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

DEFENDANT HOUSEHOLD INTERNATIONAL INC.'S REPLY IN SUPPORT OF ITS MOTION FOR AN AWARD OF COSTS PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 39(e)

Defendant Household International Inc. ("Household") respectfully submits this reply in support of its motion for an award of its taxable costs of appeal pursuant to Federal Rule of Appellate Procedure 39(e).

PRELIMINARY STATEMENT

Plaintiffs do not challenge Household's right to recover the $455 fee that Household paid to file its Notice of Appeal. Plaintiffs contend, however, that this Court should deny recovery of the $13,280,827 in premiums that Household incurred to obtain a supersedeas bond to secure Plaintiffs' $2,462,899,616.21 judgment, which the Seventh Circuit reversed.

As demonstrated below, Plaintiffs' arguments have been rejected by the Seventh Circuit—indeed, by the very cases that Plaintiffs cite in their brief. Notably, Plaintiffs have been unable to identify any case in which a district court in this circuit refused to apply the plain language of Federal Rule of Appellate Procedure 39(e) and denied recovery of supersedeas bond premiums to the party that prevailed on appeal, or any decision by the Seventh Circuit reversing

such an award. Because there is no valid reason for the Court to do so here, the Court should award Household its taxable costs of appeal in the amount of $13,281,282.

ARGUMENT

I. Household's Motion To Recover Its Supersedeas Bond Premiums Is Governed by Rules 39(a)(3) and 39(e) of the Federal Rules of Appellate Procedure.

Household's motion for an award of its costs of appeal is governed by Federal Rules of Appellate Procedure 39(a) and 39(e). Rule 39(a) provides:

> (1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;
>
> (2) if a judgment is affirmed, costs are taxed against the appellant;
>
> (3) *if a judgment is reversed, costs are taxed against the appellee*;
>
> (4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(Emphasis added.) Rule 39(e) expressly enumerates the four items of costs on appeal that are "taxable in the district court for the benefit of the party entitled to costs under this rule," including "premiums paid for a supersedeas bond." Fed. R. App. P. 39(e)(3).

In opposing Household's motion, Plaintiffs repeatedly assert that Household was only partially successful on appeal. (Pls.' Br. at 1, 8-9.) This assertion is baseless. The plain language of the Seventh Circuit's opinion and mandate leaves no doubt that the judgment against Defendants was reversed *in its entirety*. The Seventh Circuit's opinion ends with the words "REVERSED AND REMANDED." *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 433 (7th Cir. 2015). And the Seventh Circuit's 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." (Dkt. No. 2019.)[1]

In *Olympia Express, Inc. v. Linee Aeree Italiane S.P.A.*, No. 02 C 2858, 2008 U.S. Dist. LEXIS 21573 (N.D. Ill. Mar. 19, 2008), in which the wording of the Seventh Circuit's mandate was *identical* to the wording of the mandate here, the district court rejected plaintiffs' argument that defendants' motion for Rule 39(e) costs was governed by Rule 39(a)(4), rather than Rule 39(a)(3). *Id.* at *8. The district court in *Olympia Express* noted that the language of the mandate was consistent with the language of the Seventh Circuit's opinion, which, like the Seventh Circuit's opinion here, "closed with the words '[r]eversed and [r]emanded.'" *Id.* (alteration in original). The court then explained:

> This language closely tracks the language in Rule 39(a)(3). Plaintiff nonetheless asks us to interpret "reversed" to mean "vacated," so as to render Rule 39(a)(4) applicable. We decline plaintiff's invitation to hold that the Seventh Circuit did not mean what it clearly said. We therefore find Rule 39(a)(3) applicable, which means that defendant is entitled to seek costs in this Court under Rule 39(e).

Id.

By contrast, in *Wal-Mart Stores, Inc. v. Crist*, 123 F.R.D. 590 (W.D. Ark. 1988), on which Plaintiffs' rely (Pls.' Br. at 9), the court of appeals' decision stated: "'[W]e reverse the decision of the district court *with respect to Transit's counterclaim*, and remand with directions to dismiss the case *without relief to any party*.'" *Id.* at 593 (quoting *Wal-Mart Stores, Inc. v. Crist*, 855 F.2d 1326, 1336 (8th Cir. 1988), emphasis added by district court). Given the

[1] Not only do Plaintiffs ignore the plain language of the mandate, they also rehash arguments that this Court rejected in ruling on the scope of proceedings on remand. Specifically, Plaintiffs contend that the reversal on the loss causation element of their claim involves only a "narrow issue[]" concerning the specificity of the testimony of Plaintiffs' expert about his Leakage Model of loss causation. (Pls.' Br. at 1, 8-9.) This Court rejected this argument and held that the Seventh Circuit mandated a new trial on the entire element of loss causation. (Dkt. No. 2041 at 1.) This Court noted also that, "[b]y holding that Dr. Fischel's leakage model testimony did not establish loss causation, the Seventh Circuit necessarily, if not explicitly, rejected the amount of damages per share that he calculated based on that testimony." (*Id.*at 2.)

language of the Eighth Circuit's opinion, the district court in *Wal-Mart* stated that it was "convinced that there is an 'absence of clear victory' in this case." *Wal-Mart*, 123 F.R.D. at 593.

Here, the wording of the Seventh Circuit's decision and mandate shows that Household's Rule 39(e) motion is governed by Rule 39(a)(3), which unambiguously provides that, "if a judgment is reversed, costs are taxed against the appellee." Fed. R. App. P. 39(a)(3). Indeed, the Seventh Circuit's mandate specifies that the judgment is "REVERSED *with costs.*" (Dkt. No. 2019 (emphasis added).) Plaintiffs' arguments provide no reason for this Court to decline to follow the Seventh Circuit's specific directive.

II. Plaintiffs' Authorities Provide No Support for Their Assertion that the District Court Has Broad Discretion To Deny a Prevailing Party Its Rule 39(e) Costs.

