUCTION #7]

Evidence Limited to Certain Parties

Each party is entitled to have the case decided solely on the evidence that applies to that party.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.10.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 8
[COURT'S INSTRUCTION #8]

Weighing the Evidence

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 "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.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.11 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 9
[COURT'S INSTRUCTION #9]

Definition of "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 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. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.12 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 10
[COURT'S INSTRUCTION #10]

Testimony of Witnesses; Deciding What To Believe

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

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.13 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 11
[COURT'S INSTRUCTION #11]

Prior Inconsistent Statements or Acts

You may consider the statements given by any party or witness who testified under oath before trial as evidence of the truth of what he or she said in the earlier statements, as well as in deciding what weight to give his or her testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.14 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 12
[COURT'S INSTRUCTION #12]

Lawyer Interviewing Witness

It is proper for a lawyer to meet with any witness in preparation for trial.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.16 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 13

Representation of Witnesses

[Defendants request that this instruction be given in the event that any question or comment during the trial gives rise to an inference or suggestion that it is illegal or improper for a corporation to provide legal representation to its current or former employees. See Transcript of Final Pretrial Conference at 621:17–23 (Mar. 19, 2009).]

You have heard testimony from some of the witnesses that Household has paid attorney fees for them to be represented in connection with this case, including representation at depositions. The law permits a corporation to pay the legal expenses for a lawyer that current or former employees use, if the expenses are incurred as a direct consequence of their discharge of their duties.

Authority: *In Re JDS Uniphase Corp. Sec. Litig*. (N.D. Cal. 2007) (Wilken, J.), Jury Charge at 6–7 (modified); Del. Code Ann. tit. 8, § 145.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 14
[COURT'S INSTRUCTION #13]

Number of Witnesses

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.17 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 15
[COURT'S INSTRUCTION #14]

Absence of Evidence

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.18 (2005).

DEFENDANTS' [CONDITIONAL] REQUESTED INSTRUCTION NO. 16 [COURT'S INSTRUCTION #15 (modified)]

Spoliation/Destruction of Evidence

[Defendants object to the Court's proposed Instruction #15 in its entirety. The same instruction was denied during the Final Pretrial Conference (see Transcript at 624:01–12 (Mar. 19, 2009)). Defendants object further on the grounds that the proposed instruction is contrary to the Court's order denying Plaintiffs' motion seeking the same counterfactual adverse inference (Docket No. 1504) and contrary to Magistrate Judge Nolan's prior ruling on some of the same issues (Docket No. 933). Defendants object further on the grounds that Seventh Circuit Pattern Instruction § 1.20 does not fully state the legal principles relevant to the particular circumstances of this case and on the grounds that the proposed instruction is not warranted by the evidentiary record, argumentative and unfairly prejudicial to Defendants. In addition, Defendants object to Plaintiffs' [Proposed] Jury Instruction No. 35 and incorporate, as though fully set forth herein, Defendants' Response and Objection set forth at Final Pretrial Order, Exhibit I-2, pp. 49-50. In the event that the Court chooses to instruct the jury on spoliation or destruction of evidence notwithstanding Defendants' objections, and only in that event, Defendants propose the following alternate jury instruction. Defendants reserve the right to object and/or further amend the proposed instruction at such time as the Court proposes specific language to be used in place the bracketed phrases in the first paragraph.]

Plaintiffs contend that defendants at one time possessed [*describe evidence allegedly destroyed*]. However, defendants contend that [*evidence never existed, evidence was not in its possession, evidence was not destroyed, loss of evidence was accidental, etc.*].

Defendants' destruction or inability to produce a document, standing alone, does not warrant an inference that the document contained information that is unfavorable to the defendants. You may assume that such evidence would have

been unfavorable to defendants only if you find by a preponderance of the evidence that:

1. Defendants had a duty to preserve the evidence;
2. Defendants intentionally caused evidence relevant to plaintiffs' claims to be destroyed; and
3. Defendants caused the evidence to be destroyed in bad faith, in other words, for the purpose of hiding adverse information from the plaintiffs in this case.

In weighing an accusation of bad faith, you must carefully consider all the circumstances surrounding the destruction of any document.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.20 (2005) (modified); *Park* v. *City of Chicago*, 297 F.3d 606, 615 (7th Cir. 2002) (a party's "destruction of or inability to produce a document, standing alone, does not warrant an inference that the document, if produced, would have contained information adverse to [the party's] case"); *Dierson* v. *Walker*, 2003 WL 21317276, at *4 (N.D. Ill. June 6, 2003) (Nolan, M.J.); *Wiginton* v *Ellis*, 2003 WL 22439865, at *4-5 (N.D. Ill. Oct. 27, 2003) (quoting *Mathis* v. *John Morden Buick, Inc*., 136 F.3d 1153, 1155 (7th Cir. 1998))].

