

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On)	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly)	(Consolidated)
Situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) Honorable Jorge L. Alonso
vs.)	
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
)

**PLAINTIFFS' MOTION *IN LIMINE* TO BAR EVIDENCE OF OR REFERENCE TO
AGGREGATE DAMAGES TO THE CLASS**

PLAINTIFFS' MOTION *IN LIMINE* NO. 8

Lead Plaintiffs respectfully request that the Court prohibit defendants from offering evidence or argument relating to the aggregate damages suffered by the Class.

This Motion is necessitated by defendants' counsel's comments at the first trial. During his closing argument, defendants' counsel sought to prejudice the jury by arguing that the \$7.97 inflation number in Professor Fischel's Specific Disclosures Model might seem like a small number, but "[e]very number in this case is very large" and "I don't want you to ever think, well it's only \$7.97, what's the harm. There's a lot of harm." Trial Tr. at 4633:21-4634:4;¹ *id.* at 4633:9-12 ("I suspect we all know there's some larger number involved . . . you know in this case every number winds up being a gigantic number."). To drive the point home, defendants' counsel used the example of Household's stock price increasing \$7 per share with the October 11, 2002 announcement of the settlement with the State Attorneys General and argued that by multiplying 500 million of Household's outstanding shares, the market value increase was three and a half billion dollars. *See* Trial Tr. at 4633:6-20. These comments were not only irrelevant, but also prejudiced plaintiffs by suggesting to the jury that they should consider *anything* other than the evidence presented in determining liability and damages. In the retrial, defendants should be precluded from introducing evidence of aggregate damages or seeking to persuade the jury to award lower damages on the improper basis that Fischel's estimates would result in "a gigantic number" or inflict "a lot of harm."

In all cases presented to a jury, "[to] the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means." *See* Fed. R. Evid. 103(d). "Irrelevant evidence is not admissible." Fed. R. Evid. 402. Evidence is relevant only where it will have some bearing on the probability of the existence of any "fact [that] is of consequence in determining the action." Fed. R. Evid. 401. Even if relevant, evidence should still be excluded where its probative value is "substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative

¹ Attached as Ex. 4 to the Declaration of Luke O. Brooks in Support of Plaintiffs' Motions *in Limine*, filed herewith.

evidence.” Fed. R. Evid. 403. Evidence is unfairly prejudicial “if it will induce the jury to decide the case on an improper basis . . . rather than on the evidence presented.” *United States v. Miles*, 207 F.3d 988, 992 (7th Cir. 2000) (citation omitted).

Unquestionably, evidence of aggregate damages is irrelevant to the retrial issues. The jury will be asked to determine whether Household’s stock price declines during the relevant period resulted from artificial inflation caused by defendants’ fraud leaving the stock price. *See Glickenhau & Co. v. Household Int’l*, 787 F.3d 408, 423 (7th Cir. 2015) (“*Glickenhau*”). If they find that defendants’ fraud did cause plaintiffs’ losses, the jury will then be asked to determine how much artificial inflation was in the stock price for each day during the class period. *See* Pretrial Order, Ex. H-4. Plaintiffs’ out-of-pocket losses, on a per share basis, will be equal to the amount of inflation in the stock. *See Glickenhau*, 787 F.3d at 415 (“A plaintiff’s causal losses are measured by the amount the share price was inflated when he bought the stock minus the amount it was inflated when he sold it.”) (citing *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 342-44 (2005)).

Reference to how the per share figure determined by the jury will ultimately result in an aggregate award for plaintiffs will not help the jury determine either loss causation or damages. The possible aggregate damages do not make it more or less likely that a particular amount of Household’s stock price was inflated due to defendants’ fraud as opposed to other causes. There is simply no issue to be decided at trial to which any reference to plaintiffs’ aggregate recovery is relevant.² *See, e.g., Tallman v. Freedman Anselmo Lindberg, L.L.C.*, No. 11-3201, 2013 WL 2631754, at *2 (C.D. Ill. June 12, 2013) (barring evidence showing that plaintiffs would also receive attorneys’ fees in addition to damages if successful at trial as such evidence would not have any tendency to make it more or less probable that defendants violated the Fair Debt Collection Practices Act).