Citing *Guse v. J.C. Penney Co.*, 570 F.2d 679 (7th Cir. 1978), *Republic Tobacco Co. v. North Atlantic Trading Co.*, 481 F.3d 442 (7th Cir. 2007), and case law addressing cost awards pursuant to Federal Rule of Civil Procedure 54(b), Plaintiffs argue that a district court has "broad discretion" to refuse to award Rule 39(e) costs. (Pls.' Br. at 2.) Plaintiffs' authorities provide no support for this proposition, and no reason why this Court should decline to award Household its taxable supersedeas bond premiums. In fact, Plaintiffs' authorities support the opposite conclusion.

Guse involved a petition for rehearing challenging the Seventh Circuit's "assessment of costs against the unsuccessful parties on appeal." *Id.* at 680. In deciding the petition, the Seventh Circuit expressly stated: "We do not here need to decide the extent of the discretionary authority of the district court to disallow costs to a prevailing party who has been awarded costs on appeal inasmuch as the mandate on the judgment of this court has not yet been returned to the district

court." *Id.* 681.[2]

In *Republic Tobacco*, the other Seventh Circuit case addressing Rule 39(e) costs on which Plaintiffs rely (Pls.' Br. at 2-3), the Seventh Circuit addressed a cost request that, unlike the one here, was governed by Federal Rule of Appellate Procedure 39(a)(4), *i.e.*, the judgment in *Republic Tobacco* had been affirmed in part and reversed in part. 481 F.2d at 449. Unlike Rule 39(a)(3), Rule 39(a)(4) expressly provides that where a judgment is affirmed in part and reversed in part "costs are taxed only as the court orders." Fed. R. App. P. 39(a)(4). Despite the *Republic Tobacco* plaintiff's assertion that costs should not be awarded because it had won the majority of relief on appeal, the district court awarded the defendant the *entire amount* of costs it had incurred in lieu of obtaining a supersedeas bond. *Id.* at 448-50. The Seventh Circuit held that the district court had not abused its discretion in doing so, but noted that the district court was free to revisit the issue on remand "after hearing more from the parties." *Id.* at 449.

Plaintiffs' reliance on *Coyne-Delany Co. v. Capital Development Board*, 717 F.2d 385 (7th Cir. 1983), also is unavailing. Plaintiffs cite *Coyne-Delany* for the proposition that "'the district court has unquestioned power in an appropriate case not to award costs to the prevailing

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[2] The two Second Circuit cases on which the Seventh Circuit relied in *Guse* both support the proposition that a district court should exercise its discretion in favor of awarding a prevailing party its supersedeas bond premiums. In *Berner v. British Commonwealth Pacific Airlines, Ltd.*, 362 F.2d 799, 801 (2d Cir. 1966), the Second Circuit held that the district court had not abused its discretion by awarding the defendant its supersedeas bond premiums, notwithstanding the losing plaintiff's argument that "such heavy charges should not be imposed upon the widow and children for whom this action was brought in good faith." The Second Circuit remarked that "[s]uch a bond, ordinary and necessary to stay execution during an appeal, has long been held a proper item of costs." *Id.* In *Trans World Airlines, Inc. v. Hughes*, 515 F.2d 173, 177-79 (2d Cir. 1975), the Second Circuit held that the district court had abused its discretion by *disallowing* certain costs that the defendant had incurred in connection with obtaining a letter of credit in lieu of a supersedeas bond. Conversely, in *Lerman v. Flynt Distributing Co.*, 789 F.2d 164, 166 (2d Cir. 1986), on which Plaintiffs also rely (Pls.' Br. at 2), the Second Circuit held that the district court had abused its discretion in awarding costs incurred in connection with obtaining a supersedeas bond that were *in addition* to the bond premiums, because no statute or rule provides for the recovery of such costs.

party.'" (Pls.' Br. at 4 (quoting *Coyne-Delany*, 717 F.2d at 390).) *Coyne-Delaney*, however, did not involve a motion for costs pursuant to Rule 39(e) of the Federal Rules of Appellate Procedure. Rather, in *Coyne-Delaney*, the prevailing defendant sought to recover the costs it had incurred in posting an injunction bond, pursuant to Rules 54(d) and 65(c) of the Federal Rules of Civil Procedure. *Coyne-Delaney*, 717 F.2d at 390.

In reversing the district court's decision *not* to award the requested costs, the Seventh Circuit in *Coyne-Delaney* observed that "the district court's opinion suggests that the court may have believed it had to deny both costs and damages because the lawsuit had not been brought in bad faith and was not frivolous." *Id.* In explaining why this proposition was incorrect, the Seventh Circuit noted that the language of Rule 54(d) provides that "'costs *shall be allowed as of course to the prevailing party* unless the court otherwise directs.'" *Id.* at 390 (emphasis added, quoting Fed. R. Civ. P. 54(d)). The Seventh Circuit explained that "*[t]his language creates a presumption in favor of awarding costs*." (emphasis added).

The Seventh Circuit in *Coyne-Delany* further stated: "When rules prescribe a course of action as the norm but allow the district court to deviate from it, the court's discretion is more limited than it would be if the rules were non-directive." *Id.* at 392; *see also, e.g.*, *Weeks v. Samsung Heavy Indus. Co.*, 126 F.3d 926, 945 (7th Cir. 1997) (admonishing, in a Rule 54(d) case, that "[t]he presumption in favor of awarding costs to the prevailing party is difficult to overcome, and the district court's discretion is narrowly confined—the court must award costs unless it states good reasons for denying them").[3]

[3] Plaintiffs assert that "[t]he district court's discretion under Rule 39(e) is analogous to the *broad discretion* conferred on the district courts with respect to costs under Rule 54(d)." (Pls.' Br. at 3 (emphasis added).) But as *Coyne-Delaney* and *Weeks* show, a district court's discretion not to award costs pursuant to Rule 54(d) is not "broad," but rather is narrowly circumscribed.

