

**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.	)	

**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION *IN LIMINE* NO. 2  
TO PRECLUDE REFERENCE TO PRIOR PROCEEDINGS**

Defendants Household International, Inc., William F. Aldinger, David A. Schoenholz, and Gary Gilmer respectfully submit this memorandum of law in support of their motion *in limine* to preclude reference to the prior proceedings in this case other than as reflected in stipulations or the Court's instructions to the jury.

### **BACKGROUND**

This securities fraud class action was tried to a jury in 2009. In that trial, Plaintiffs alleged that Defendants made 40 material misstatements to purchasers of Household stock that inflated the stock price and ultimately caused the class members economic loss. The jury found that Defendants made 17 of the 40 alleged misstatements and that Plaintiffs had failed to prove the remaining 23 alleged misstatements. Dkt. 1611 (Verdict).

The jury then determined the amount of "inflation" present in Household's stock price as a result of the 17 misstatements for each day from March 23, 2001 (the first day on which the jury found a misstatement) through the end of the class period. *Id.* In doing so, the jury chose to apply the "inflation" figures from the "leakage" model of loss causation presented by Plaintiffs' expert, Professor Daniel Fischel. *Id.* Application of Professor Fischel's leakage model resulted in entry of a partial final judgment against Defendants on October 17, 2013, in the amount of \$2,462,899,616.21, which reflected \$1,476,490,844.21 in damages and \$986,408,772.00 in pre-judgment interest. Dkt. No. 1898.<sup>1</sup>

On appeal, the Seventh Circuit found Plaintiffs' loss causation evidence deficient and reversed and remanded for a new trial on that element of Plaintiffs' claim. *Glickenhaus & Co. v.*

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<sup>1</sup> Judgment has not been entered with respect to 133 claims valued at \$58,061,621, as to which the Court held the claimants are entitled to separate trials on the issue of whether they relied on the misstatements, or with respect to another 9,720 claims valued at \$449,510,370 as to which Defendants have raised certain objections that will be resolved by the Special Master appointed by the Court.

*Household Int'l, Inc.*, 787 F.3d 408, 423, 433 (7th Cir. 2015). The issues to be tried by the new jury are (1) whether Plaintiffs have proven loss causation with respect to the 17 misstatements found by the first jury, and (2) if so, the amount of inflation caused by each of those misstatements. *See* Dkt. 2042 (Order).<sup>2</sup>

At the second trial, Plaintiffs intend to present testimony from Professor Fischel, their loss causation expert from the first trial. Defendants have retained three experts to testify at the new trial regarding different aspects of the loss causation issue: Dr. Allen Ferrell, who is the author of the article cited in the Seventh Circuit's opinion regarding the proper manner of accounting for firm-specific, nonfraud-related information, *see Glickenhau*s, 787 F.2d at 422-23; Professor Christopher James, who has held positions with the Federal Deposit Insurance Corporation and the U.S. Department of the Treasury Office of the Comptroller of the Currency; and Dr. Bradford Cornell, the co-author of the article on which Professor Fischel purports to base his leakage model. Dkt. No. 2060-2, 3, 4 (Expert Reports). Defendants have chosen not to retain their loss causation expert from the first trial, Dr. Mukesh Bajaj, because—as recognized by the Seventh Circuit and this Court—additional expert testimony “concerning Fischel’s loss causation models” is central to the new trial. Dkt. No. 2102 at 2 (Mem. Op. and Order). On February 1, 2016, the Court denied Plaintiffs’ motion to preclude Defendants from using new experts and held that Defendants may “substitute” their new loss causation experts in place of Dr. Bajaj for the retrial. *Id.* at 1-2. The Court also denied Defendants’ *Daubert* motion to exclude Professor Fischel’s testimony from the retrial. *Id.* at 22.

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<sup>2</sup> The Seventh Circuit also remanded for a new trial regarding whether the individual Defendants “made” certain misstatements, but on remand the parties have reached a stipulation about which misstatements each Defendant made, and with what level of scienter. *See* Dkt. 2122.