² Any reference to aggregate damages would be entirely speculative. Indeed, defendants’ counsel grossly exaggerated the possible aggregate damages at the last trial by billions. Although the Court of Appeals upheld the Phase II proceedings in their entirety, the total amount of aggregate damages will not be known until the per share damages are decided by the jury and the completion of the claims process after trial. There are thousands of claims that are still in dispute, awaiting a decision by the Special Master.

Even if evidence of aggregate damages was relevant to some issue the jury will decide, the probative value of such evidence is substantially outweighed by the danger that plaintiffs would be unfairly prejudiced. Indeed, defendants' only purpose in offering evidence of aggregate damages would be – as it was in the first trial – to suggest to the jury that they should consider the financial harm defendants would “suffer” if the jury awarded the inflation per share figure proposed by plaintiffs' expert. *See* Trial Tr. at 4633:21-4634:4. Such an inference would be inappropriate, and courts have regularly excluded evidence of parties' financial condition, ability to pay a judgment, or the effect of a recovery under Rule 403 for that exact reason. *See, e.g., Hall v. Sterling Park Dist.*, No. 08 C 50116, 2012 WL 1050302, at *7 (N.D. Ill. Mar. 28, 2012) (barring evidence of indemnification out of fear it would impact jury's damages award); *Rush Univ. Med. Ctr. v. Minn. Mining & Mfg. Co.*, No. 04 C 6878, 2009 WL 3229435, at *3 (N.D. Ill. Oct. 1, 2009) (recognizing that juries are often distracted from the real issues in a case by evidence of one side's finances); *Pearson v. Ill. Cent. R.R.*, No. 06-cv-0822-DRH, 2008 WL 905915, at *1 (S.D. Ill. Mar. 27, 2008) (excluding “any comment, argument or suggestion that this lawsuit is Plaintiff's exclusive remedy” because such evidence is “irrelevant, immaterial and improper” to plaintiffs' claims).

Accordingly, defendants should be barred from introducing evidence of or referring to any amount of aggregate damages that might result from a verdict in favor of plaintiffs.

DATED: April 22, 2016

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
MICHAEL J. DOWD (135628)
SPENCER A. BURKHOLZ (147029)
DANIEL S. DROSMAN (200643)
LUKE O. BROOKS (90785469)
LAWRENCE A. ABEL (129596)
HILLARY B. STAKEM (286152)

s/ Luke O. Brooks
LUKE O. BROOKS

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
MAUREEN E. MUELLER
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)

Lead Counsel for Plaintiffs

MILLER LAW LLC
MARVIN A. MILLER
LORI A. FANNING
115 S. LaSalle Street, Suite 2910
Chicago, IL 60603
Telephone: 312/332-3400
312/676-2676 (fax)

Liaison Counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses for counsel of record denoted on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 22, 2016.

s/ Luke O. Brooks

LUKE O. BROOKS

ROBBINS GELLER RUDMAN
& DOWD LLP

655 West Broadway, Suite 1900

San Diego, CA 92101-8498

Telephone: 619/231-1058

619/231-7423 (fax)

