

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
NOV 04 2002

LAWRENCE E. JAFFE PENSION PLAN, On
Behalf of Itself and All Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et
al.,

Defendants.

No. 02-C-5893

CLASS ACTION

Judge Ronald A. Guzman
Magistrate Judge Nan R. Nolan

MARC ABRAMS, On Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et
al.,

Defendants.

No. 02-C-5934

CLASS ACTION

EISBERRY HOLDINGS, LTD., On Behalf of
Itself and All Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et
al.,

Defendants.

No. 02-C-6130

CLASS ACTION

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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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**MOTION OF
THE GLICKENHAUS INSTITUTIONAL GROUP FOR
APPOINTMENT AS LEAD PLAINTIFF AND
FOR APPROVAL OF LEAD PLAINTIFF'S
CHOICE OF LEAD COUNSEL**

21

**JEFFREY P. JANNETT, On Behalf of Himself
and All Others Similarly Situated,**

Plaintiff,

vs.

**HOUSEHOLD INTERNATIONAL, INC., et
al.,**

Defendants.

No: 02-C-6326

CLASS ACTION

**BERNARD DOLOWICH, On Behalf of Himself
and All Others Similarly Situated,**

Plaintiff,

vs.

**HOUSEHOLD INTERNATIONAL, INC., et
al.,**

Defendants.

No. 02-C-6352

CLASS ACTION

**RONALD A. HANSCHMAN, On Behalf of
Himself and All Others Similarly Situated,**

Plaintiff,

vs.

**HOUSEHOLD INTERNATIONAL, INC., et
al.,**

Defendants.

No: 02-C-6859

CLASS ACTION

**GERALD M. FRIEDEL, On Behalf of Himself
and All Others Similarly Situated,**

Plaintiff,

vs.

**HOUSEHOLD INTERNATIONAL, INC., et
al.,**


Defendants.

No. 02-C-7067

CLASS ACTION

Glickenhau & Co., PACE Industry Union-Management Pension Fund, and International Union of Operating Engineers Local No. 132 Pension Plan (the "Glickenhau Institutional Group") will, and hereby do, move the Court for an Order (1) appointing the Glickenhau Institutional Group as lead plaintiff, pursuant to §21D(a)(3)(B) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995; and (2) approving the Glickenhau Institutional Group's selection of Milberg Weiss Bershad Hynes & Lerach LLP to serve as lead counsel and Miller Faucher and Cafferty LLP as liaison counsel. In support of this motion, the Glickenhau Institutional Group submits herewith a Memorandum of Law and the Declaration of Marvin A. Miller.

DATED: October 18, 2002


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Proposed Lead Counsel for Plaintiffs

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,

vs.

HOUSEHOLD INTERNATIONAL, INC., et
al.,

Defendants.

No. 02-C-5893

CLASS ACTION

Judge Ronald A. Guzman
Magistrate Judge Nan R. Nolan

DOCKETED

NOV 04 2002

MARC ABRAMS, On Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTER
al.,

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No. 02-C-5934

CLASS ACTION

EISBERRY HOLDIN
Itself and All Others Similarly Situated,

Plaintiff,

vs.

HOUSEHOLD INTERNATIONAL, INC., et
al.,

Defendants.

No. 02-C-6130

CLASS ACTION

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**MEMORANDUM OF LAW IN SUPPORT OF
THE GLICKENHAUS INSTITUTIONAL GROUP'S
MOTION FOR APPOINTMENT AS LEAD PLAINTIFF
AND FOR APPROVAL OF LEAD PLAINTIFF'S
CHOICE AS LEAD COUNSEL**

21

**JEFFREY P. JANNETT, On Behalf of Himself
and All Others Similarly Situated,**

Plaintiff,

vs.

**HOUSEHOLD INTERNATIONAL, INC., et
al.,**

Defendants.

No: 02-C-6326

CLASS ACTION

**BERNARD DOLOWICH, On Behalf of Himself
and All Others Similarly Situated,**

Plaintiff,

vs.

**HOUSEHOLD INTERNATIONAL, INC., et
al.,**

Defendants.