In light of the plain language of Rule 39(a)(3) and the Seventh Circuit's mandate directing that the judgment be "REVERSED *with costs*" (Dkt. No. 2019 (emphasis added)), any discretion that this Court may have with respect to an award of Rule 39(e) costs is *narrowly confined* and presumptively should be exercised in favor of awarding such costs. This Court, therefore, should apply Rule 39(e) in accordance with its express terms and tax the premiums that Household incurred in posting the supersedeas bond.

III. Plaintiffs Fail To Cite Any Decision by a District Court in This Circuit Denying a Rule 39(e) Motion for the Taxation of Supersedeas Bond Premiums or Any Decision by the Seventh Circuit Reversing an Award of Supersedeas Bond Premiums.

Plaintiffs fail to cite any decision in which a district court in this circuit has denied a prevailing party's request to recover its supersedeas bond premiums, or any Seventh Circuit decision holding that a district court abused its discretion in awarding a prevailing party its supersedeas bond premiums. Plaintiffs, however, do cite *BASF AG v. Great American Assurance Company*, 595 F. Supp. 2d 899 (N.D. Ill. 2009) (Pls.' Br. at 4, 5)—a case in which the district court awarded the three defendants the full amount of their supersedeas bond premiums.

Household's own review of precedent similarly reveals no decision by any district court in the Seventh Circuit denying a Rule 39(e) motion for an award of supersedeas bond premiums. Rather, district courts in this circuit routinely award the prevailing party its costs of obtaining a supersedeas bond (or alternative security). *See, e.g., Smart Mktg. Group, Inc. v. Publ'ns Int'l, Ltd.*, Case No. 04-cv-0146, 2011 U.S. Dist. LEXIS 53144, at *6, *10 (N.D. Ill. May 17, 2011), (awarding prevailing defendant $57,866.49 it paid to obtain a letter of credit in lieu of a supersedeas bond); *BASF*, 595 F. Supp. 2d at 902, 905, 906 (awarding prevailing defendants supersedeas bond premiums totaling $1,553,264); *Olympia Express*, 2008 U.S. Dist. LEXIS 21573, at *17 (awarding prevailing defendant $70,000 it paid to obtain a supersedeas bond);

Olympia Equip. Leasing Co. v. W. Union Tel. Co., No. 77 C 4556, 1987 U.S. Dist. LEXIS 5312, at *14 (N.D. Ill. June 16, 1987) (allowing recovery by prevailing defendant of $135,029.14 incurred in posting alternative security to supersedeas bond). In accordance with this precedent, and in light of the plain language of Rules 39(a)(3) and 39(e), the Court should award Household its supersedeas bond premiums.

IV. Plaintiffs Present No Valid Reason for the Court To Decline To Tax the Costs of Household's Supersedeas Bond Premiums.

Despite the fact that Rule 39(e) explicitly provides for the recovery by the prevailing party of its supersedeas bond premiums, and notwithstanding that Plaintiffs have been unable to identify any decisions from courts in this circuit refusing to award a prevailing party its supersedeas bond premiums, Plaintiffs advance a hodgepodge of arguments about why this Court should depart from established practice and deny Household's request for an award of its supersedeas bond premiums. None of these arguments has merit. Indeed, they either have been rejected by the very cases Plaintiffs cite or by controlling Seventh Circuit precedent that Plaintiffs conveniently ignore.[4]

A. Plaintiffs' Decision To Reject Household's Offer To Establish an Escrow Account Is Not a Valid Reason To Deny Household's Motion for Recovery of Its Supersedeas Bond Premiums.

Plaintiffs assert that "Household has failed to meet its burden of proving that the supersedeas bond costs were reasonable and necessary." (Pls.' Br. at 5.) This argument fails both legally and factually.

[4] Household already addressed above Plaintiffs' baseless argument that the Court should deny Household's motion because "the Seventh Circuit's decision was not a victory for defendants." (Pls.' Br. at 8.) As discussed above, the judgment against Defendants was reversed *it its entirety*. *See* Argument, Section I. As it now stands, therefore, Plaintiffs have no judgment for either liability or damages, and no guarantee that they will be successful in obtaining a new judgment on retrial.

First, no such "burden" exists, as one of Plaintiffs' own authorities shows. Specifically, in *BASF*, the plaintiffs argued that the court should deny the defendants' Rule 39(e) motion to recover their supersedeas bond premiums, because "Defendants could have pursued a less costly alternative." 595 F. Supp. 2d at 902. The court rejected this argument, noting that "BASF has failed to cite any controlling precedent that provides that a court could decline to award such appellate costs based on the availability of less costly alternatives." *Id.*[5]

Second, although Household had no obligation to search for a less costly means of securing the judgment than a supersedeas bond, Household in fact offered to provide a less costly alternative—an escrow account—as Plaintiffs acknowledge. (Pls. Br. at 5.)[6]

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[5] Conversely, as one of Plaintiffs' authorities explains, "where the parties agree to less expensive substitutes for the costs explicitly authorized in Rule 39(e), there [is] no problem in allowing these costs." *Johnson v. Pac. Lighting Land Co.*, 878 F.2d 297, 298 (9th Cir. 1989) (disallowing costs paid for letter of credit that were in addition to cost of premiums paid for supersedeas bonds); *see also, e.g.*, *Republic Tobacco*, 481 F.3d at 450 (affirming award of costs of obtaining loan to secure judgment where the defendant established that these costs "were no more expensive that the premium for a supersedeas bond"); *Smart Mktg.*, 2011 U.S. Dist. LEXIS 53144, at *7 (awarding costs of posting letter of credit in lieu of a supersedeas bond where defendants showed that the letter of credit "was more economical than obtaining a supersedeas bond"); *Olympia Equipment*, 1987 U.S. Dist. LEXIS 5312, at *10 & n.4 (awarding prevailing party interests costs it incurred in posting alternative security where the costs were "considerably less than what a supersedeas bond would have cost").

