

**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, )		Case No. 02 C 5893
Plaintiff, )		
)		Judge Jorge L. Alonso
)		
v. )		
)		
HOUSEHOLD INTERNATIONAL, INC., )		
et al., )		
)		
Defendants. )		

**DEFENDANT HOUSEHOLD INTERNATIONAL INC.’S MOTION FOR  
AN AWARD OF COSTS PURSUANT TO FEDERAL RULE OF APPELLATE  
PROCEDURE 39(e) AND TO SET A BRIEFING SCHEDULE ON THE MOTION**

Defendant Household International Inc. (“Household”) respectfully moves the Court for an award of its taxable costs of appeal pursuant to Federal Rule of Appellate Procedure (“FRAP”) 39(e). In support of this motion, Household states as follows:

1. On October 17, 2013, following a jury trial and post-trial proceedings, the district court (Guzmán, J.) entered a partial final judgment in favor of Plaintiffs and the Class, pursuant to Fed. R. Civ. P. 54(b), in the amount of \$2,462,899,616.21. (Dkt. No. 1898.)
2. On November 12, 2013, Household deposited with the Clerk of Court a supersedeas bond in the amount of \$2,466,348,175.67 to stay execution of the judgment pending Defendants’ appeal. (Dkt. No. 1905.)
3. Also on November 12, 2013, Defendants filed their Notice of Appeal to the Seventh Circuit and Household paid the filing fee of \$455. (Dkt. No. 1906.)
4. On May 21, 2015, the Seventh Circuit reversed the partial judgment in favor of Plaintiffs and the Class and remanded the case for a new trial on two issues: “loss causation and

whether the three executives ‘made’ certain of the false statements at issue under *Janus*’s narrow definition of that term.” *Glickenhau & Co. v. Household Int’l, Inc.*, No. 13-3532, 787 F.3d 408, 433 (7th Cir. 2015).

5. On June 4, 2015, Plaintiffs filed with the Seventh Circuit a petition for panel rehearing. The panel denied the petition on July 1, 2015.

6. On July 9, 2015, the Seventh Circuit issued its mandate. (Dkt. No. 2019.) The mandate states: “The judgment of the District Court is REVERSED, *with costs*, and the case is REMANDED, in accordance with the decision of this court entered on this date.” (*Id.* (emphasis added).)

7. On August 26, 2015, this Court entered an Agreed Order Cancelling, Releasing, and Discharging Defendants’ Supersedeas Bond. (Dkt. No. 2038.) The Clerk of Court returned the bond to counsel for Household that same day. (Dkt. No. 2040.)

8. On account of the reversal of the judgment, *with costs*, Household is entitled to recover the costs of appeal enumerated in FRAP 39(e). FRAP 39(e) provides for the prevailing party’s recovery, in the district court, of the following costs of appeal: “(1) the preparation and transmission of the record; (2) the reporter’s transcript, if needed to determine the appeal; (3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and (4) the fee for filing the notice of appeal.”

9. The Advisory Committee Notes to Rule 39(e) explain:

The costs described in this subdivision are costs of the appeal and, as such, are within the undertaking of the appeal bond. They are taxable in the district court for general convenience. . . . Provision for taxation of the costs of premiums paid for supersedeas bonds is common in the local rules of district courts and the practice is established in the Second, Seventh, and Ninth Circuits.

10. Household incurred the following costs of appeal for which it is entitled to reimbursement pursuant to FRAP 39(e):

(a) the \$455 fee for filing the Notice of Appeal (Dkt. No. 1906);

(b) \$13,280,827 in supersedeas bond premiums that Household's parent HSBC North America Holdings, Inc. ("HSBC") paid to Marsh for bond premiums for the period November 11, 2013 through August 26, 2015, the date of release and cancellation of the supersedeas bond, consisting of the following:

(i) \$7,399,045 that HSBC paid to Marsh for supersedeas bond premiums for the period from November 11, 2013 to November 11, 2014;

(ii) plus \$7,399,045 that HSBC paid to Marsh for supersedeas bond premiums for the period from November 11, 2014 to November 11, 2015;

(iii) less a refund of bond premiums for the period August 27, 2015 to November 11, 2015 paid by Marsh to HSBC.