No. 02-C-6352

CLASS ACTION

**RONALD A. HANSCHMAN, On Behalf of
Himself and All Others Similarly Situated,**

Plaintiff,

vs.

**HOUSEHOLD INTERNATIONAL, INC., et
al.,**

Defendants.

No: 02-C-6859

CLASS ACTION

**GERALD M. FRIEDEL, On Behalf of Himself
and All Others Similarly Situated,**

Plaintiff,

vs.

**HOUSEHOLD INTERNATIONAL, INC., et
al.,**

Defendants.

No. 02-C-7067

CLASS ACTION

I. INTRODUCTION

Glickenhau & Co., PACE Industry Union-Management Pension Fund, and International Union of Operating Engineers Local No. 132 Pension Plan (the "Glickenhau Institutional Group") who collectively suffered damages in excess of \$6.061 million as a result of their purchase or acquisition of Household International, Inc. ("Household" or the "Company") securities, submit this motion for: (1) appointment of lead plaintiff; and (2) approval of lead plaintiff's selection of counsel. The Glickenhau Institutional Group has timely filed this motion and has the largest financial interest in the relief sought by the class. 15 U.S.C. §78u-4(a)(3)(B)(iii). The Glickenhau Institutional Group also satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure because its claims are typical of the claims of the class, it will fairly and adequately represent the interest of the class (since its interests are closely aligned with the members of the class) and it has retained counsel who is highly experienced in prosecuting securities class actions. *Id.* Accordingly, the Glickenhau Institutional Group is "the most adequate plaintiff," as defined by §21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "Exchange Act"), and should be appointed lead plaintiff. Further, the Court should approve the Glickenhau Institutional Group's choice of Milberg Weiss Bershad Hynes & Lerach LLP ("Milberg Weiss") as lead counsel and Miller Faucher and Cafferty LLP ("Miller Faucher") as liaison counsel.

II. OVERVIEW OF APPLICABLE LAW

Section 21D of the Exchange Act, as amended, sets forth the procedure for the selection of lead plaintiff to oversee class actions brought under the federal securities laws.¹ Specifically, §21D(a)(3)(A)(i) provides that within 20 days after the date on which a class action is filed:

[T]he plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class –

¹In December 1995, Congress amended the Exchange Act by enacting the Private Securities Litigation Reform Act of 1995 ("PSLRA"). These amendments are codified in §21D of the Exchange Act, 15 U.S.C. §78u-4.

(I) of the pendency of the action, the claims asserted therein, and the purported class period; and

(II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

15 U.S.C. §78u-4(a)(3)(A)(i).

Section 21D(a)(3)(B)(i) of the Exchange Act directs a court, within 90 days from the date of publication of the early notice, to consider any motions by plaintiffs or purported class members to appoint lead plaintiffs filed in response to any such notice. Under this section of the Exchange Act, the Court shall appoint the "most adequate plaintiff" to serve as lead plaintiff and shall presume that the most adequate plaintiff is the person that:

(aa) has either filed the complaint or made a motion in response to a notice ...;

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

III. PROCEDURAL BACKGROUND

Pending before this Court are seven securities class action lawsuits (the "Related Actions") filed by purchasers of Household securities.² The plaintiffs in each class action allege violations of §§10(b) and 20(a) of the Exchange Act against all defendants³ on behalf of investors who purchased

²These actions are: *Jaffe v. Household Inc., et al.*, No. 02 C 5892 (N.D. Ill., filed August 19, 2002); *Abrams v. Household Inc., et al.*, No. 02 C 5934 (N.D. Ill., filed August 20, 2002); *Eisenberry Holdings v. Household Inc., et al.*, No. 02 C 6130 (N.D. Ill., filed August 28, 2002); *Jannett v. Household Inc., et al.*, No. 02 C 6326 (N.D. Ill., filed September 5, 2002); *Dolowich v. Household Inc., et al.*, No. 02 C 6352 (N.D. Ill., filed September 6, 2002); *Hanschman v. Household Inc., et al.*, No. 02 C 6859 (N.D. Ill., filed September 25, 2002); and *Friedel v. Household Inc., et al.*, No. 02 C 7067 (N.D. Ill., filed October 2, 2002). On October 4, 2002, plaintiff Marc Abrams filed a Motion for a Finding of Relatedness which is currently pending before this Court.

