

**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
)	
v.)	
)	
HOUSEHOLD INTERNATIONAL, INC., <i>et al.</i> , Defendants.)	Judge Jorge L. Alonso
)	

**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF DAVID A.
SCHOENHOLZ’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant David A. Schoenholz (“Schoenholz”) files this Statement of Undisputed Material Facts in Support of his Motion for Partial Summary Judgment pursuant to N.D. Ill. L.R. 56(3). Schoenholz shows:

THE PARTIES AND THE COURT’S JURISDICTION

1. Defendant David A. Schoenholz is the former Chief Financial Officer of Defendant Household International, Inc. (“Household”). *Glickenhau & Co. v. Household Int’l, Inc.*, 787 F.3d 408, 426 (7th Cir. 2015) (“*Glickenhau*”).

2. Defendant William F. Aldinger (“Aldinger”) is the former Chief Executive Officer of Household. *Id.*

3. Plaintiffs sued Schoenholz, Household, Aldinger, and one other former Household officer for allegedly making misrepresentations in violation of the Securities Exchange Act of 1934. *Id.* at 413.

4. This Court has subject matter jurisdiction pursuant to 15 U.S. Code § 78aa and 28 U.S.C. § 1331.

THE FIRST TRIAL

5. The parties tried this case in 2009, and the jury rendered its verdict on May 7, 2009. *Dkt. No.* 1611 (Jury Verdict) (attached as Ex. A).

6. The District Court asked the jury to determine whether the Defendants made 40 alleged misrepresentations. *Id.*

7. The jury found that 23 of the 40 alleged misrepresentations were *not* actionable. *Glickenhau*s, 787 F.3d at 414 and 428; *Dkt. No.* 1611.

8. The jury found that Schoenholz was *not* liable for a statement co-defendant Gary Gilmer (“Gilmer”) made to the media. *Glickenhau*s, 787 F.3d at 428.

9. The jury found that Schoenholz was the “maker” of sixteen (16) statements:

- A. Seven (7) statements in Household’s Securities and Exchange Commission (“SEC”) filings (the “SEC Filings”). *See Glickenhau*s, 787 F.3d at 428.
- B. Seven (7) statements in press releases associated with SEC filings (the “Press Releases”). *See Dkt. No.* 1611 (Jury Verdict) at Statement Nos. 16, 18, 21, 23, 24, 29, 36 & 37; *Dkt. No.* 2042 (Order on Issues to be Retried).
- C. One (1) statement in Aldinger’s presentation to Goldman Sachs on December 4, 2001 (the “Goldman Sachs Presentation”). *See Dkt. No.* 1611 (Jury Verdict) at Statement No. 23; *Dkt. No.* 2042 (Order on Issues to be Retried); *Glickenhau*s, 787 F.3d at 428.
- D. One (1) statement at Household’s Investor Relations Conference (the “IRC”). *Glickenhau*s, 787 F.3d at 428.

10. In October 2013, the District Court entered a judgment against Schoenholz and the other Defendants. *Dkt. No.* 1898.

THE APPEAL OF THE JUDGMENT

11. Defendants appealed the judgment to the United States Court of Appeals for the Seventh Circuit. *Dkt. No.* 1906.

12. The Seventh Circuit reversed and remanded the judgment in May 2015. *Glickenhau*s, 787 F.3d at 433.

13. The Seventh Circuit’s opinion analyzed the 16 statements attributed to Schoenholz. *Id.* at 426 & 428.

14. The Seventh Circuit correctly observed that Schoenholz “concede[d]” that he “made” seven (7) statements in Household’s SEC Filings and that Schoenholz “made” the IRC statement, within the meaning of *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011). *Id.* at 428.

15. Although Schoenholz’s briefing in the Seventh Circuit did not specifically request that the Seventh Circuit reverse the judgment with regard to whether he “made” the Press Releases, the Seventh Circuit’s decision found that a re-trial was necessary to determine whether Schoenholz “made” the Press Releases and the Goldman Sachs Presentation. *Id.*; *see also Dkt. No. 52* (Appellants’ Brief) in Cause No. 13-3532 in the U.S. Court of Appeals for the Seventh Circuit.