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 17
[COURT'S INSTRUCTION #16]

Expert Witnesses

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.21 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 18

Expert Testimony Does Not Prove Facts Relied Upon

Expert witnesses sometimes are permitted to base their opinions on information that is not admissible under the rules of evidence, or to use evidence for purposes other than the limited purpose for which the evidence has been admitted. You are permitted to consider such evidence for the limited purpose of assisting you to evaluate the expert's opinion. If a fact has not been proved to you by evidence that is admitted to prove the truth of its contents, you may not accept that fact as proved just because an expert witness has referred to the information or used it as a basis for his or her opinion.

Authority: *In re James Wilson Assocs*., 965 F.2d 160, 172–73 (7th Cir. 1992) ("The fact that inadmissible evidence is the (permissible) premise of the expert's opinion does not make that evidence admissible for other purposes, purposes independent of the opinion"; an expert may not be used "as a vehicle for circumventing the rules of evidence"); *Gong* v. *Hirsch*, 913 F.2d 1269, 1272-73 (7th Cir. 1990) (trustworthiness of underlying data relied upon by an expert is not irrelevant, and although an opinion may be formed from underlying information, Rule 703 does not automatically mean that the information itself is independently admissible); *Grant* v. *Chemrex, Inc*., No. 93C0350, 1997 WL 223071, at *8 (N.D. Ill. Apr. 28, 1997) (Marovich, J.) (expert witness may not be used to circumvent the rules of evidence by introducing unreliable conclusions "through the back door").

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 19
[COURT'S INSTRUCTION #17]

Summaries

[Defendants request that only the relevant portion(s) of this instruction be given, depending on whether the parties have / have not stipulated to the accuracy of those summary exhibits admitted in evidence during the trial.]

Stipulated

The parties agree that [*describe summary in evidence*] accurately summarizes the contents of documents, records or books. You should consider these [*summaries / charts*] just like all of the other evidence in the case.

Not Stipulated

Certain [*describe summary in evidence*] is/are in evidence. The original materials used to prepare those [*summaries / charts*] also are in evidence. It is up to you to decide if the [*summaries /charts*] are accurate.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.23 (2005). The Court's Instruction #17 is modified by including the paragraph headings used in the pattern instruction, for assistance in determining which portion(s) of the instruction are needed, and by allowing for the description of exhibits as "charts," for clarity.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 20
[COURT'S INSTRUCTION #18]

Demonstrative Exhibits

Certain demonstrative exhibits have been shown to you. Those exhibits are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.24 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 21
[Court's Instruction #19 (modified)]

Multiple Claims: Multiple Defendants

You must give separate consideration to each claim and each party in this case. Although there are three individual defendants, it does not follow that if one is responsible for violating the securities laws, the others are also responsible. Household is a corporation, however, and it can act only through its employees, agents, directors or officers. If an individual defendant violated Section 10(b), and if he did so while acting within the scope of his duties as an officer of Household, the corporation will also be liable. Plaintiffs are required to prove each element of each of their claims separately as to each individual defendant, and you will have to decide separately as to each individual defendant whether or not plaintiffs have met that burden.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.27 (2005) (modified). The Court's Instruction #19 is modified pursuant to the Court's instructions during the Final Pretrial Conference (Transcript 601:01–604:01 (Mar. 19, 2009)).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 22
[COURT'S INSTRUCTION #20 (modified)]

Dismissed/Withdrawn Defendant

Arthur Andersen is no longer a defendant in this case. Do not speculate on the reasons. Even though Arthur Andersen is no longer a defendant, if you find that there was any violation of the securities laws, you will be asked to determine what portion of the blame, if any, should be allocated to Arthur Andersen.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.26 (2005) (modified). The Court's Instruction #20 is modified pursuant to the Court's instructions during the Final Pretrial Conference (Transcript 633:03–637:13 (Mar. 19, 2009)).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 23
[COURT'S INSTRUCTION #21 (modified)]

Burden of Proof

Plaintiffs bear the burden of proving each element of each of their claims by a preponderance of the evidence. When I say a particular party must prove something by "a preponderance of the evidence," or when I use the expression "if you find," or "if you decide," this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.27 (2005) (modified by adding introductory sentence).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. 24

Disbelieving Testimony Is Not a Sufficient Basis for a Contrary Conclusion

Plaintiffs have the burden of proving every element of their claims. If you do not believe the testimony that was given on a particular issue, you may disregard the testimony. Disbelieving a witness is not, by itself, a sufficient basis for drawing a contrary conclusion. Unless the plaintiffs have presented evidence sufficient to prove that issue, they have not carried their burden of proof simply because you disbelieve a witness's testimony.