11. Attached hereto as Exhibits A, B, and C, respectively, are: (1) a copy of the invoice from Marsh for the \$7,399,045 of supersedeas bond premiums for the period from November 11, 2013 to November 11, 2014, and a copy of the wire transfer receipt evidencing payment of those premiums; (2) a copy of the invoice from Marsh for the \$7,399,045 of supersedeas bond premiums for the period from November 11, 2014 to November 11, 2015, and a copy of the wire transfer receipt evidencing payment of those premiums; and (3) a copy of a wire transfer payment by Marsh refunding \$1,517,263 of the \$7,399,045 of supersedeas bond premiums for the period from November 11, 2014 to November 11, 2015, on account of the cancellation of the supersedeas bond on August 26, 2015.

12. In a Joint Status Report filed by the parties on August 25, 2015, the parties advised the Court that, following cancellation and release of the supersedeas bond, Household intended to seek an award of its costs of appeal, pursuant to FRAP 39(e), including its superseadeas bond premiums, and Plaintiffs intended to oppose the motion. (Dkt. No. 2015 at 2-3.) The parties proposed that Household file its FRAP 39(e) motion within 21 days of the release of the supersedeas bond; that Plaintiffs be given 21 days to respond to the motion; and that Household be given 14 days to file a reply in support of the motion. (*Id.*) Defendants, therefore, request that the Court set the following briefing schedule on this motion:

Plaintiffs' response to motion	October 7, 2015
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Household's reply	October 21, 2015
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WHEREFORE, Household respectfully requests that the Court: (i) set a briefing schedule on this motion and (ii) after completion of briefing, award Household its taxable costs of appeal in the total amount of \$13,281,282, pursuant to FRAP 39(e).

Dated: September 16, 2015

Respectfully submitted,

/s/R. Ryan Stoll

R. Ryan Stoll  
Mark E. Rakoczy  
Donna L. McDevitt  
Andrew J. Fuchs  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM  
155 North Wacker Drive  
Chicago, IL 60606  
(312) 407-0700

Attorneys for Defendant  
Household International, Inc.

**CERTIFICATE OF SERVICE**

R. Ryan Stoll, an attorney, hereby certifies that on September 16, 2015, he caused true and correct copies of the foregoing Motion of Defendant Household International Inc. for an Award of Costs Pursuant to Federal Rule of Appellate Procedure 39(e) and to set a briefing schedule on the motion to be served via the Court's ECF filing system on the following counsel of record in this action:

Michael J. Dowd, Esq.  
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/s/ R. Ryan Stoll  
R. Ryan Stoll

**INDEX OF EXHIBITS**

**Tab**

Documentation of Supersedeas Bond Premiums for the Period  
November 11, 2013 to November 11, 2014.....A

Documentation of Supersedeas Bond Premiums for the Period  
November 11, 2014 to November 11, 2015.....B

Documentation of Refund of Supersedeas Bond Premiums for the  
Period August 27, 2015 to November 11, 2015.....C

# **EXHIBIT A**



# INVOICE

Marsh USA Inc.  
Chicago IL  
(312) 627-6000

Page	1 of 2
Invoice Total	7,399,045.00 USD
Invoice No.	064536984113
Invoice Date	11/22/2013
Client No.	0645300000

Karen Lemanski  
VP

Billed To: HSBC North America Holdings  
26525 North Riverwoods Blvd  
Mettawa, IL 60045

## Remittance Copy

Company earns and retains interest income on premium payments held by Marsh on behalf of insurers during the period between receipt of such payments from clients and the time such payments are remitted to the applicable insurer, where permitted by law.

Detach and remit this portion with your payment

Client No.	Invoice No.	Payment Due	Invoice Total	Amount Paid
0645300000	064536984113	Immediate	7,399,045.00 USD	

Thank you for your prompt payment.