³The *Jaffe*, *Eisberry*, and *Dolowich* complaints name Arthur Andersen LLP, the Company's auditor during the class period, as an additional defendant. Following entry of an order consolidating the Related Actions and the appointment of lead plaintiff, a consolidated complaint will be filed by the lead plaintiff that will resolve any differences in the various cases.

or otherwise acquired Household securities during the Class Period. The Glickenhau Institutional Group suffered losses in excess of \$6.061 million as a result of its purchases of Household securities and seek to represent all persons injured by the same course of conduct – defendants' violations of the federal securities laws.⁴

Section 21D(a)(3)(B) of the Exchange Act requires early notice to advise class members of their right to move the Court to be appointed "lead plaintiff" and provides that any member or members of the class may so request this within 60 days of publication of the early notice. 15 U.S.C. §78u-4(a)(3)(A)(i). On August 19, 2002, the plaintiff in the *Jaffe* action published the required notice advising class members of the Household action (*see* Ex. C to the Declaration of Marvin A. Miller in Support of the Glickenhau Institutional Group's Motion for Appointment as Lead Plaintiff and for Approval of Lead Plaintiff's Choice of Lead Counsel ("Miller Decl.")). The Glickenhau Institutional Group now timely requests that the Court appoint it as lead plaintiff and approve its choice of counsel.

IV. SUMMARY OF PENDING ACTIONS

The Related Actions are brought against Household, its Chairman and Chief Executive Officer Aldinger and its President and Chief Operating Officer Schoenholz (the "Individual Defendants") on behalf of a class of investors who purchased or otherwise acquired Household securities during the Class Period. ¶1.⁵ The plaintiffs in these actions allege that defendants violated §§10(b) and 20(a) of the Exchange Act and Securities and Exchange Commission ("SEC") Rule 10b-5 by misrepresenting Household's financial results, causing Household's shares to trade at artificially inflated levels throughout the Class Period. ¶¶2, 3, 55.

⁴For Household shares that were not sold, the loss is calculated by multiplying the number of shares held by the average share price during the 90 trading days after the end of the Class Period. For the purposes of this motion, the price used is \$31.82.

⁵Unless otherwise indicated, all paragraph references ("¶") are to the complaint in *Abrams v. Household International, Inc.*, No. 02 C 5934, filed on August 20, 2002.

In order to cause Household's securities to trade at artificially inflated levels, defendants misrepresented Household's financial results by failing to properly amortize the Company's co-branding agreements (its expenses associated with its marketing initiatives together with its affinity agreements), and by improperly "re-ageing" Household's accounts, thereby concealing the Company's actual delinquency status. ¶¶2, 37. As a result, defendants caused the Company's financial statements to violate Generally Accepted Accounting Principles ("GAAP") and SEC rules. ¶44.

Household is principally a non-operating holding company engaged in three reportable segments: consumer, credit card services and international. ¶¶1, 9. Household's consumer segment includes consumer lending, mortgage services, retail services and auto finance businesses. *Id.* The credit card services include the domestic MasterCard and Visa business. *Id.* The international segment includes foreign operations in the United Kingdom and Canada. *Id.*

On August 14, 2002, the same day as the Individual Defendants in their respective capacities as CEO and COO were required to certify the veracity of their financial statements, Household announced the restatement of its financial statements since 1994. ¶10, 38. Specifically, consultations with its new auditor, KPMG, concerning the amortization of various credit card co-branding, marketing and affinity agreements led Household to restate earnings by \$386 million. *Id.* Household will now amortize its co-branding agreement over one year (this was previously done over the life of the contract); expense marketing initiatives as incurred (this was previously done over life of the agreement); and amortize affinity agreements over ten years (this was previously done over thirteen years). *Id.*