Authority: 9B Wright & Miller, *Federal Practice & Procedure* Civ.2d § 2527, "Credibility of Witnesses" (2008) (A party cannot meet its burden of proof "by relying on the hope that the jury will not trust the credibility of the witnesses. . . . There must be some affirmative evidence . . . ."); *Bose Corp*. v. *Consumers' Union of U.S., Inc*., 466 U.S. 485, 512 (1984) (testimony that is not believed may simply be disregarded but "is not considered a sufficient basis for drawing a contrary conclusion"); *Heft* v. *Moore*, 351 F.2d 278, 284 (7th Cir. 2003) ("[t]o avoid a directed verdict, the plaintiff must do more than argue that the jury might have disbelieved all of defendant's witnesses. Rather, the plaintiff must offer substantial affirmative evidence to support her argument"); *Millbrook v. IBP, Inc.*, 280 F.3d 1169, 1181 (7th Cir. 2002) (if plaintiff's only evidence in that defendants' witnesses were not worthy of belief, it is a "no-evidence case" which plaintiff must lose because he has the burden of proof).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 25
[COURT'S INSTRUCTION #22 (modified)]

10b-5 Elements

Plaintiffs contend that defendants Household, William Aldinger, David Schoenholz and Gary Gilmer each violated Section 10(b) of the Securities Exchange Act and the Securities Exchange Commission or SEC's Rule 10b-5. From now on, I will use "10b-5" to refer to both the Section and the Rule.

To prevail on their 10b-5 claim 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 relevant time 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 from being misleading. Recall that the relevant time period is the period of time between July 30, 1999 and October 11, 2002.

Second, plaintiffs must prove that the false statement or the omitted fact was material.

Third, plaintiffs must prove that the defendant acted with a particular state of mind that shows an intent to deceive, manipulate, or defraud. This state of mind can be established by showing that the defendant, in misrepresenting or omitting a

material fact, acted either with knowledge of the statement's falsity or with reckless disregard of a substantial risk that the statement was false.

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 of a misrepresentation or omission during the relevant time period; and (b) that the subsequent disclosure of the truth during that relevant time period caused the investment's decline in value and the plaintiffs' loss.

Plaintiffs are required to prove each of these elements by a preponderance of the evidence, and you will have to decide separately as to each defendant whether or not plaintiffs have met that burden. If you find that the plaintiffs have proved each of the above elements as to any defendant, your verdict should be for the plaintiffs and against that defendant. If you find that the plaintiffs have not proved each of the above elements as to any defendant, your verdict should be for that defendant and against the plaintiffs.

When you retire to deliberate, you will be provided with a Verdict Form on which you will record your decision, as to each defendant, on each of the essential elements.

Authority: Adapted from Pattern Civil Jury Instructions: *Eleventh Circuit, Civil Cases*, § 4.2 (2005); Pattern Civil Jury Instructions: *Fifth Circuit, Civil Cases*, § 7.1 (2006); 15 U.S.C. §§ 78j(b); 17 C.F.R. § 240.10b-5; Dura Pharmaceuticals v. Broudo, 544 U.S. 335, 341–42 (2005) (basic elements of action under § 10(b), including loss causation); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 (1976) ("[T]he term 'scienter' refers to a mental state embracing intent to deceive, manipulate, or defraud."); Higginbotham v. Baxter Int'l., Inc., 495 F.3d 753, 758 (7th Cir. 2007); ("[T]he required state of mind is an intent to deceive, [which is] demonstrated by knowledge of the statement's falsity or reckless disregard of a substantial risk that the statement is false."); Ray v. Citigroup Global Markets, Inc., 482 F.3d 991, 995–96 (7th Cir. 2007) (elements of 10b-5 claim; transaction causation is not to be confused with loss causation, a showing that the proximate cause of a subsequent loss was the alleged fraud); Sundstrand Corp. v. Sun Chemical Corp., 553 F.2d 1033, 1045 (7th Cir. 1977) (reckless conduct in the 10b-5 is a "highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it."). The Court's Instruction #22 is modified (a) to correspond to the preliminary instructions given during trial (see Trial Transcript at 233:06–234:19 (Mar. 31, 2009)), (b) to omit information duplicative of the following expanded instructions on the individual elements, and (c) to reflect the definitions of "scienter" set forth in controlling Supreme Court and Seventh Circuit precedent.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 26
[Court's Instruction #23 (modified)]

First Element — False or Misleading Statement

To prove the first element of their 10b-5 claim against any defendant, plaintiffs must demonstrate that, during the relevant time 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 from being misleading.

The alleged false statements and omissions asserted by plaintiffs are as follows:

> [*Describe the specific statements or omissions claimed to have been fraudulently made*.]

In determining whether those statements were false or misleading, you must consider each statement in light of the circumstances that existed at the time it was made.

An omission does not support a 10b-5 violation unless the defendant had a duty to disclose the information. 10b-5 imposes a duty to disclose only if omitting a fact would cause a statement that is made to be misleading.

The defendants do not have a duty to disclose every fact they possess about Household or any fact that is in the public domain. If a defendant does not have a

duty to disclose a fact but chooses to make a statement about it, the statement must be truthful and not misleading.

Because Household is a public company, it is required to file with the SEC an annual report, called a 10-K, and quarterly reports, called 10-Qs, for the first three quarters of each year. These reports include financial statements. Financial statements present a company's financial position at one moment in time, or its operating results and cash flows for a specified period. A company's financial statement need not provide all the information that is available about the company. Household has no duty to update its 10-Q reports on any cycle other than quarterly.