Please indicate Invoice 064536984113 on your remittance to:

By Wire: ABA No.026009593  
Account No.8188190995

By Mail: Bank of America  
Marsh USA, Inc.  
62505 Collection Center Drive  
Chicago, IL 60693-0625 USA

0645369841137 073990450019





# INVOICE

Marsh USA Inc.  
Chicago IL  
(312) 627-6000

Page	2 of 2
Invoice Total	7,399,045.00 USD
Invoice No.	064536984113
Invoice Date	11/22/2013
Client No.	0645300000

Karen Lemanski  
VP

Billed To: HSBC North America Holdings  
26525 North Riverwoods Blvd  
Mettawa, IL 60045

Surety Name	Bond No.	Effective Date	Expiration Date	Transaction Type	Description/Type of Coverage	Item	Amount
Federal Insurance Co	82297281	11/11/2013	11/11/2014	Original	Commercial Bond	PREMIUM	1,500,000.00
Pacific Employers Ins Co	K08896707	11/11/2013	11/11/2014	Original	Commercial Bond	PREMIUM	300,000.00
Liberty Mutual Insurance Co	285045785	11/11/2013	11/11/2014	Original	Commercial Bond	PREMIUM	2,250,000.00
National Union Fire Ins Co	912124	11/11/2013	11/11/2014	Original	Commercial Bond	PREMIUM	750,000.00
Westchester Fire Insurance Co	K08896690	11/11/2013	11/11/2014	Original	Commercial Bond	PREMIUM	199,045.00
Travelers Cas & Surety Of Amer.	105901684	11/11/2013	11/11/2014	Original	Commercial Bond	PREMIUM	1,200,000.00
Zurich American Insurance Co.	CBG09123027	11/11/2013	11/11/2014	Original	Commercial Bond	PREMIUM	1,200,000.00
<b>Invoice Comments:</b> Batch Billing Period: MAIL OUT Batch Billing Invoice Number: . Principal(s): Household International, Inc. et al as Defendants Obligor(s): Lawrence E. Jaffe, Pension Plan, on behalf of itself and others as Plaintiffs Bond Amount: \$2,466,348,175.67 Supersedes Appeal as Defendants - Appeal for U.S. Dist Court for Northern Dist. of Illinois Requester: Timothy M. O'Connor							
Invoice Total (Payable in Full upon Receipt)							7,399,045.00

Company earns and retains interest income on premium payments held by Marsh on behalf of insurers during the period between receipt of such payments from clients and the time such payments are remitted to the applicable insurer, where permitted by law.

CO NAME: HSBC BANK USA, NA ID: 1161696321 ENT DESC: PAYMENTS ODFI T/R: 0220-0002 BATCH: 00000002  
 EFF DATE: 01/14/15 ORIG EFF DATE: 01/14/15 DESC DATE: DISCRETIONARY DATA:  
 SEC: CTX SRVC CLS: 220 PAR: 007537583 ORIG STAT: NACHA SETTLEMENT DATE:

PAR NO TC T/R ACCOUNT AMOUNT ITEMS RECV CO ID/ DS TRACE POINT APPL TYPE T/R  
 SENDING CO AUDIT  
 \*----- D I S T R I B U T I O N -----\*

ADD TYPE FREE FORM ADD SEQ

007545019 22-CDN 071000039 8188190995 7,399,045.00 0002 MARSH USA INC 0000133 NYACH NORMAL 900102008  
 01/14 2200  
 05 RMT\*OI\*064537226560 \*7399045.00\*7399045.00\*\*\*\*\*CLIENT# 0645300000 ACK 0220000020  
 05 \RMT\*PO\*0000000000000000\DTM\*003\*141107\ 0001  
 0002

## **EXHIBIT B**



Marsh USA Inc.  
Chicago IL  
(312) 627-6000

# INVOICE

Page	1 of 2
Invoice Total	7,399,045.00 USD
Invoice No.	064537226560
Invoice Date	11/07/2014
Client No.	0645300000

Billed To: Tim O'Connor  
HSBC North America Holdings  
26525 North Riverwoods Blvd  
Mettawa, IL 60045

## Remittance Copy

Company earns and retains interest income on premium payments held by Marsh on behalf of insurers during the period between receipt of such payments from clients and the time such payments are remitted to the applicable insurer, where permitted by law.