Defendants deposed Professor Fischel on February 24, 2016, and Plaintiffs deposed Dr. Ferrell, Dr. Cornell, and Dr. James on February 27, March 11, and March 14, 2016, respectively. On April 1 and 12, 2016, the parties exchanged their witness and exhibit lists.

### **ARGUMENT**

The expert depositions on remand and Plaintiffs' witness and exhibit lists indicate that Plaintiffs intend to present evidence to the jury about the prior proceedings in this case that is inadmissible, irrelevant, and presents a high risk of unfair prejudice, jury confusion, and waste of time. The Court should exclude this evidence and preclude reference to the prior proceedings in this case other than as reflected in stipulations or the Court's instructions to the jury.

#### **A. Testimony or Other Evidence From or About Dr. Mukesh Bajaj, Defendants' Loss Causation Expert from the First Trial**

Plaintiffs have indicated that they intend to present testimony from Defendants' loss causation expert from the first trial, Dr. Bajaj, either by introducing portions of his testimony from the first trial or by calling him to testify live. Pretrial Order Ex. E-1 (Plaintiffs' Witness List). In addition, at the depositions of Defendants' experts, Plaintiffs' counsel questioned the experts about Dr. Bajaj's testimony and report from the first trial. For example, Plaintiffs' counsel asked Dr. Ferrell about whether he agreed with Dr. Bajaj's report and testimony and whether he "believe[d] it was important to stay consistent with Dr. Bajaj's prior opinion." Ex. A, Ferrell Dep. Tr. 36:12-41:5; 39:12-14. Dr. Ferrell explained that he was not retained to assess Dr. Bajaj's loss causation analysis, but rather to respond to the opinions presented in Professor Fischel's Second Supplemental Report and provide his own, independent analysis of loss causation. *Id.* at 37:24-38:2; 39:12-41:5. Dr. Ferrell testified that he read Dr. Bajaj's reports "to get an understanding of the context of the case," but "was not asked to review or assess what [Dr. Bajaj] did or didn't do" and so had no opinions about Dr. Bajaj's analysis. *Id.* at 168:2-5; 170:13-20. Dr. Cornell and

Dr. James testified similarly. *See* Ex. B, Cornell Dep. Tr. 74:2-4; 77:19-78:20; 79:7-20; Ex. C, James Dep. Tr. 77:15-22.

The Court should preclude Plaintiffs from calling Dr. Bajaj as a witness, introducing Dr. Bajaj's testimony from the first trial, questioning Professor Fischel or Defendants' experts about Dr. Bajaj's testimony or report, or otherwise informing the jury that Defendants retained a different loss causation expert in the first trial.<sup>3</sup> Dr. Bajaj's testimony is inadmissible for lack of personal knowledge, and evidence concerning the fact that he testified for Defendants in the first trial is irrelevant, prejudicial, confusing to the jury, and a waste of time.

As an initial matter, Dr. Bajaj cannot testify (live or by prior testimony) at this trial because he has not been retained as an expert for the retrial by either party and he has no "personal knowledge" to offer as a fact witness. Fed. R. Evid. 602. Plaintiffs do not purport to call Dr. Bajaj as their expert; therefore any testimony he offered would be as a fact witness. Yet Dr. Bajaj was not a witness to any of the underlying facts at issue in this case. The only "fact" that Plaintiffs would introduce through Dr. Bajaj would be the fact that he testified for Defendants in the first trial, which (1) does not relate to the events at issue, and (2) is irrelevant to the questions the jury must decide, as explained below. Plaintiffs' attempt to call Dr. Bajaj as a witness or introduce his testimony from the first trial is nothing more than an effort to circumvent this Court's previous ruling that Defendants are entitled to "substitute" their new loss causation experts in place of Dr. Bajaj for the retrial. Dkt. No. 2102 at 1-2 (Mem. Op. and Order). The Court should preclude Plaintiffs from calling Dr. Bajaj as a witness or introducing his testimony from the first trial.

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<sup>3</sup> The Court should also preclude exhibits that reference Dr. Bajaj or his conclusions. (P1392; P1398; P2001.)