Even if statements about a company's sources of revenue are misleading, that does not make the revenue figures in the company's financial statements misleading. If a company is accused of having violated the law and there is a good faith dispute about the facts, the company may be required to disclose the existence of the dispute, but it has no duty to admit contested charges or accuse itself of illegal conduct.

Authority: Adapted from *Pattern Civil Jury Instructions: Eleventh Circuit, Civil Cases*, § 4.2 (2005); *Pattern Civil Jury Instructions: Fifth Circuit, Civil Cases*, § 7.1 (2006); *Model Civil Jury Instructions: Ninth Circuit*, § 18.0 (2007); ABA, Section of Litigation, *Model Jury Instructions: Securities Litigation*, § 5.02 (1996); *Basic, Inc*. v. *Levinson*, 485 U.S. 224, 239 n.17 (1988) ("Silence, absent a duty to disclose, is not misleading under Rule 10(b)-5."); *Chiarella* v. *United* States, 445 U.S. 222, 234-35 (1980) ("there can be no fraud absent a duty to speak."); *Higginbotham* v. *Baxter International, Inc*., 495 F.3d 753, 759–60 (7th Cir. 2007) (securities laws do not require disclosure of information already in the public domain; no rule of law requires 10-Q reports to be updated on any cycle other than quarterly); *Gallagher* v. *Abbott Labs*., 269 F.3d 806, 808 (7th Cir. 2001) ("We do not have a system of continuous disclosure."); *Schlifke* v. *Seafirst Corp.*, 866 F.2d 935, 944 (7th Cir. 1989) ("The express language of 10b-5 only proscribes omissions that render affirmative statements misleading . . . ."); *Chu* v. *Sabratek Corp.*, 100 F.Supp.2d 815, 834 (N.D. Ill. 2000) (Castillo, J.) ("A plaintiff cannot credibly claim to be misled by a company's attempt to hide negative information when the same information is publicly available via alternate channels.") (Castillo, J.); *Goldberg* v. *Freedom Federal Savings Bank*, No. 88C4787, 1989 WL 8503, at *4 (N.D. Ill. Jan. 31, 1989) (Conlon, J.); *see also Indiana Electrical Workers' Pension Trust Fund IBEW* v. *Shaw Group, Inc.* 537 F.3d 527, 541 (5th Cir. 2008) (citing *Gross* v. *Summa Four, Inc.* 93 F.3d 987, 992 (1st Cir. 1996) (no duty to disclose all nonpublic material that a corporation has in its possession); Regulation S-K, Item 303(a), 17 C.F.R. § 229.303(a); *Anderson* v. *Abbott Labs.*, 140 F. Supp. 2d 894, 906-07 (N.D. Ill. 2001) (Moran, J.) ("SEC rules do not create a duty to confess contested charges. . . ."); *In re Marsh & McLennan Cos., Inc. Securities Litigation*, 501 F. Supp. 2d 452, 470 (S.D.N.Y. 2006) (misleading statements about sources of revenue do not make statements of revenue figures misleading).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 27
[Court's Instruction #24 (modified)]

Second Element — Materiality

To prove the second element of their 10b-5 claim against any defendant, plaintiffs must demonstrate that a false or misleading statement made by the defendant was "material."

A factual representation is material if there is a substantial likelihood that a reasonable investor would have considered it important in deciding whether to buy or sell Household stock. An omission is material if a reasonable investor would have regarded what was not disclosed as having significantly altered the "total mix" of information that it took into account in deciding whether to buy or sell Household stock.

For this purpose, a reasonable investor is assumed to be a person of ordinary intelligence with a general understanding of the business world and is presumed to have information that is available in the public domain.

In determining whether a statement or omission is material, you must consider it in light of the circumstances that existed at the time the statement was made or the fact was omitted.

A statement is not material if the statement on its face is vague, loosely optimistic boasting, or if it is merely a promotional phrase that is devoid of any substantive information.

Authority: Adapted from *Model Civil Jury Instructions: Ninth Circuit*, § 18.2 (2007); Kevin F. O'Malley et al., *Federal Jury Practice and Instructions — Civil*, § 162.235, 162.281 (5th ed. 2007); *Basic, Inc*. v. *Levinson*, 485 U.S. 224, 231–32 (1988) (citing *TSC Indus., Inc*. v. *Northway, Inc*., 426 U.S. 438, 449 (1976)); *Rowe* v. *Maremont Corp.*, 850 F.2d 1226, 1232–33 (7th Cir. 1988); *In re Allscripts, Inc. Securities Litigation*, No. 00C6796, 2001 WL 743411, at *6 (N.D. Ill. June 29, 2001) (Kocoras, J.); *Makor Issues & Rights, Ltd*. v. *Tellabs*, Inc., 437 F.3d 588, 596 (7th Cir. 2006) ("vague aspiration or unspecific puffery" is not material), *vacated and remanded on other grounds*, 127 S.Ct. 2499 (2007); *Eisenstadt* v. *Centel Corp*., 113 F.3d 738, 746 (7th Cir. 1997); *Searls* v. *Glasser*, 64 F.3d 1061, 1066 (7th Cir. 1995).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 28
[COURT'S INSTRUCTION #25 (modified)]

Third Element — Scienter

To prove the third element of their 10b-5 claim against any defendant, plaintiffs must demonstrate that the defendant acted with an intent to deceive, manipulate or defraud.