[6] With their brief, Plaintiffs submitted the Declaration of Michael J. Dowd. (Dkt. No. 2051.) Exhibit 1 to Mr. Dowd's Declaration is a letter dated October 16, 2013 from Plaintiffs' counsel to Household's counsel. Citing this letter, Plaintiffs assert that "[a]fter defendants refused the requested guarantee of an escrow account, Lead Counsel suggested a letter of credit (which plaintiffs understood was a less expensive alternative) in lieu of a supersedeas bond." (Pls.' Br. at 8 n.9.) Tellingly, Plaintiffs have omitted to include as an exhibit to Mr. Dowd's Declaration the response letter from Household's counsel, dated October 21, 2013. Household's counsel advised Plaintiffs' counsel that Household had looked into obtaining a letter of credit, but had determined that a letter of credit would not be less costly than a supersedeas bond. (Ex A at 1.) Household's counsel further advised:

> Defendants have endeavored to determine the most cost-efficient alternative to the proposed cash escrow account. It has been determined that, in the absence of the use of an escrow fund, the least costly alternative will be to post a supersedeas bond that will be secured by the undertakings or guarantees of corporate sureties.

(*Id.* at 2.) Household, of course, had its own independent incentives to obtain the least costly form of security and it did so.

Third, Plaintiffs admit that it was *their decision* to reject Household's offer to establish a less costly escrow account. (Pls. Br. at 5.)[7] Plaintiffs rejected Household's offer to establish a fully-funded escrow account with full knowledge that they ultimately could be held liable for Household's supersedeas bond premiums. Specifically, in its October 21, 2013 letter to Plaintiffs' counsel, Household made clear that Plaintiffs' rejection of an escrow account was without any legitimate basis, and warned Plaintiffs that, if Household prevailed on appeal, it would seek to recover its supersedeas bond premiums pursuant to Rule 39(e). (Ex. A.) With full knowledge of this risk, and the fact that the amount of premiums at issue would involve millions of dollars, Plaintiffs nonetheless rejected Household's proposed alternative. *Id.* Plaintiffs' decision to reject Household's offer is not a reason to impose the costs of the supersedeas bond premiums on Household.

B. Plaintiffs' Assertions that This Was a Close Case and that They Acted in Good Faith Also Provide No Valid Basis for the Court To Deny Recovery of Household's Supersedeas Bond Premiums.

Also unavailing are Plaintiffs' arguments that this Court should deny Household's motion to recover its supersedeas bond premiums because this was a "close case," and because of Plaintiffs' self-proclaimed "good faith" in bringing this litigation. (Pls.' Br. at 9-11.) None of the cases Plaintiffs cite involved a denial of supersedeas bond premiums and only one—*Friends of the Everglades v. South Florida Water Management District*, 865 F. Supp. 2d 1159 (S.D. Fla. 2011), *aff'd*, 678 F.3d 1199 (11th Cir. 2012)—involved a request for costs pursuant to Rule 39(e) of the Federal Rules of Appellate Procedure.

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[7] In an effort to justify their rejection of Household's offer, Plaintiffs raise the specter of a bankruptcy filing by Household. (Pls.' Br. at 6.) Throughout the course of this 13-year-old case, Plaintiffs repeatedly have raised this baseless doomsday scenario. Yet Household (now known as HSBC Finance) remains in existence as an operating company.

In *Everglades*, the defendant sought costs pursuant to both Federal Rule of Civil Procedure 54(b) and Federal Rule of Appellate Procedure 39(e). *Id.* at 159, 1163-64. The court awarded the defendant $541.80 of its total Rule 39(e) costs of $996.80 and half of its Rule 54(d) costs of $26,213.68 for obtaining transcripts for use in the case. *Id*. at 1162-63. The cost request in *Everglades* did not involve premiums paid to obtain a supersedeas bond. Among the reasons the *Everglades* court gave for reducing the cost award was that the case involved a question of first impression, and the defendant had gained a benefit beyond just the reversal of the judgment against it, because the Eleventh Circuit's decision provided greater clarity about the defendants' permitting practices. *Id*. at 1168. Neither of those factors is present here.[8]

The district court's decision in *Everglades* also provides no support for Plaintiffs' argument that recovery of Household's supersedeas bond premiums should be denied because Plaintiffs acted in good faith. The district court in *Everglades* plainly stated that "'good faith, without more, however, is an insufficient basis for denying costs to a prevailing party.'" *Everglades*, 865 F. Supp. 2d at 1168 (quoting *White & White, Inc. v. American Hospital Supply Corp*., 786 F.2d 728 (6th Cir. 1986), which in turn cited the Seventh Circuit's decision in *Coyne-Delany*).

In sum, no precedent supports Plaintiffs' argument that taxation of supersedeas bond premiums, as specified in Rule 39(e), should not be awarded upon reversal of a judgment because the case was purportedly "close" or the losing appellee acted in "good faith."

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[8] Contrary to Plaintiffs' suggestion, the Seventh Circuit did not "recognize[] this case was close." (Pls.' Br. at 10.) The Seventh Circuit, rather, simply noted that this was a "complex and difficult case." *Glickenhaus*, 787 F.3d at 423 n.8. Plaintiffs fail to cite any decision denying recovery of the prevailing party's supersedeas bond premiums on the ground that the case was a complex and difficult. And unlike in *Everglades*, Defendants here did not obtain any benefit over and above the reversal of the judgment against them.

C. Plaintiffs' Arguments that Awarding Household Its Supersedeas Bond Premiums Would Be Inequitable and Would Have a Chilling Effect on Future Securities Cases Have Been Rejected by the Seventh Circuit.