Even if Dr. Bajaj's testimony were otherwise admissible, evidence concerning the fact that he testified for Defendants in the first trial should be excluded because it is irrelevant, prejudicial, confusing to the jury, and a waste of time. Fed. R. Evid. 402, 403. First, such evidence is irrelevant because the fact that Defendants used an expert in the first trial who they are not using in the new trial does not make any fact of consequence in this case more or less probable. Fed. R. Evid. 401. The fact that Defendants retained new experts instead of Dr. Bajaj to respond to the opinions presented by Professor Fischel in his Second Supplemental Report does not make it more or less probable that either of Professor Fischel's models proves loss causation flowing from any of the 17 misstatements or that the misstatements caused any particular amount of inflation on any particular day during the class period. Likewise, whether Defendants' new loss causation experts agree with Dr. Bajaj's report and testimony is irrelevant to any issue in the case, because neither party has retained Dr. Bajaj to offer an opinion on loss causation in the new trial.

Second, evidence that Defendants used a different expert in the first trial than in the second trial presents a significant danger of unfair prejudice, jury confusion, and waste of time that outweighs any potential probative value. As this Court has observed, "the Seventh Circuit's decision contemplates that there will be additional expert testimony concerning Fischel's loss causation models" on remand, and Defendants were entitled to "substitute experts" in order to present that additional testimony. Dkt. 2102 at 1. Yet Plaintiffs will attempt to penalize Defendants for hiring new experts by insinuating to the jury that Defendants' new experts disagree with Dr. Bajaj or that Dr. Bajaj was not retained for the new trial because his opinions would somehow be harmful. *See* p. 3, *supra*. These insinuations are not true (as discussed below), but rebutting them would require significant time and explanation about Dr. Bajaj's prior opinions and the

procedural history of this case, and forcing Defendants to spend valuable trial time responding to such a collateral attack on a witness who is not appearing at trial would be highly prejudicial.

Any suggestion that the conclusions or analyses of Defendants' new experts are inconsistent with Dr. Bajaj's should be rejected. Plaintiffs already argued this point to the Court in their motion to prevent Defendants from retaining new experts, Dkts. 2068 at 4-5; 2090 at 7-9, which the Court rejected, Dkt. 2102 at 1-2. Specifically, Plaintiffs argued three discrete grounds on which such an inconsistency might exist, and Defendants conclusively demonstrated in their opposing brief that none of those three grounds were valid. Dkt. 2072 at 9-11. Permitting Plaintiffs to re-raise this issue before the jury in the guise of referring to testimony and evidence from and about Dr. Bajaj would be unduly prejudicial and therefore, any evidence that Defendants used a different expert in the prior proceeding should be precluded.

Such evidence would also confuse the jury. Dr. Bajaj is not a party or witness in this case; questions and evidence about him and his role in the first trial would be confusing to the jury, which would likely be left wondering about his relevance to the case. And, of course, time spent rehashing the prior proceedings in this case, rather than proving or disproving the elements at issue before this jury, would be a waste of the jury's, Court's, and Defendants' time and resources.

**B. The First Jury's Acceptance of the Leakage Model and The Amount of Partial Judgment and Pretrial Interest Awarded After the First Trial**

Plaintiffs have indicated that they intend to present evidence about determinations made by the first jury that were vacated on appeal. At his deposition on remand, Professor Fischel testified that the first jury's findings were not limited to the 17 statements the jury found actionable, because the jury, which adopted his "leakage" model of loss causation, "found the existence of leakage." Ex. D, Fischel Dep. Tr. 88:2-14; *see id.* at 32:14-20 (testifying to his understanding

that “the existence of leakage” was “determined by the jury” and now there is a debate about how to measure it).

The Court should preclude Plaintiffs and Professor Fischel from referring to the fact that the jury in the first trial found that there was evidence of leakage or adopted Professor Fischel’s leakage model. The first jury’s finding regarding loss causation, including its adoption of Professor Fischel’s leakage model, was vacated in its entirety on appeal. *See Glickenhau*, 787 F.3d at 423, 433. Accordingly, any finding of leakage by the first jury is irrelevant in the new trial on remand. Fed. R. Evid. 401, 402. “[U]pon a reversal and remand for further consistent proceedings the case goes back to the trial court and there stands for determination of the issues presented as *though they had not been determined before*, pursuant, of course, to the principles of law enunciated in the appellate court’s opinion which must be taken as the law of the case at the new trial.” *Pickett v. v. Sheridan Health Care Ctr.*, 813 F.3d 640, 645 (7th Cir. 2016) (internal quotations marks omitted).