Plaintiffs must establish this wrongful state of mind separately as to each defendant. If one of the individual defendants made a material false statement knowing that it was false or with reckless disregard for a substantial risk that it was false, he acted with the required state of mind. If an individual defendant made a statement that was misleading because he omitted a material fact knowing that the omission would cause his statement to be misleading or with reckless disregard for a substantial risk that the omission would cause his statement to be misleading, he acted with the required state of mind.

In order to find the required state of mind on the basis of "recklessness," it is not enough to find that a defendant acted with simple negligence or even inexcusable neglect. Recklessness closely approaches conscious deception. A defendant's conduct is reckless only if it is an extreme departure from the standards of ordinary care and if it presents a danger of misleading investors that is either known to the defendant or so obvious that he had to have been aware of it.

Plaintiffs must establish the required state of mind separately for each statement they contend is false or misleading. A finding that any defendant acted with the required wrongful state of mind depends on what he knew at the time the particular statement or omission was made.

Remember that a corporation can only act through its employees. To prove that Household acted with a wrongful state of mind, plaintiffs must show that an individual defendant or other Household officer acted with the required state of mind in making a false statement or omission of material fact. If so, and if that individual was acting within the scope of his or her employment and in attempt to further the company's goals, then Household also acted with the required state of mind with respect to that statement or omission. If plaintiffs fail to prove that any Household officer acted with a wrongful state of mind, they have also failed to show a wrongful state of mind as to Household.

An honest mistake in judgment, an honest error in management or even negligence or carelessness does not demonstrate an intent to deceive. Good faith on the part of a defendant is inconsistent with fraudulent intent. Plaintiffs bear the burden of proving that a defendant did *not* act in good faith.

Authority: Adapted from *Pattern Civil Jury Instructions: Eleventh Circuit, Civil Cases*, § 4.2 (2005); *Pattern Civil Jury Instructions: Fifth Circuit, Civil Cases*, § 7.1 (2006); Kevin F. O'Malley *et al., Federal Jury Practice and Instructions — Civil*, §§ 162.232, 162.284 (5th ed. 2007); Hon. Leonard B. Sand *et al., Modern Federal Jury Instructions*, § 82-8 (2008); ABA, Section of Litigation, *Model Jury Instructions: Securities Litigation*, §§ 4.02[4], 4.02[4][a], 4.02[4][b] (1996); *Makor Issues & Rights, Ltd.* v. *Tellabs, Inc.*, 513 F.3d 702, 708 (7th Cir. 2008); *Pugh* v. *Tribune Co*., 521 F.3d 686, 694 (7th Cir. 2008) (plaintiffs must create a strong inference of scienter with respect to each individual defendant); *Higginbotham* v. *Baxter Int'l., Inc*., 495 F.3d 753, 758 (7th Cir. 2007); ("[T]he required state of mind is an intent to deceive, [which is] demonstrated by knowledge of the statement's falsity or reckless disregard of a substantial risk that the statement is false."); *SEC* v. *Jakubowski*, 150 F.3d 675, 681 (7th Cir. 1998) ("[O]nly persons who act with an intent to deceive or manipulate violate Rule 10b-5."); *Robin* v. *Arthur Young & Co.*, 915 F.2d 1120, 1126 (7th Cir. 1990) ("Scienter . . . is the intent to deceive, manipulate, or defraud."); *Rowe* v. *Maremont Corp.* 850 F.2d 1226, 1238 (7th Cir. 1988) (scienter is intent to defraud); *Sundstrand Corp*. v. *Sun Chemical Corp*., 553 F.2d 1033, 1045 (7th Cir. 1977) (reckless conduct is a "highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it."); *Central Laborers' Pension Fund* v. *Sirva, Inc.*, No. 04C7644, 2006 WL 2787520 (N.D. Ill. Sept. 22, 2006) (Guzman, J.) (analyzing scienter with respect to each specified misrepresentation and omission); *see also S.E.C.* v. *Johnson*, 174 Fed. Appx. 111 (3rd Cir. 2006) (upholding instruction that "burden is on the SEC to prove fraudulent intent and consequent lack of good faith by a preponderance of the evidence").

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 29

Error in Applying GAAP; Restatement of Earnings

Household is required to prepare its financial statements in accordance with Generally Accepted Accounting Principles, or "GAAP." GAAP are the accounting profession's guidelines for preparing financial statements. GAAP are derived from a wide variety of accounting conventions, rules and experience and they incorporate the consensus among accountants on how economic resources and obligations should be measured, what information should be disclosed in financial statements, and how the information should be disclosed to represent the company's financial position fairly. The measurement and presentation of financial information involves matters of professional judgment and reasonable auditors may disagree on them.