Plaintiffs contend that, because the amount of supersedeas bond premiums that Household seeks to recover would exceed the individual recoveries of the three institutional investors that were named as Lead Plaintiffs, it would be inequitable for the court to award Household its supersedeas bond premiums and would chill future securities fraud suits. (Pls.' Br. at 11-15.) Plaintiffs assert that they are unaware of any authority to support the contention that "lead plaintiffs in a class action can be taxed costs for bond premiums that are more than eight times greater than their interest in the litigation." (*Id.* at 14.) Had Plaintiffs shepardized *Rand v. Monsanto Co.*, 926 F.2d 596 (7th Cir. 1991), on which they rely (Pls.' Br. at 15), they readily would have discovered that the Seventh Circuit, citing *Rand*, has rejected the very argument Plaintiffs make here.

In *Rand*, the Seventh Circuit held that the fact that counsel for the named plaintiff had agreed to advance to advance the costs of the litigation and not seek reimbursement from the plaintiff was not a reason to disqualify the named plaintiff from acting as a class representative. *Id.* at 601. The Seventh Circuit further explained that it is not inappropriate for class counsel to assume responsibility for the costs of class action litigation:

> Lawyers, who unlike the representative plaintiff receive compensation reflecting any benefits conferred on the class as a whole, also may be willing to underwrite the costs. Lawyers can spread risk not only across the partners of the firms but also across cases. One loss does not mean disaster if the firms have portfolios of actions, as they will.

Id. at 599; *accord Myrick v. Wellpoint, Inc.*, 764 F.3d 662, 667 (7th Cir. 2014) ("Law firms representing would-be class representatives have portfolios of suits. Some will be settled for considerable sums; others will fail. Paying the costs of failure is part of being in this business.").

Plaintiffs' counsel in this case, Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), is one of the nation's most prolific class action firms. On its website, under the heading "The Right Choice," Robbins Geller proclaims: "With 200 lawyers in 10 offices nationwide, the Firm has the resources, experience and tenacity to achieve superior results." (Ex B. at 1.) Robbins Geller and those it enlists to serve as lead plaintiffs in its litany of securities fraud class actions are fully aware of the potential costs and risks involved in such litigation. *See, e.g., Boca Raton Firefighters'& Police Pension Fund v. DeVry Inc.*, No. 10 C 7031, 2014 U.S. Dist. LEXIS 63523, at *31-32 (N.D. Ill. May 8, 2014) (Castillo, C.J.) (invoking presumption that "Robins Geller and [lead plaintiff]" must bear responsibility for defendants' "attorney's fees and other expenses for the entire action"). In all likelihood, Robbins Geller, an exceedingly well-financed firm and repeat player advancing securities fraud actions throughout the country, has agreed to pay the costs of this litigation.

But even if that were not the case, it would be no reason for the Court to deny Household's motion to recover its supersedeas bond premiums, as the Seventh Circuit's decision in *White v. Sundstrand Corp.*, 256 F.3d 580 (7th Cir. 2001), makes clear. In *White*, unlike in *Rand*, "the representative plaintiffs filed suit without securing from their lawyers any undertaking to pick up the tab," and the lawyers did not offer to pay the costs after the plaintiffs lost. *Id.* at 586. The Seventh Circuit held that this fact did not excuse the named plaintiffs from bearing the costs of the litigation:

> The eight pensioners may view this as churlish—and other would-be plaintiffs may take this into account when deciding whether to sign on with these lawyers—but a decision by the representatives and their lawyers not to strike the bargain approved in *Rand* is a poor reason to drop the costs back in defendants' laps. If this tactic succeeded, no sane class-action lawyer would again make the promise that the plaintiffs' lawyers made in *Rand*.

Id. The Seventh Circuit added: "Plaintiffs have not cited, and we have not found, any case

holding that responsibility for costs must be parceled out so that no member of a class pays more than a *pro rata* share." *Id.* Plaintiffs argument here is directly contrary to controlling Seventh Circuit precedent that is directly on point.

Household has been forced to endure years of litigation and legal expense based, *inter alia*, on Plaintiff counsel's interjection of a legally insufficient and erroneous loss-causation opinion into the case. Household was required to incur substantial costs for the premiums necessary to procure a supersedeas bond in order to appeal that error and obtain the reversal to which Household was entitled. There is no purported "equitable" basis, let alone, legal basis, by which Household should be denied the costs of its supersedeas bond. Plaintiffs were responsible for the error that required reversal of the judgment and, under the plain directive of the Federal Rules of Appellate Procedure and the mandate of the Seventh Circuit, Plaintiffs are responsible for the "premiums paid for a supersedeas bond" necessary to correct that error on appeal.

V. Household Is the Legal Entity that Incurred the Cost of the Supersedeas Bond Premiums.

In a last-ditch effort to avoid payment of the supersedes bond premiums, Plaintiffs assert that there is no evidence that Household (now known as HSBC Finance) is the legal entity that incurred the cost of the premiums. (Pls.' Br. at 5 n.3.). Plaintiffs, however, are (or should be) well aware that HSBC Finance is the legal entity that incurred the cost of the bond premiums, because this is described in HSBC Finance's public filings with the Securities and Exchange Commission (the "SEC"), portions of which Plaintiffs have attached as exhibits to the Declaration of Michael J. Dowd. (Dkt. No. 2051.)

For example, Plaintiffs have attached as Exhibit 5 to Mr. Dowd's declaration selected pages from HSBC Finance's Form 10-K annual report for the year ended December 31, 2013, which was filed on February 24, 2014. Page 72 of HSBC Finance's 2013 Form 10-K explains:

> The surety bond has a pricing term of three years and an annual fee of $7 million. To reduce costs associated with posting cash collateral with the insurance companies, the surety bond has been guaranteed by HSBC North America and we will pay HSBC North America a fee of $6 million annually for this guarantee. *During 2014, we [HSBC Finance] recorded expense of $7 million related to the surety bond* and $6 million related to the guarantee provided by HSBC North America.