Household also manipulated its reported results during the Class Period by "re-aging" delinquent accounts. ¶¶11, 39. Account re-aging refers to the practice of resetting to current, accounts that would otherwise be delinquent. *Id.* This practice manipulated the reserve ratio of non-performing assets and reserve ratio to charge-offs and caused assets to be overstated and charge-offs to be understated. *Id.* Household's reported credit quality deteriorated year-over-year in the June

2002 quarter. ¶¶12, 40. The Company's re-aging policy caused these figures to understate Household's delinquency and charge-off experience. *Id.*

Household also created an earnings boost from pension income in fiscal 2001. ¶13, 41. Specifically, while companies typically record a periodic pension *expense* to reflect the amount of future employee benefits earned during a period (and sometimes as a result of under-funded pension plans), Household has recorded *income* from the Company's pension plan in each of the past three years. *Id.* Household's pension assumptions led the Company to recognize approximately \$38 million of pension income in fiscal 2001, compared with approximately \$33 million of pension income in 2000, and \$26 million of pension income in 1999. ¶14, 42. Absent this boost, reported earnings for 2001 would have been reduced by \$.05 per share, to \$3.86 from the reported \$3.91. *Id.*

Defendant Arthur Andersen issued unqualified audit opinions for each of the Company's annual reports on Forms 10-K during the Class Period. In those opinions, Arthur Andersen certified that it had audited the Company's financials in accordance with GAAP, and that, in its opinion, the financial statements were presented fairly, in all material respects. *Jaffe Compl.*, ¶60.

On August 14, 2002, Household admitted that it inappropriately recorded transactions included in its 1997-2002 results, and has restated those results to remove millions in improperly reported revenues, such that its 1997-2002 financials were not a fair presentation of Household's results and were presented in violation of GAAP and SEC rules. ¶44. Household's shares thus traded at an inflated level during the Class Period thereby causing plaintiffs to suffer damages. ¶56.

V. ARGUMENT

A. The Glickenhau Institutional Group Should Be Appointed Lead Plaintiff

1. The Glickenhau Institutional Group Believes It Has the Largest Financial Interest in the Relief Sought

The PSLRA provides that this Court "shall appoint as lead plaintiff the member ... of the purported plaintiff class that the court determines to be most capable of adequately representing the

interests of class members (hereafter in this paragraph referred to as the 'most adequate plaintiff') in accordance with this subparagraph." 15 U.S.C. §78u-4(a)(3)(B)(i). The statute also provides that:

[T]he most adequate plaintiff in any private action arising under this chapter is the person or group of persons that –

* * *

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class

15 U.S.C. §78u-4(a)(3)(B)(iii)(I).

The PSLRA explicitly provides that a "member or members" of the class, 15 U.S.C. §78u-4(a)(3)(B)(i), or a "person or group of persons," may combine to constitute "the largest financial interest" entitled to presumptive appointment as lead plaintiff. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). Thus, courts have appointed groups of shareholders as lead plaintiffs. *In re Nanophase Techs. Corp. Litig.*, No. 98-C-3450, 1999 U.S. Dist. LEXIS 16171, at *20 (N.D. Ill. Sept. 27, 1999) (group of preferred shareholders granted lead plaintiff status); *Lax v. First Merchants Acceptance Corp.*, No. 97 C 2715, 1997 U.S. Dist. LEXIS 11866, at *27 (N.D. Ill. Aug. 6, 1997) (plaintiff investor group appointed lead plaintiff); *Steiner v. Aurora Foods Inc.*, No. 0-602CW, 2000 U.S. Dist. LEXIS 20341 (N.D. Cal. June 5, 2000) (appointing four shareholders); *Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129, 1131 (C.D. Cal. 1999) (appointing seven shareholders).