E-mail: LukeB@rgrdlaw.com

Jaffe v. Household Int'l, Inc., No. 02-5893 (N.D. Ill.)
Service List

Counsel	E-mail address
<p>Stewart Theodore Kusper Giovanni Antonio Raimondi THE KUSPER LAW GROUP, LTD. 20 North Clark Street, Suite 3000 Chicago, IL 60602 (312) 204-7938</p> <p>Tim S. Leonard JACKSON WALKER L.L.P. 1401 McKinney Street, Ste. 1900 Houston, TX 77010 (713)752-4439</p>	<p>Stewart.Kusper@Kusperlaw.com Giovanni.Raimondi@Kusperlaw.com tleonard@jw.com</p>
Counsel for Defendant David A. Schoenholz	
<p>Dawn Marie Canty Gil M. Soffer KATTEN MUCHIN ROSENMAN LLP 525 West Monroe Street Chicago, Illinois 60661 (312)902-5253</p>	<p>dawn.canty@kattenlaw.com gil.soffer@kattenlaw.com</p>
Counsel for Defendant William F. Aldinger	
<p>David S. Rosenbloom C. Maeve Kendall McDERMOTT WILL & EMERY, LLP 227 West Monroe Street Chicago, IL 60606 (312) 984-2175</p>	<p>drosenbloom@mwe.com makendall@mwe.com</p>
Counsel for Defendant Gary Gilmer	
<p>R. Ryan Stoll Mark E. Rakoczy Andrew J. Fuchs Donna L. McDevitt Patrick Fitzgerald SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 155 North Wacker Drive Chicago, IL 60606 (312)407-0700</p>	<p>rstoll@skadden.com mrakoczy@skadden.com Andrew.Fuchs@skadden.com Donna.McDevitt@skadden.com Patrick.Fitzgerald@skadden.com pclement@bancroftpllc.com zhudson@bancroftpllc.com TKavaler@cahill.com Jhall@cahill.com dbutswinkas@wc.com sfarina@wc.com</p>

Counsel	E-mail address
<p>Paul D. Clement D. Zachary Hudson BANCROFT PLLC 1919 M Street NW, Ste. 470 Washington, DC 20036 (202)234-0090</p> <p>Thomas J. Kavalier Jason M. Hall CAHILL GORDON & REINDEL LLP 80 Pine Street New York, NY 10005 (212)701-3000</p> <p>Dane H. Butswinkas Steven M. Farina Leslie C. Mahaffey Amanda M. MacDonald WILLIAMS & CONNOLLY LLP 725 Twelfth Street NW Washington DC 20005 202-434-5000</p> <p>Luke DeGrand Tracey L. Wolfe DEGRAND & WOLFE, P.C. 20 South Clark Street Suite 2620 Chicago, Illinois 60603 (312) 236-9200 (312) 236-9201 (fax)</p>	<p>lmahaffey@wc.com amacdonald@wc.com twolfe@degrandwolfe.com ldegrand@degrandwolfe.com</p>
<p>Counsel for Defendant Household International Inc.</p>	

Counsel	E-mail address
<p>Michael J. Dowd Spencer A. Burkholz Daniel S. Drosman Luke O. Brooks Hillary B. Stakem ROBBINS GELLER RUDMAN & DOWD LLP 655 West Broadway, Suite 1900 San Diego, CA 92101 (619)231-1058 619/231-7423 (fax)</p> <p>Jason C. Davis ROBBINS GELLER RUDMAN & DOWD LLP Post Montgomery Center One Montgomery Street, Suite 1800 San Francisco, CA 94104 (415)288-4545 (415)288-4534 (fax)</p> <p>Maureen E. Mueller ROBBINS GELLER RUDMAN & DOWD LLP 120 East Palmetto Park Road, Suite 500 Boca Raton, FL 33432 (561)750-3000 (561)750-3364 (fax)</p>	<p>miked@rgrdlaw.com spenceb@rgrdlaw.com dand@rgrdlaw.com lukeb@rgrdlaw.com hstakem@rgrdlaw.com jdavis@rgrdlaw.com mmueller@rgrdlaw.com</p>
<p>Lead Counsel for Plaintiffs</p>	
<p>Marvin A. Miller Lori A. Fanning MILLER LAW LLC 115 S. LaSalle Street, Suite 2910 Chicago, IL 60603 (312)332-3400 (312)676-2676 (fax)</p>	<p>Mmiller@millerlawllc.com Lfanning@millerlawllc.com</p>
<p>Liaison Counsel for Plaintiffs</p>	