Detach and remit this portion with your payment

Client No.	Invoice No.	Payment Due	Invoice Total	Amount Paid
0645300000	064537226560	Immediate	7,399,045.00 USD	

Thank you for your prompt payment.

Please indicate Invoice 064537226560 on your remittance to:

By Wire: Bank Name: Bank of America  
Wire Routing Number: 026009593  
Account Title: Marsh USA, Inc.  
Account Number: 8188190995

By Mail: Marsh USA, Inc.  
62505 Collection Center Drive  
Chicago, IL 60693-0625 USA

064537226560 073990450015



# INVOICE

Marsh USA Inc.  
Chicago IL  
(312) 627-6000

Page	2 of 2
Invoice Total	7,399,045.00 USD
Invoice No.	064537226560
Invoice Date	11/07/2014
Client No.	0645300000

Billed To: Tim O'Connor  
HSBC North America Holdings  
26525 North Riverwoods Blvd  
Mettawa, IL 60045

Surety Name	Bond No.	Effective Date	Expiration Date	Transaction Type	Description/Type of Coverage	Item	Amount
Travelers Cas & Surety Of Amer.	105901684	11/11/2014	11/11/2015	Original	Commercial Bond	PREMIUM	1,200,000.00
Liberty Mutual Insurance Co	285045785	11/11/2014	11/11/2015	Original	Commercial Bond	PREMIUM	2,250,000.00
Federal Insurance Co	82297281	11/11/2014	11/11/2015	Original	Commercial Bond	PREMIUM	1,500,000.00
National Union Fire Ins Co	912124	11/11/2014	11/11/2015	Original	Commercial Bond	PREMIUM	750,000.00
Zurich American Insurance Co.	CBG09123027	11/11/2014	11/11/2015	Original	Commercial Bond	PREMIUM	1,200,000.00
Westchester Fire Insurance Co	K08896690	11/11/2014	11/11/2015	Original	Commercial Bond	PREMIUM	199,045.00
Pacific Employers Ins Co	K08896707	11/11/2014	11/11/2015	Original	Commercial Bond	PREMIUM	300,000.00
<b>Invoice Comments:</b> Principal(s): Household International, Inc. et al as Defendants Obligor(s): Lawrence E. Jaffe, Pension Plan, on behalf of itself and others as Plaintiffs Bond Amount: \$2,466,348,175.67 Supersedeas Appeal as Defendant Appeal US Dist Court for Northern Dist. of Illinois Requester: Timothy M. O'Connor Annual Premium (only) Renewal Bond form is Continuous; Release Required until a court stamped release document is provided.							
Invoice Total (Payable in Full upon Receipt)							7,399,045.00

Company earns and retains interest income on premium payments held by Marsh on behalf of insurers during the period between receipt of such payments from clients and the time such payments are remitted to the applicable insurer, where permitted by law.

CO NAME: HSBC BANK USA, NA ID: 1161696321 ENT DESC: PAYMENTS ODFI T/R: 0220-0002 BATCH: 0000003  
 EFF DATE: 01/08/14 ORIG EFF DATE: 01/08/14 DESC DATE: DISCRETIONARY DATA:  
 SEC: CTX SRVC CLS: 220 PAR: 009417427 ORIG STAT: NACHA SETTLEMENT DATE:

PAR NO TC T/R ACCOUNT AMOUNT ITEMS RECV CO ID/ DS TRACE POINT APPL TYPE T/R  
 SENDING CO AUDIT  
 \*----- D I S T R I B U T I O N -----  
 BRANCH DATE WIN