(Dkt. No. 2051-5 (emphasis added.) HSBC Finance's 2014 Form 10-K (Ex. C) and 2015 Forms 10-Q quarterly reports (Ex. D) contained similar disclosures. [9]

CONCLUSION

For the reasons set forth herein, the Court should issue an Order awarding Household its taxable costs of appeal in the amount of $13,281,282.

Dated: October 21, 2015

Respectfully submitted,

/s/R. Ryan Stoll

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[9] Because HSBC Finance's SEC filings do not (yet) cover the entire period the supersedeas bond was in effect, Household has submitted herewith the Declaration of Michael A. Reeves, the Executive Vice President and Chief Financial Offer of HSBC Finance. (Ex. E.) Mr. Reeves confirms that HSBC Finance is the entity that incurred the expense of the $13,280,827 of supersedeas bond premiums that defendant Household (now HSBC Finance) seeks to recover through this motion.

CERTIFICATE OF SERVICE

R. Ryan Stoll, an attorney, hereby certifies that on October 21, 2015, he caused true and correct copies of the foregoing Defendant Household International Inc.'s Reply in Support of Its Motion for an Award of Costs Pursuant to Federal Rule of Appellate Procedure 39(e) to be served via the Court's ECF filing system on the following counsel of record in this action:

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INDEX OF EXHIBITS

Tab

EXHIBIT A

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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October 21, 2013

BY EMAIL AND U.S. MAIL

Spencer A. Burkholz, Esq.
Robbins Geller Rudman & Dowd LLP
655 West Broadway
Suite 1900
San Diego, CA 92101

RE: *Lawrence E. Jaffe Pension Plan v. Household International, Inc.*, Case No. 02-CV-5893 (N.D. Ill.)

Dear Spence:

We are in receipt of your letter dated October 16, 2013. As your letter acknowledges, Defendants previously proposed to you the use of an escrow account as an alternative to the posting of a supersedeas bond in order to avoid the premiums that must be paid to otherwise post bond security. In those discussions, we advised you that, in the event Defendants were required to post a bond to preserve rights pending appeal, the Defendants would seek to recover all premiums paid in accordance with Federal Rule of Appellate Procedure 39(e).

Although we disagree with your concerns, your letter accurately reflects that you rejected the escrow fund proposal based upon your concerns relating to bankruptcy protections. With respect to the Letter of Credit option referenced in your letter, we advised you (1) that the costs to our client associated with a Letter of Credit were not less than the costs of a supersedeas bond, and (2) under the Local Rules of the Northern District of Illinois, we would independently be entitled to post an unconditional Letter of Credit in any event if it were a lower cost alternative to the guaranty of a corporate surety holding a certificate of authority from the Secretary of Treasury. *See* LR 65.1.

Defendants have endeavored to determine the most cost-efficient alternative to the proposed cash escrow account. It has been determined that, in the absence of the use of an escrow fund, the least costly alternative will be to post a supersedeas bond that will be secured by the undertakings or guarantees of corporate sureties.

Thank you for your agreement and confirmation that Plaintiffs will not undertake any efforts to enforce the judgment prior to our filing of the notice of appeal and posting of the supersedeas bond. Both will be done within the 30-day time period from entry of the judgment on October 17, 2013.

Please be assured that Defendants have every incentive to minimize the cost of posting security to preserve rights pending appeal and are undertaking to do so. We will seek the recovery of the premiums paid for the supersedeas bond in accordance with Federal Rule of Appellate Procedure 39(e).

Sincerely,

R. Ryan Stoll

EXHIBIT B

THE RIGHT CHOICE

Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or the "Firm") specializes in complex litigation emphasizing securities, corporate mergers and acquisitions, shareholder derivative, whistleblower, antitrust, consumer, insurance, health care, human rights and employment discrimination class actions. The Firm's unparalleled experience and capabilities in these fields are based on the talents of its attorneys, who have successfully prosecuted thousands of class action lawsuits.

The Firm is widely recognized as a leading law firm worldwide. Judges have described Robbins Geller as one of the most formidable securities law firms in the country. With 200 lawyers in 10 offices nationwide, the Firm has the resources, experience and tenacity to achieve superior results.

Robbins Geller attorneys have shaped the law in the area of securities litigation and shareholder rights, and have recovered tens of billions of dollars on behalf of the Firm's clients. Robbins Geller's record of success includes some of the largest recoveries in history:

- Largest securities class action recovery: $7.3 billion (*Enron*)
- Largest antitrust class action settlement: $5.7 billion (*Visa/MasterCard*)
- Largest securities class action judgment: $2.46 billion (*Household International*)*
- Largest stock option backdating recovery: $925 million (*UnitedHealth Group*)
- Largest opt-out (non-class) securities action recovery: $657 million (*WorldCom*)
- Largest RMBS purchaser class action recovery: $500 million (*Countrywide*)
- Largest merger & acquisition recovery: $200 million (*Kinder Morgan*)

The Firm's attorneys have obtained several of the top 25 securities class action recoveries in which a single law firm served as lead counsel. Additionally, Institutional Shareholder Services ("ISS") recently ranked Robbins Geller number one among all securities class action firms in its *SCAS Top 50* report for the number of securities class action settlements and amount of settlement money recovered for shareholders. ISS found that during 2014, Robbins Geller obtained 50% more for shareholders than any other securities firm in the country. Specifically, the Firm recovered more than $929 million in 35 cases in which it served as lead counsel in 2014.

The depth and breadth of the Firm's resources are extensive, permitting the Firm to achieve exceptional results. With hundreds of highly skilled attorneys and employees, including forensic accountants, economists, damage analysts, investigators, paralegals, database programmers and computer security experts, Robbins Geller is able to give the highest level of attention and professionalism to each case and client.

Robbins Geller has the skill and experience to litigate even the most complex and demanding cases. As sole lead counsel in cases such as *Enron*, *Household International* and *UnitedHealth*, the Firm was able to litigate independently and successfully. The Firm's securities team includes dozens of former federal and state prosecutors and trial attorneys, and a top-tier appellate group whose collective work has established numerous legal precedents beneficial to investors.