A financial statement in an SEC filing that was not prepared in accordance with GAAP may be presumed to be misleading or inaccurate. That does not necessarily mean, however, that every statement on every subject included in a company's 10-K or 10-Q is misleading or inaccurate.

The fact that Household restated certain financial statements or revised an SEC filing does not, by itself, prove that any defendant acted knowingly or recklessly in publishing the information in the original statements. Likewise, a mistake in applying GAAP or the publication of inaccurate accounting figures does

not, by itself, prove that any defendant acted with the required mental state for securities fraud. A financial restatement or a GAAP violation is evidence that you may consider along with other evidence to determine whether any defendant acted knowingly or recklessly in connection with the original statements. Evidence that a defendant in good faith sought, received and reasonably relied on the advice of the company's outside auditor is inconsistent with a fraudulent intent.

Authority: Adapted from ABA, Section of Litigation, *Model Jury Instructions: Securities Litigation*, § 5.04[2] (1996); 17 C.F.R. § 210.4-01(a)(1) (2008); *Roth* v. *Officemax, Inc.*, 527 F.Supp. 2d 791, 797-98 (N.D. Ill. 2007) (Gottschall, J.) (GAAP violations, restatement of income not sufficient to demonstrate that those who made the statements committed securities fraud); *Lewis* v. *Straka*, No. 05C1008, 2007 WL 2332421 at *2 (E.D. Wis. Aug. 13, 2007) ("restatements create no inference of scienter"); *Chu* v. *Sabratek Corp.*, 100 F.Supp.2d 815, 824 (N.D. Ill. 2000) (Castillo, J.) ("overstatement of earnings, revenues, or assets in violation of GAAP does not itself establish scienter"); *Ong* v. *Sears, Roebuck & Co*., 2005 WL 2284285, at *24 (N.D. Ill. Sept. 14, 2005) (Pallmeyer, J.) (GAAP violation, standing alone, is insufficient to raise an inference of fraudulent intent) (citing *Stavros* v. *Exelon Corp.*, 266 F. Supp. 2d 833, 850 (N.D. Ill. 2003) (Castillo, J.)); *Grassi* v. *Information Resources, Inc*., 63 F.3d 596, 600-01 (7th Cir. 1995); *SEC* v. *Caserta*, 75 F. Supp. 2d 79, 94 (E.D.N.Y. 1999) (citing *S.E.C.* v. *Goldfield Deep Mines Co. of Nev., AAA*, 758 F.2d 459, 467 (9th Cir. 1985).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 30

Fourth Element — Rebuttable Presumption of Reliance

The fourth element of plaintiffs' 10b-5 claims is reliance. For purposes of this trial, it will be presumed that, if a defendant made a material false statement or a statement that was misleading because a material fact was omitted, investors relied on that false or misleading statement in deciding to purchase Household stock.

An active open market, also called an "efficient market," is one with a large number of traders, a high level of activity, and frequent trades, such that buyers and sellers can rapidly obtain current information about the price of the stock. The parties have stipulated that Household stock traded in an efficient market during the relevant time period.

In an efficient market, the market price of a company's stock is generally determined by, and reflects, all available, relevant, and credible information — both positive and negative — concerning the company and its business. The law recognizes that an investor who buys or sells stock at the price set by the market relies on the integrity of that price. Because all publicly available information will be reflected in the market price, it is presumed that an investor who relied upon the integrity of the market price has relied upon any material misrepresentations that may have been made to the market.

Authority: Adapted from *Model Civil Jury Instructions: Ninth Circuit*, § 18.5 (2007); ABA, Section of Litigation, Model Jury Instructions: Securities Litigation, § 4.02[5][d] (1996); *Basic, Inc*. v. *Levinson*, 485 U.S. 224, 248 (1988); *Ray* v. *Citigroup Global Markets, Inc*., 482 F.3d 991, 994 (7th Cir. 2007); *Goldberg* v. *Household Bank*, 890 F.2d 965, 966-67 (7th Cir. 1989) ("When markets are liquid and respond quickly to news, the drop when the truth appears is a good measure of the value of the information."); *Kriendler* v. *Chemical Waste Management*, Inc., 877 F. Supp. 1140, 1151 n.8 (N.D. Ill. 1995) (Castillo, J.) (fundamental to the efficient market hypothesis is that markets "immediately 'impound[] all available information, even knowledge that is difficult to articulate' and obtain" (quoting *Eckstein* v. *Balcor Film Investors*, 8 F.3d 1121, 1129 (7th Cir. 1993)); Final Pretrial Order ¶ 2(a), Exhibit A ("Statement of Uncontested Facts"), ¶ 10.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 31
[COURT'S INSTRUCTION #26 (modified)]

Fifth Element — Loss Causation

To prove the last element of their 10b-5 claim against any defendant, plaintiffs must demonstrate that a false or misleading statement of material fact by the defendant was a substantial cause of the economic loss plaintiffs suffered. If plaintiffs do not show that a particular false statement or omission was a substantial or significant contributing cause of a loss that investors suffered, they will not have proved their 10b-5 claim as to that particular statement. Plaintiffs do not have to prove that any statement or omission was the sole cause of plaintiffs' loss.