REMAND ORDER REGARDING ISSUES FOR TRIAL

16. On remand, this District Court recognized in its September 2015 Order regarding the issues for retrial that, “the Seventh Circuit’s opinion requires a retrial on whether [Schoenholz] ‘made’ the following statements within the meaning of *Janus [Capital Group, Inc. v. First Derivative Traders]*, 564 U.S. 135 (2011):” the seven statements in Press Releases and the statement in Aldinger’s Goldman Sachs Presentation. *Dkt. No. 2042* at p. 2.

ADDITIONAL FACTS REGARDING THE GOLDMAN SACHS PRESENTATION

17. The Jury Verdict defines Statement No. 23 – the “Goldman Sachs Presentation” – as follows:

23.	12/04/2001	Goldman Sachs Presentation Plaintiffs' Exhibit 1248	December 4, 2001 Goldman Sachs Presentation: defendants made false statements regarding Household's accounting practices, including reaging and restructuring. * * * "Charge off policies are appropriate for our target market and result in proper loss recognition" (PFG000158) "All policies have been consistently applied and realistically report results" (PFG000158) "Why are Household's Credit Losses Better" - better credit skills (PFG000152)
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See Dkt. No. 1611 (Jury Verdict) (attached hereto as Exhibit A) at p. 61.

18. The exhibit identified as Statement No. 23 – Plaintiffs' Exhibit 1248 – is a PowerPoint presentation. *See Plaintiffs' Exhibit 1248 (attached hereto as Exhibit B).*

19. During trial, former Household CEO William Aldinger testified that he presented that PowerPoint to a group of institutional investors and analysts at a conference organized by Goldman Sachs on December 4, 2001. Ex. C-1 (excerpts of Trial Testimony) at Vol. 15, 45:8-46:6.

20. Aldinger spoke to the group at the Goldman Sachs Conference for approximately 50 minutes. Ex. C-2 at Vol. 20, 108:20.

21. Aldinger's name appears on Plaintiffs' Exhibit 1248 as the author and presenter of the Goldman Sachs Presentation. *See Ex. B – Trial Ex. 1248 at PFG148 (noting that the presentation was made by "Bill Aldinger – Chairman and Chief Executive Officer").*

22. Plaintiffs' Exhibit 1248 was admitted during Aldinger's trial testimony. *See Ex. B – Trial Ex. 1248 at PFG148 (noting that Exhibit 1248 was admitted during Aldinger's testimony).*

23. Aldinger testified that the PowerPoint – Plaintiffs' Exhibit 1248 – accurately reflects the comments he made to the individuals assembled at the Goldman Sachs conference. Ex. C-1 at Vol. 15, p. 46.

24. Aldinger called a meeting regarding the creation of the PowerPoint presentation, and Schoenholz was one of a group of people who attended that meeting. Ex. C-1 at Vol. 15, 80:21-82:14.

25. While the PowerPoint was drafted with input from a group, Aldinger repeatedly testified that the PowerPoint was “my presentation” or “my Goldman presentation.” Ex. C-1 at Vol. 15, p. 85; *id.* at pp. 82, 83, 243 (discussing “my presentation” or “my Goldman presentation”).

26. The Jury Verdict’s definition of Statement No. 23 quotes three specific statements from the PowerPoint :

23.	12/04/2001	Goldman Sachs Presentation	December 4, 2001 Goldman Sachs Presentation: defendants made false statements regarding Household’s accounting practices, including reaping and restructuring.
		Plaintiffs’ Exhibit 1248	1 “Charge off policies are appropriate for our target market and result in proper loss recognition” (PFG000158)
			2 “All policies have been consistently applied and realistically report results” (PFG000158)
			3 “Why are Household’s Credit Losses Better” - better credit skills (PFG000152)

See *Dkt. No.* 1611 (Jury Verdict) (attached hereto as Exhibit A) at p. 61.

27. Aldinger testified that he orally made two of the three specifically-challenged statements:

Q. [by Plaintiffs’ attorney Daniel Drosman] The top slide there, you ask the question, “Have Household’s accounting policies impacted results?” Right?

A. [by Aldinger] That’s right.

Q. And, then, you proceeded to answer that question to all of the investors and analysts present, correct?

A. That’s right.

Q. And in the third bullet point, **you wrote, “Chargeoff policies are appropriate for our target market and result in proper loss recognition,” right?**

A. **That’s right.**

Q. **And that’s what you told folks, right?**

A. **Yes.**

Q. And, then, you said, “All policies have been consistently applied and realistically report results,” right?

A. That’s right.

Q. And when you said “policies” there, you were telling folks about your accounting policies, weren’t you?

A. Yes.

Ex. C-1 (Trial Tr. at Vol. 15, p. 47) (emphasis added).