In fact, Congress enacted the PSLRA and these provisions to encourage and induce institutional investors like those in the Glickenhau Institutional Group to step forward and assume the role of lead plaintiff. *See, e.g., In re Lucent Techs. Inc. Secs. Litig.*, 194 F.R.D. 137, 152 (D.N.J. 2000) (appointment of pension trust fund as lead plaintiff was "consistent with the PSLRA," citing excerpts from the legislative history regarding the appointment of institutional investors); *In re McKesson HBOC, Inc. Secs. Litig.*, 97 F. Supp. 2d 993, 997 (N.D. Cal. 1999) ("[w]hen discussing this language, the Congressional drafters focused on their desire to have institutional investors take charge of securities litigation, rather than on how to determine the 'greatest financial interest'"); *Gluck v. CellStar Corp.*, 976 F. Supp. 542, 548 (N.D. Tex. 1997) ("[t]hrough the PSLRA, Congress has

unequivocally expressed its preference for securities fraud litigation to be directed by large institutional investors."); *Greebel v. FTP Software*, 939 F. Supp. 57, 63 (D. Mass. 1996) (PSLRA "suggest[s] a presumption that institutional investors be appointed lead plaintiff"). The Glickenhau Institutional Group fulfills these requirements – as it is comprised of sophisticated institutional investors who are ready to take a lead role and direct the progress of the present securities litigation.

During the Class Period, the Glickenhau Institutional Group purchased or otherwise acquired Household securities at prices artificially inflated by defendants' materially false and misleading statements. *See* Miller Decl., Exs. A and B. As a result, the Glickenhau Institutional Group lost over \$6.061 million on its Household investment. Miller Decl., Ex. A. Accordingly, the Glickenhau Institutional Group believes it has the largest financial interest in the outcome of this litigation and, therefore, is entitled to appointment as lead plaintiff. 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb).

2. The Glickenhau Institutional Group Is Qualified Under Rule 23

Section 21D(a)(3)(B)(iii)(I) of the Exchange Act provides that, in addition to possessing the largest financial interest in the outcome of the litigation, lead plaintiff must also "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). With respect to the qualifications of the class representatives, Rule 23(a) requires that their claims be typical of the claims of the class and that the representatives will fairly and adequately protect the interests of the class.⁶ As detailed below, the Glickenhau Institutional Group satisfies the typicality and adequacy requirement of Rule 23(a) and is qualified to be appointed lead plaintiff.

⁶It has been generally recognized that this preliminary determination of Rule 23 qualification is for the purpose of selecting lead plaintiffs only. *See Lax*, 1997 U.S. Dist. LEXIS 11866, at *20; *Fischler v. Amsouth Bancorporation*, No. 96-1567-CIV-T-17A, 1997 U.S. Dist. LEXIS 2875, at *7-*8 (M.D. Fla. Feb. 6, 1997); *see also Gluck*, 976 F. Supp. at 546. Following appointment of lead plaintiff, when plaintiffs move for class certification, the Court will determine and defendants may address Rule 23 issues. *See Greebel*, 939 F. Supp. at 60-61 (the defendant may not oppose the motion for selection of lead counsel); *Zuckerman v. Foxmeyer Health Corp.*, [1997 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶99,443, at 96,913 (N.D. Tex. 1997) ("[t]he defendant may not object to adequacy of the proposed lead plaintiff at this stage of the litigation, although the selection of the most adequate plaintiff shall not prejudice the defendants' right to challenge their adequacy at the class certification phase").

a. The Claims of the Glickenhau Institutional Group Are Typical of the Claims of the Class

The typicality requirement of Rule 23(a)(3) is satisfied so long as there is a nexus between the class representative's claims or defenses and the common questions of facts or law which unite the class. *See De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983); *Thompson v. City of Chicago*, No. 01 C 6916, 2002 U.S. Dist. LEXIS 10627, at *12-*14 (N.D. Ill. June 11, 2002); *In re Bank One Secs. Litig./First Chi. S'holder Claims*, No. 00 CV 0767, 2002 U.S. Dist. LEXIS 8709, at *13-*15 (N.D. Ill. May 9, 2002). When the named plaintiffs have suffered the same or similar injuries as the class members as a result of the same course of conduct by defendants, and their claims are based on the same legal issues, the typicality requirement has been met. *De La Fuente*, 713 F.2d at 232 (A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory.") (citations omitted).⁷

The legal issues common to the members of the class in this case, which predominate over questions that may affect individual class members, include the following:

- Whether the defendants' acts as alleged herein violated the federal securities laws;
- Whether defendants' statements during the Class Period misrepresented material facts;
- Whether the market price of Household securities was artificially inflated following the material misrepresentations and the failure to correct the material misrepresentations complained of herein; and
- To what extent the members of the class have sustained damages and the proper measure of damages.