To establish that a false statement or omission of material fact was a substantial cause of their loss, plaintiffs must prove two things: *first*, that a material misrepresentation or omission during the relevant time period concealed something from the market, which caused Household's stock price to be higher than it would have been without the misrepresentation or omission; and *second*, that when the truth was revealed, that revelation caused the stock price to go down. The truth may be revealed to the market through a single disclosure or through a series of disclosures made by any person or entity.

It is not enough for plaintiffs to prove that they purchased Household stock at a price that was inflated as a result of a misrepresentation or omission, and then

lost money when they sold the stock at a lower price. Many factors other than fraud could cause a drop in stock value, and simply because a misrepresentation "touches upon" a later economic loss does not demonstration causation. If you find that plaintiffs would have lost money on their investments regardless of the statements and omissions that plaintiffs claim were fraudulent, you must find for defendants.

Authority: Adapted from *Pattern Civil Jury Instructions: Eleventh Circuit, Civil Cases*, § 4.2 (2005); Kevin F. O'Malley, *et al*., *Federal Jury Practice and Instructions — Civil*, § 162.300 (5th ed. 2007); ABA, Section of Litigation, *Model Jury Instructions: Securities Litigation*, § 4.02[6][c] (1996); *Dura Pharmaceuticals* v. *Broudo*, 544 U.S. 335, 339, 342-46 (2005); *Ray* v. *Citigroup Global Markets, Inc*., 482 F.3d 991, 994–96 (7th Cir. 2007); *Tricontinental Industries, Ltd.* v. *PricewaterhouseCoopers, LLP*, 475 F.3d 824, 842-43 (7th Cir. 2007) (affirming dismissal of securities fraud claims due to the plaintiff's failure to show causative link between allegedly fraudulent statement and the claimed loss); *Bastian* v. *Petren Resources Corp.*, 892 F.2d 680, 683 (7th Cir. 1990); *In re Northfield Laboratories, Inc. Securities Litigation*, 527 F. Supp. 2d 769, 789 (N.D. Ill. 2007) (Marovich, J.) ("[T]he 'fraud on the market' approach, requires plaintiffs to allege 'both that the defendants' alleged misrepresentations artificially inflated the price of the stock and that the value of the stock declined once the market learned of the deception.'" (quoting *Ray*, *supra*, at 995); see also *In Re JDS Uniphase Corp. Sec. Litig*., No. C 02-1486 (N.D. Cal. 2007) (Wilken, J.), Jury Charge at 13–14.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 32
[COURT'S INSTRUCTION #27 (modified)]

Respondeat Superior

Under certain circumstances, an employer is responsible for the actions and omissions of its employees. If you find that William Aldinger, David Schoenholz or Gary Gilmer violated 10b-5, the parties agree that Household is also liable for the violation.

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 33
[COURT'S INSTRUCTION #28]

Damages

If you find that plaintiffs have not proved all of the elements of their 10b-5 claim against any defendant, then you should not consider the question of damages.

If you find that plaintiffs have proved all of the elements of their 10b-5 claim against any defendant, then you must determine the amount of daily damages per share, if any, to which plaintiffs are entitled. Plaintiffs can recover only actual damages, which may not exceed the difference between the price plaintiffs paid (or received) for each share of Household stock and the average price per share during the 90-day period after [the corrective information was disseminated to the market and] the artificial inflation was removed. Any damages you award must have a reasonable basis in the evidence and may not be based on speculation or guesswork. Plaintiffs must prove their damages by a preponderance of the evidence. Damages need not be proved with mathematical certainty but there must be enough evidence for you to make a reasonable estimate of damages.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, §§ 1.31, 3.09, 3.10 (2005) (modified); U.S.C.A; § 78u-4(3); *Ong v. Sears, Roebuck & Co.*, 459 F. Supp. 2d 729, 744 (N.D. Ill. 2006) ("traditional measure of damages in securities fraud actions . . . measures damages as the difference between the purchase price and 'true value' of the securities after fraud is revealed"); 3B Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions* §162.321 (5th ed. 2001) (modified).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 34
[COURT'S INSTRUCTION #29 (modified)]

Section 20(a) Elements

Under Section 20(a) of the Securities Exchange Act, a defendant may be liable for what is called a "secondary violation," even if he did not violate 10b-5, if he had the authority to control another defendant who did violate 10b-5. Plaintiffs claim that each of the individual defendants, William Aldinger, David Schoenholz and Gary Gilmer, is liable for a secondary violation under Section 20(a).

To prove that any defendant is liable for a secondary violation, plaintiffs have the burden of proving both of the following elements:

1. that another defendant (called a "primary violator") violated 10b-5 in the manner I have previously explained; and
2. that the defendant was a "controlling person" with respect to the primary violator.

