

**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)	
Situated,)	Lead Case No. 02-C-5893
)	(Consolidated)
Plaintiff,)	
)	CLASS ACTION
v.)	
)	Judge Ronald A. Guzman
HOUSEHOLD INTERNATIONAL, INC., <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS' MOTION FOR RECONSIDERATION OF
THE COURT'S NOVEMBER 22, 2010 ORDER OR, ALTERNATIVELY,
FOR CERTIFICATION FOR INTERLOCUTORY APPEAL, AND
OBJECTION TO ISSUANCE OF PROPOSED NOTICE TO CLASS MEMBERS**

Defendants Household International Inc., William F. Aldinger, David A. Schoenholz, and Gary Gilmer, through their attorneys, respectfully move the Court to reconsider Part I of the Court's Memorandum Opinion and Order of November 22, 2010 (the "November 22 Order"), which established the protocol for Phase II of the proceedings in the bifurcated trial in this case, or, alternatively, to certify the November 22 Order for an interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Defendants also respectfully object to the issuance of the proposed Notice of Verdict and Proof of Claim forms to class members until the Court has decided Defendants' motion for reconsideration or certification. In support of this motion, Defendants submit herewith a supporting memorandum of law and further state as follows:

1. At Phase I of the proceedings in this bifurcated case, the Court held that, for purposes of establishing class-wide liability with respect to Plaintiffs' securities fraud claim under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and SEC Rule 10b-5 promulgated thereunder, 15 C.F.R. § 240.10b-5, Plaintiffs were entitled to a rebuttable

presumption of reliance under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), subject to Defendants' right, at Phase II of the proceedings, to present evidence rebutting the presumption of reliance as to individual members of the class. The determination of damages also was reserved for Phase II.

2. During the Phase I proceedings, based on the bifurcation proposed by Plaintiffs and accepted by Magistrate Judge Nolan, Defendants were precluded from conducting any discovery relevant to the rebuttal of reliance as well as other individualized issues, including as to the Lead Plaintiffs (Dkt. 225, 762, 935).

3. On May 7, 2009, the jury hearing Phase I of the case returned a verdict in favor of Plaintiffs, finding a minority of the alleged statements during the class period to be actionable, and determining artificial inflation for a portion of the class period. (Dkt. 1611.)

4. On November 22, 2010, the Court issued a Memorandum Opinion and Order establishing the protocol for Phase II of the trial. (Dkt. 1703.)

5. As set forth in the accompanying memorandum of law, the Phase II protocol deprives Defendants of their Seventh Amendment right to have a jury determine all contested issues of material fact with respect to every essential element of Plaintiffs' securities fraud claim. The Court, therefore, should reconsider its November 22 Order and establish a Phase II protocol that will afford Defendants their Seventh Amendment right to a jury trial.

6. If, however, the Court declines to reconsider the November 22 Order, Defendants respectfully request that, consistent with this Court's observation that "[i]n creating a Phase II protocol, this Court receives very little guidance from other courts because securities fraud class actions have rarely proceeded to trial, let alone reached subsequent proceedings" (Dkt. 1703 at

2–3), the Court certify the following question for interlocutory appeal pursuant to 28 U.S.C. § 1292(b):

Where, in a bifurcated trial of a securities fraud class action under Section 10(b) of the Securities Exchange Act of 1934, (a) the trial court finds that plaintiffs are entitled to a rebuttable presumption of reliance under *Basic Inc. v. Levinson*, 495 U.S. 224 (1988), for purposes of establishing class-wide liability at the first phase of the trial, subject to defendants’ right at the second phase of the trial to present evidence rebutting the presumption of reliance as to individual class members, and (b) the jury returns a verdict in favor of plaintiffs after the conclusion of the first phase of the trial: (1) are defendants’ Seventh Amendment rights abrogated where the trial court does not permit defendants to present to any jury evidence rebutting the presumption of reliance, but relies instead exclusively on a claim form that only asks class members whether, had they known of the fraud, they would they have purchased the securities in question as the sole prerequisite to recovery, or (2) are further procedures required at the second stage of the trial to ensure that defendants’ rights under the Seventh Amendment are not infringed?

7. As demonstrated in the accompanying memorandum of law, the question presented by the November 22 Order meets all of the requirements for certification under 28 U.S.C. § 1292(b), and this motion is timely. The Court, therefore, should certify the November 22 Order for interlocutory review.

8. Because reconsideration or interlocutory review of the November 22 Order is likely to result in substantial modifications to the Phase II protocol, including the timing and substance of the Notice of Verdict and Proof of Claim forms proposed by Plaintiffs, Defendants also respectfully request that the Court defer consideration of Plaintiffs’ Proposed Notice of Verdict and Proof of Claim forms and not approve issuance of the proposed forms to class members until the issues presented in Defendants’ motion for reconsideration or certification for interlocutory review have been decided. If the Notice of Verdict and Proof of Claim forms proposed by Plaintiffs are mailed to class members now, and this Court or the Seventh Circuit subsequently decides, for example, that limiting discovery to the single interrogatory to class members proposed by Plaintiffs effectively precludes Defendants from exercising their Seventh

Amendment right to a jury trial in Phase II, then revised forms would need to be issued to the class. This would result in a substantial waste of time and resources and also likely would confuse class members.

WHEREFORE, Defendants respectfully request that the Court grant this motion and (1) reconsider its Order of November 22, 2010 or, alternatively, certify the November 22 Order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b); and (2) defer consideration of issuance of Plaintiff's proposed Notice of Verdict and Proof of Claim forms to the members of the class until this motion has been decided.

Dated: December 20, 2010

Respectfully submitted,

/s/R. Ryan Stoll

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CERTIFICATE OF SERVICE

R. Ryan Stoll, an attorney, hereby certifies that on December 20, 2010, he caused true and correct copies of the foregoing Motion for Leave to File an Oversize Brief to be served via the Court's ECF filing system on the following counsel of record in this action:

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