ADD TYPE FREE FORM ADD SEQ

009430884 22-CDN 071000039 8188190995 7,399,045.00 0002 MARSH USA INC 0000167 NYACH NORMAL 900102008  
 05 RMT\*OI\*064536984113 \*7399045.00\*\*\*\*\*CLIENT NO.0645300000 0001 01/08 2205  
 05 \RMT\*PO\*0000000000000000\DTM\*003\*131122\ 0002

## **EXHIBIT C**



# INVOICE

**Marsh USA Inc.**  
Chicago IL  
(312) 627-6000

<b>Page</b>	1 of 2
<b>Invoice Total</b>	(1,517,263.00) USD
<b>Invoice No.</b>	064532828914
<b>Invoice Date</b>	09/09/2015
<b>Client No.</b>	0645300000

**Billed To:**  
Tim O'Connor  
HSBC North America Holdings  
26525 North Riverwoods Blvd  
Mettawa, IL 60045

## Remittance Copy

Company earns and retains interest income on premium payments held by Marsh on behalf of insurers during the period between receipt of such payments from clients and the time such payments are remitted to the applicable insurer, where permitted by law.

Detach and remit this portion with your payment ✂

Client No.	Invoice No.	Payment Due	Invoice Total	Amount Paid
0645300000	064532828914	Credit DO NOT PAY	(1,517,263.00) USD	

**Thank you for your prompt payment.**

Please indicate Invoice 064532828914 on your remittance to:

**By Wire:**  
**Bank Name:** Bank of America  
**Wire Routing Number:** 026009593  
**Account Title:** Marsh USA, Inc.  
**Account Number:** 8188190995

**By Mail:**  
Marsh USA, Inc.  
62505 Collection Center Drive  
Chicago, IL 60693-0625 USA

0645328289148 015172630089





Marsh USA Inc.  
Chicago IL  
(312) 627-6000

# INVOICE

Page	2 of 2
Invoice Total	(1,517,263.00) USD
Invoice No.	064532828914
Invoice Date	09/09/2015
Client No.	0645300000

Billed To: Tim O'Connor  
HSBC North America Holdings  
26525 North Riverwoods Blvd  
Mettawa, IL 60045

Surety Name	Bond No.	Effective Date	Expiration Date	Transaction Type	Description/ Type of Coverage	Item	Amount
Travelers Cas & Surety Of America	105901684	11/11/2014	11/11/2015	Cancellation	Commercial Bond	PREMIUM	(243,288.00)
Liberty Mutual Insurance Co	285045785	11/11/2014	11/11/2015	Cancellation	Commercial Bond	PREMIUM	(456,750.00)
Federal Insurance Co	82297281	11/11/2014	11/11/2015	Cancellation	Commercial Bond	PREMIUM	(304,500.00)
National Union Fire Ins Co	912124	11/11/2014	11/11/2015	Cancellation	Commercial Bond	PREMIUM	(158,219.00)
Zurich American Insurance Co	CBG09123027	11/11/2014	11/11/2015	Cancellation	Commercial Bond	PREMIUM	(253,200.00)
Westchester Fire Insurance Co	K08896690	11/11/2014	11/11/2015	Cancellation	Commercial Bond	PREMIUM	(40,406.00)
Pacific Employers Ins Co	K08896707	11/11/2014	11/11/2015	Cancellation	Commercial Bond	PREMIUM	(60,900.00)
<b>Invoice Comments:</b> Principal(s): Household International, Inc. et al as Defendants Obligee(s): Lawrence E. Jaffe, Pension Plan, on behalf of itself and others as Plaintiffs Bond Amount: \$2,466,348,175.67 Supersedes Appeal Defendants Appeal for US Dist Court for Northern Dist. of Illinois Requester: Timothy M. O'Connor Cancellation Effective Date: 26-Aug-2015							
Invoice Total (Payable in Full upon Receipt)							(1,517,263.00)

Company earns and retains interest income on premium payments held by Marsh on behalf of insurers during the period between receipt of such payments from clients and the time such payments are remitted to the applicable insurer, where permitted by law.