Authority: Adapted from 15 U.S.C. § 78t(a); *Donohoe* v. *Consolidated Operating & Production Corp.*, 982 F.2d 1130, 1138-39 (7th Cir. 1992); *Harrison v. Dean Witter Reynolds, Inc.*, 79 F.3d 609, 614 (7th Cir. 1996); *Zurich Capital Markets, Inc. v. Coglianese*, No. 03C7960, 2005 WL 1950653, at *4-6 (N.D. Ill. Aug. 12, 2005) (St. Eve, J.).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 35
[COURT'S INSTRUCTION #30 (modified)]

Controlling Person - Two-part Test

If you determine that no defendant has violated 10b-5, you do not have to consider whether any defendant was a controlling person.

If you find that any defendant was a primary violator, however, you must then determine whether any of the other defendants was a "controlling person" as to that primary violator.

To establish that William Aldinger, David Schoenholz or Gary Gilmer was a "controlling person," plaintiffs must prove that:

(1) the defendant actually exercised general control over the operations of the primary violator; and

(2) the defendant had the power or ability, even if that power was not exercised, to control the specific transaction or activity upon which the primary violation was based — in this case, making the specific false statement or omission of material fact.

Both of these elements must be established as to each individual defendant. The parties have stipulated that both William Aldinger and David Schoenholz actually exercised general control over the operations of Household, so no proof is required on that element as to those two defendants, in their relation to Household.

Authority: Adapted from *Model Civil Jury Instructions: Ninth Circuit*, § 18.8 (2007); Kevin F. O'Malley et al., *Federal Jury Practice and Instructions — Civil*, § 162.270 (5th ed. 2007); ABA, Section of Litigation, *Model Jury Instructions: Securities Litigation*, § 4.03[1] (1996); 15 U.S.C. §78t(a); 17 C.F.R. § 240.12b-2 (1995); *Donohoe* v. *Consolidated Operating & Production Corp.*, 982 F.2d 1130, 1138-39 (7th Cir. 1992); *Harrison v. Dean Witter Reynolds, Inc.*, 79 F.3d 609, 614 (7th Cir. 1996); *Zurich Capital Markets, Inc. v. Coglianese*, No. 03C7960, 2005 WL 1950653, at *6 (N.D. Ill. Aug. 12, 2005) (St. Eve, J.).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 36

Statute of Repose

Household and the individual defendants each asserts as an affirmative defense that plaintiffs' Section 10(b) and 20(a) claims are barred under the "statute of repose." This means that, even if you find that plaintiffs have proved each element of their 10b-5 claim as against any defendant, you must nevertheless find in favor of that defendant if he or it proves this affirmative defense by a preponderance of the evidence.

The statute of repose is a rule of law that cuts off plaintiffs' right to sue the defendants if the plaintiffs do not sue by a certain deadline.

If the defendants prove that plaintiffs are complaining about an alleged misstatement or omission that was first made before July 30, 1999, or about inflation that first entered the price of Household's common stock before July 30, 1999, then you must conclude that the statement or omission does not support a cause of action and you must return a verdict in favor of the defendants.

Authority: *Lawrence E. Jaffe Pension Plan* v. *Household International, Inc.*, No. 02C5893, 2006 WL 560589 at *3 (N.D. Ill. Feb. 28, 2006) (Guzman, J.); *Foss* v. *Bear Stearns Co.*, 394 F.3d 540, 542 (7th Cir. 2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 37
[COURT'S INSTRUCTION #31 (modified)]

Selection of Presiding Juror; Verdict Form

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

The verdict form has been prepared for you.

[*Verdict form read*.]

You are to follow the directions that are printed in the Verdict Form, and consider each of the questions in order. The Verdict Form includes two tables. One table is labeled Verdict Table and the other is labeled Inflation Table. When you have reached unanimous agreement on a question, your presiding juror will fill in the answer to that question on the Verdict Form or on the appropriate table. The Verdict Form is structured so that many of the questions need to be answered only if you have answered a previous question in a certain way. Pay close attention to the instructions and read each question carefully before you answer it, so you can avoid answering questions needlessly. Each of you will have a copy of the Verdict Form (marked "copy") to use during your deliberations, but only the Verdict Form that is filled in by your presiding juror and signed by all jurors will be returned to the courtroom at the end of your deliberations. The copies will be destroyed, and

no one will be allowed to read any notes or markings you may have written on them before they are destroyed.

Take the verdict form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and all of you will sign it.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.32 (2005) (modified).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 38
[COURT'S INSTRUCTION #32]

Communication with Court

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.33 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 39
[COURT'S INSTRUCTION #33]

Disagreement Among Jurors

The verdict must represent the considered judgment of each juror. Your verdict for or against any party must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.34 (2005).

DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 40
[Court's Instruction #34]

Juror Notes

Any notes you have taken during the trial are only aids to your memory. The notes are not evidence. If you have not taken 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.

Authority: *Federal Jury Instructions: Seventh Circuit, Civil Cases*, § 1.07 (2005).