Robbins Geller has been trusted to represent more institutional investors in securities and corporate litigation than any other law firm in the United States. The Firm advises hundreds of institutional investors, including public and multi-employer pension funds, fund managers, banks and insurance companies with more than $2 trillion in assets. To help monitor and protect these funds, Robbins Geller created the Portfolio Monitoring Program℠ to detect and protect against fraud. This monitoring program is performed by an exclusive in-house team of two dozen analysts,

accountants, and other professionals providing comprehensive monitoring of securities, bonds, and other investments.

Robbins Geller has a long history of achieving record-breaking recoveries and precedent-setting decisions for defrauded shareholders and consumers. The Firm also works hard to enforce corporate governance changes, helping to improve the financial markets for investors worldwide.

For more information about Robbins Geller, contact us or call (800) 449-4900.

* *Household* was recently remanded to the district court for a new trial on certain aspects of loss causation and to determine the culpability of certain individual defendants with respect to false statements the jury previously found to be actionable.

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Fifth Street Finance Cor...
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MaxPoint Interactive, In...
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On Deck Capital, Inc.
American Express Company
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AirMedia Group Inc.

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EXHIBIT C

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2014
OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 1-8198

HSBC FINANCE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**86-1052062**
(State of incorporation)	**(I.R.S. Employer Identification No.)**
26525 North Riverwoods Boulevard, Suite 100, Mettawa, Illinois	**60045**
(Address of principal executive offices)	**(Zip Code)**

(224) 880-7000
Registrant's telephone number, including area code
Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
5.0% Notes due June 30, 2015	New York Stock Exchange
5.5% Notes due January 19, 2016	New York Stock Exchange
Floating Rate Notes due June 1, 2016	New York Stock Exchange
Depositary Shares (each representing one-fortieth share of 6.36% Non-Cumulative Preferred Stock, Series B, $.01 par, $1,000 liquidation preference)	New York Stock Exchange
Guarantee of Preferred Securities of HSBC Finance Capital Trust IX	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:
None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ Smaller reporting company ☐
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of February 20, 2015, there were 68 shares of the registrant's common stock outstanding, all of which are owned by HSBC Investments (North America) Inc.

DOCUMENTS INCORPORATED BY REFERENCE

None.

Contractual Cash Obligations The following table summarizes our long-term contractual cash obligations at December 31, 2014 by period due:

	2015	2016	2017	2018	2019	Thereafter	Total
				(in millions)			
Principal balance of debt:							
Due to affiliates	$ 2,000	$ 500	$ 512	$ 2,500	$ —	$ 1,331	$ 6,843
Long-term debt (including secured financings)	5,383	5,167	1,609	292	195	3,467	16,113
Total debt	7,383	5,667	2,121	2,792	195	4,798	22,956
Operating leases:							
Minimum rental payments	13	11	4	4	4	2	38
Minimum sublease income	(4)	(3)	—	—	—	—	(7)
Total operating leases	9	8	4	4	4	2	31
Non-qualified postretirement benefit liability[1]	19	18	17	16	15	231	316
Total contractual cash obligations	$ 7,411	$ 5,693	$ 2,142	$ 2,812	$ 214	$ 5,031	$ 23,303

(1) The expected benefit payments included in the table above covers both continuing and discontinued operations and includes a future service component.

These cash obligations could be funded through cash generated from operations, asset sales, liquidation of short-term investments, funding from affiliates or capital contributions from HSBC.

The pension obligation for our employees are the contractual obligation of HSBC North America and, therefore, are excluded from the table above.

The contractual cash obligation table above does not include any amounts for the partial final judgment involving the Jaffe litigation as we have obtained a surety bond for $2.5 billion to stay execution of the partial judgment while the appeal is on going. See "Off-Balance Sheet Arrangements" in this MD&A for discussion of the surety bond that was obtained in November 2013 and Note 22, "Litigation and Regulatory Matters," in the accompanying consolidated financial statements for more detailed discussion of the Jaffe litigation.

Our purchase obligations for goods and services at December 31, 2014 were not significant.

Off-Balance Sheet Arrangements and Contingent Liabilities

Off-Balance Sheet Arrangements On October 17, 2013, the District Court entered a partial final judgment against us in the Jaffe litigation in the amount of approximately $2.5 billion. We are currently appealing this judgment. In addition to the partial judgment that has been entered, there also remains approximately $625 million, prior to imposition of pre-judgment interest, in claims that still are subject to objections that have not yet been ruled upon by the District Court. In November 2013, we obtained a surety bond for $2.5 billion to secure a stay of execution of the partial judgment while the appeal is on-going. The surety bond has a pricing term of three years and an annual fee of $7 million. To reduce costs associated with posting cash collateral with the insurance companies, the surety bond has been guaranteed by HSBC North America and we will pay HSBC North America a fee of $6 million annually for this guarantee. During 2014, we recorded expense of $7 million related to the surety bond and $6 million related to the guarantee provided by HSBC North America. See Note 21, "Commitments and Contingent Liabilities," in the accompanying consolidated financial statements for additional information.

Contingent Liabilities Through our discontinued Cards and Retail Services business, we previously offered or participated in the marketing, distribution, or servicing of products, such as identity theft protection and credit monitoring products, that were ancillary to the provision of credit to the consumer (enhancement services products). We ceased the marketing, distribution and servicing of these products by May 2012. The offering and administration of these, and other enhancement services products such as debt protection products, has been the subject of enforcement actions against other institutions by regulators, including the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation. These enforcement actions have resulted in orders to pay restitution to customers and the assessment of penalties in substantial amounts. We have made restitution to certain customers in connection with certain enhancement services products and we continue

EXHIBIT D

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2015

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 001-08198

HSBC FINANCE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**86-1052062**
(State of incorporation)	**(I.R.S. Employer Identification No.)**
26525 North Riverwoods Boulevard, Suite 100, Mettawa, Illinois	**60045**
(Address of principal executive offices)	**(Zip Code)**

(224) 880-7000
Registrant's telephone number, including area code

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☒ (Do not check if a smaller reporting company)	Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of July 31, 2015, there were 68 shares of the registrant's common stock outstanding, all of which are owned by HSBC Investments (North America) Inc.