28. None of the Defendants were asked about the third statement in Exhibit 1248, other than Aldinger admitting that he wrote the PowerPoint slide on which that statement appeared. *See* Ex. B – Trial Ex. 1248 at PFG148 (Aldinger listed the author/presenter of the Goldman Sachs Presentation); Ex. C-1 at Vol. 15, 45:8-46:6 (Aldinger’s testimony that he made the Goldman Sachs Presentation); Ex. C-1 at Vol. 15, p. 46 (Aldinger’s testimony that the presentation accurately reflected his comments to the individuals assembled at the Goldman Sachs conference).

29. During trial, the Plaintiffs did not ask Schoenholz about Exhibit 1248 *at all*, and the Plaintiffs never offered any evidence that Schoenholz made any of the challenged statements.

30. David Schoenholz’s name appears on one slide of Exhibit 1248, but that slide was presented by Aldinger – not Schoenholz – and none of the statements on that slide are included in the challenged statements identified in the Jury Verdict as Statement No. 23. *Compare* Ex. A – *Dkt. No.* 1611 (Jury Verdict) – at p. 61 (defining Statement No. 23) *with* Ex. B (Plaintiffs’ Trial Exhibit 1248) at PFG158, slide 22 (Aldinger’s slide quoting Schoenholz).

31. During discovery, the Plaintiffs asked Schoenholz about Aldinger’s statements at the Goldman Sachs event. Ex. D (Excerpts of Schoenholz’s Deposition Testimony) at pp. 165-166.

32. As reflected in Exhibit D, Schoenholz's deposition testimony included a discussion of Schoenholz's attendance at Aldinger's presentation, during which Aldinger addressed Household's reserves, addressed whether Household had any latent unrecognized credit losses, and responded to a Barron's article regarding Household's accounting practices. *Id.*

33. Although Schoenholz acknowledged in his deposition testimony that he attended Aldinger's Goldman Sachs Presentation, such testimony was not offered during trial.

34. Schoenholz's deposition testimony also does not show that Schoenholz authored or presented any of the challenged statements from the Goldman Sachs Presentation that are identified in the Jury Verdict as Statement No. 23. *See Ex. D.*

35. None of the statements in the Goldman Sachs Presentation – identified in the Jury Verdict as Statement No. 23 – were ever attributed to Schoenholz. *See Exs. B, C-1, C-2, and D.*

36. None of the three specifically challenged statements identified in the Jury Verdict as Statement No. 23 were ever attributed to Schoenholz. *See id.*

37. Aldinger's testimony acknowledges that he *wrote* and *spoke* the challenged statements to the conference attendees. *See Ex. C-1 at Vol. 15, p. 47.*

38. Schoenholz's name and signature do not appear in connection with any of the challenged statements in Exhibit 1248. *See Ex. B.*

39. There is also no evidence that Aldinger attributed any of the challenged statements to Schoenholz during the course of his presentation. *See Ex. C-1 and C-2.*

40. The record is also bereft of evidence that Schoenholz adopted as his own the challenged statements that Aldinger made in connection with the Goldman Sachs Presentation. *Id.*

41. None of the statements in the Goldman Sachs Presentation are implicitly attributable to Schoenholz. *See id.*

42. Plaintiffs presented no evidence of any allegedly false or misleading statements made by Schoenholz during the Goldman Sachs conference. *See id.*

43. The record evidence demonstrates that the misrepresentations associated with the Goldman Sachs Presentation statements were made by, and only by, Aldinger. Ex. B & Ex. C-1.

CONCLUSION

David A. Schoenholz asks this Court consider this Statement of Undisputed Material Facts in Support of his Motion for Summary Judgment and that the Court grant that Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Tim S. Leonard, an attorney, hereby certifies that on February 24, 2016, he caused true and correct copies of the foregoing **Statement of Undisputed Material Facts in Support of David Schoenholz's Motion for Partial Summary Judgment** to be served via the Court's ECF filing system on the following counsel of record in this action:

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