⁷The positions of the named class members need not be identical. *See Bank One*, 2002 U.S. Dist. LEXIS 8709, at *14; *Scholes v. Stone, McGuire & Benjamin*, 143 F.R.D. 181, 186 (N.D. Ill. 1992); *see also In re Nice Sys., Ltd. Secs. Litig.*, 188 F.R.D. 206, 218 (D.N.J. 1999); *Queen Uno Ltd. P'ship v. Coeur D'Alene Mines Corp.*, 183 F.R.D. 687, 691 (D. Colo. 1998) ("Accordingly, the proposed class can meet this requirement despite the fact varying fact patterns may support the claims and defenses of various class members, or despite that there is disparity among the representative parties and other members of the class.").

As a result, there is a well-defined community of interest in the questions of law and fact involved in this case and the claims asserted by the Glickenhau Institutional Group are typical of the claims of the members of the proposed class. The Glickenhau Institutional Group, as did all members of the proposed class, acquired Household securities at prices artificially inflated by defendants' misstatements and omissions and were damaged thereby. Typicality exists here because the claims asserted by the Glickenhau Institutional Group arise from the same alleged course of conduct and are based on the same theories as those of the absent class members, namely that "[d]efendants engaged in a course of conduct violative of federal and state securities laws and the common law by failing to disclose and misrepresenting information material to the members of the class." *Schwartz v. Celestial Seasonings*, 178 F.R.D. 545, 551-52 (D. Colo. 1998). In addition, the Glickenhau Institutional Group's claims "mirror those of their classmates" and thus, "the rationale underlying the typicality requirement is achieved." *In re Intelcom Group Secs. Litig.*, 169 F.R.D. 142, 149 (D. Colo. 1996).

b. The Glickenhau Institutional Group Will Fairly and Adequately Represent the Interests of the Class

The interests of the Glickenhau Institutional Group are clearly aligned with the members of the proposed class and there is no antagonism between the interests of those individuals and the proposed class members. *See Bank One*, 2002 U.S. Dist. LEXIS 8709, at *15-*16; *Sebo v. Rubenstein*, 188 F.R.D. 310, 316 (N.D. Ill. 1999). "Any doubt regarding adequacy of representation should be resolved in favor of the upholding [of] the class" *Schwartz*, 178 F.R.D. at 552. As detailed above, the Glickenhau Institutional Group shares substantially similar questions of law and fact with the members of the proposed class, and its claims are typical of the members of the class. It has further demonstrated its adequacy as class representative by signing sworn certifications affirming its willingness to serve as, and to assume the responsibilities of, class representative. *See Miller Dec., Ex. B*. Finally, the Glickenhau Institutional Group has selected counsel highly experienced in prosecuting securities class actions such as this. As a result, Glickenhau Institutional Group will fairly and adequately represent the interests of the class.


B. The Court Should Approve the Glickenhau Institutional Group's Choice of Counsel

The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject to court approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The court should not disturb the lead plaintiff's choice of counsel unless necessary to "protect the interests of the [plaintiff] class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa). The Glickenhau Institutional Group has selected the law firm of Milberg Weiss as lead counsel for the class, and Miller Faucher as liaison counsel. Milberg Weiss possesses extensive experience in the area of securities litigation, such as this case, and has successfully prosecuted numerous securities fraud class actions on behalf of injured investors. *See* Miller Decl., Ex. D. Thus, the Court may be assured that, in the event this motion is granted, the members of the class will receive the highest caliber of legal representation available.

VI CONCLUSION

For all the foregoing reasons, the Glickenhau Institutional Group respectfully requests that the Court (1) appoint the Glickenhau Institutional Group as lead plaintiff pursuant to 15 U.S.C. §78u-4(a)(3)(B); and (2) approve its choice of Milberg Weiss as lead counsel for the class and Miller Faucher as liaison counsel.

DATED: October 18, 2002


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