HSBC North America is required to disclose the results of its annual DFAST under the FRB and OCC's severely adverse stress scenario and is also required to disclose the results of its mid-cycle DFAST under its internally developed severely adverse stress scenario. In March 2015, HSBC North America publicly disclosed its most recent DFAST results and the FRB also publicly disclosed its own DFAST and CCAR results. HSBC North America publicly disclosed its most recent mid-cycle DFAST results in July 2015.

In March 2015, the FRB informed HSBC North America, our indirect parent company, that it did not object to HSBC North America's capital plan or the planned capital distributions included in its 2015 CCAR submission, including payment of dividends on outstanding preferred stock and trust preferred securities of HSBC North America and its subsidiaries. Stress testing results are based solely on hypothetical adverse scenarios and should not be viewed or interpreted as forecasts of expected outcomes or capital adequacy or of the actual financial condition of HSBC North America. Capital planning and stress testing for HSBC North America may impact our future capital and liquidity.

2015 Funding Strategy The following table summarizes our current range of estimates for funding needs and sources for 2015:

	Actual Jan. 1 through June 30, 2015	Estimated July 1 through December 31, 2015	Estimated Full Year 2015
		(in billions)	
Funding needs:			
Term debt maturities	$ 4	$ 2 - $ 3	$ 6 - $ 7
Secured financing maturities	—	1 - 1	1 - 1
Other	—	— - 1	— - 1
Total funding needs	$ 4	$ 3 - $ 5	$ 7 - $ 9
Funding sources:			
Net asset attrition[1]	$ 1	$ 1 - $ 1	$ 2 - $ 2
Liquidation of short-term investments	3	1 - 1	4 - 4
Asset sales and transfers	—	1 - 2	1 - 2
HSBC and HSBC subsidiaries, including capital infusions	—	— - 1	— - 1
Total funding sources	$ 4	$ 3 - $ 5	$ 7 - $ 9

(1) Net of receivable charge-offs.

For the remainder of 2015, the combination of cash generated from operations including balance sheet attrition, liquidation of short-term investments, funding from affiliates and asset sales will generate the liquidity necessary to meet our maturing debt obligations.

Off-Balance Sheet Arrangements

On October 17, 2013, the District Court entered a partial final judgment against us in the Jaffe litigation in the amount of approximately $2.5 billion. In addition to the partial judgment that had been entered, there also remains approximately $625 million, prior to imposition of pre-judgment interest, in claims that still are subject to objections that have not yet been ruled upon by the District Court. In November 2013, we obtained a surety bond for $2.5 billion to secure a stay of execution of the partial judgment while the appeal was on-going. The surety bond has a pricing term of three years and an annual fee of $7 million. To reduce costs associated with posting cash collateral with the insurance companies, the surety bond has been guaranteed by HSBC North America and we will pay HSBC North America a fee of $6 million annually for this guarantee. During the three and six months ended June 30, 2015, we recorded expense of $2 million and $4 million, respectively, related to the surety bond and $1 million and $3 million, respectively, related to the guarantee provided by HSBC North America. During the three and six months ended June 30, 2014, we recorded expense of $2 million and $4 million, respectively, related to the surety bond and $2 million and $3 million, respectively, related to the guarantee provided by HSBC North America. Given the mandate of the Court of Appeals for the Seventh Circuit reversing the judgment, we will be seeking release of the surety bond. See Note 14, "Litigation and Regulatory Matters," in the accompanying consolidated financial statements for additional details regarding the matter and Note 21, "Commitments and Contingent Liabilities," in our 2014 Form 10-K for additional information.

EXHIBIT E

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.	)	

DECLARATION OF MICHAEL A. REEVES

I, Michael A. Reeves, submit this declaration in support of Defendant Household International, Inc.'s Motion for an Award of Costs Pursuant to Federal Rule of Appellate Procedure 39(e). I have personal knowledge of the matters set forth herein.

1. I am the Executive Vice President and Chief Financial Officer of HSBC Finance Corporation ("HSBC Finance"), formerly known as Household International, Inc. ("Household").

2. HSBC Finance is an indirect wholly owned subsidiary of HSBC North America Holdings, Inc. ("HSBC North America").

3. In connection with Household's appeal to the Seventh Circuit Court of Appeals in the above-captioned matter, Household was required to post a supersedeas bond in the amount of $2,466,348,175.67. The annual bond premiums were $7,399,045, and the bond was in effect from November 11, 2013 to August 26, 2015, when the bond was canceled. The total premiums paid during this period (net of a refund for the premiums paid for the period August 26, 2015 to November 11, 2015) was $13,280,827.

4. The $13,280,827 of bond premiums were recorded as an expense by HSBC Finance. This is described in HSBC Finance's public filings with the SEC. For example, page 69 of HSBC Finance's Form 10-K for the year ended December 31, 2014, which was filed with the SEC on February 23, 2015, references the *Jaffe* litigation and explains:

> In November 2013, we obtained a surety bond for $2.5 billion to secure a stay of execution of the partial judgment while the appeal is on-going. The surety bond has a pricing term of three years and an annual fee of $7 million. To reduce costs associated with posting cash collateral with the insurance companies, the surety bond has been guaranteed by HSBC North America and we will pay HSBC North America a fee of $6 million annually for this guarantee. *During 2014, we recorded expense of $7 million related to the surety bond* and $6 million related to the guarantee provided by HSBC North America.

(Emphasis added). Similar disclosures for the premium expense for 2015 are contained in HSBC Finance's quarterly 2015 SEC filings.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Dated: October 21, 2015

Mike Reeves

Michael A. Reeves