For the same reason, the Court should preclude Plaintiffs and Professor Fischel from referring to the amount of partial judgment (which was based on Professor Fischel’s inflation figures) and pretrial interest that was awarded after the first trial. By vacating the first jury’s loss causation findings, the court of appeals also vacated the first jury’s damages award, and it remains for the second jury to determine “the amount of inflation caused by each of the 17 misrepresentations at issue.” Dkt. 2042 at 1 (Order). The vacated award of damages flowing from the first jury’s vacated findings is irrelevant in the new trial. Fed. R. Evid. 401, 402.

The first jury’s leakage finding and resulting damages award should also be excluded under Rule 403 because they present “an inaccurate depiction of where this case currently stands, ha[ve] no relevance to the proper [determination of loss causation or] calculation of [inflation],



and therefore pose[] a high risk of jury confusion, unfair prejudice, and waste of time.” *Apple, Inc. v. Samsung Electronics Co.*, No. 11-cv-1846, 2013 WL 5958178, at \*6 (N.D. Cal. Nov. 7, 2013) (excluding from damages retrial evidence about the first jury’s willfulness verdict and damages award, which had been overturned). Presenting those vacated findings, which were grounded in reversible error, to the new jury would result in serious confusion and unfair prejudice antithetical to the very purpose of a new trial free from the errors that required that the first verdict be vacated. *See James River Ins. Co. v. Rapid Funding LLC*, No. 07-cv-1146, 2012 WL 1931552, at \*5 (D. Colo. May 29, 2012) (excluding from retrial on damages evidence about first jury’s damages award because it was irrelevant and inadmissible under Rule 403); *Children’s Broad. Corp. v. Walt Disney Co.*, No. 96-cv-907, 2002 WL 1858759, at \*5 (D. Minn. Aug. 12, 2002) (noting that first jury’s damages findings correctly were not disclosed to second jury during damages retrial). The Court should preclude reference to those vacated findings.

**C. Characterizations of the First Jury’s Findings about the Fraud and Reference to Purported Misstatements Other Than the 17 Misstatements Found by the First Jury**

As discussed above, the jury in the first trial found that 17 of the 40 statements that Plaintiffs contended were false and misleading were actionable and the remaining 23 statements were not. As the Seventh Circuit noted, Defendants did not challenge the jury’s misrepresentation findings on appeal, “so the 17 actionable false statements are fixed”—Defendants “may not relitigate” whether those statements were “false or material,” and Plaintiffs may not relitigate “the other 23 statements” that the jury rejected. *Glickenhous*, 787 F.3d at 424, 429. Thus, the scope of the fraud is defined by the first jury’s findings.

During his deposition on remand, Plaintiffs’ loss causation expert, Professor Fischel, repeatedly characterized the jury’s finding that 17 of the 40 alleged misstatements were actionable as a finding that Defendants had committed a “massive fraud.” *See, e.g.*, Ex. D, Fischel Dep. Tr.

18: 22-5 (“My understanding is that the jury found that Household and its executives executed a massive fraud.”); *id.* at 21:11-13 (asserting that “the jury found that Household and its executives committed a massive fraud in the three areas I identified”); *id.* at 30:15-19 (explaining that one of his loss causation models “is assuming that there’s continuous leakage of information to the market—as market participants learn the massive fraud by Household and its executives”); *id.* at 148:2-4 (testifying, when asked if a leakage model had been accepted in other cases, that “[i]t’s possible that other cases don’t have the same evidence of a massive fraud that exists in this case, I don’t know”); *id.* at 154:4-10 (“[I]t may be that the massive evidence of fraud and the massive evidence of leakage of that fraud that occurred in this case doesn’t happen very often; that the fraud in this case and the leakage of the fraud in this case is extreme and therefore doesn’t happen every day.”).

This Court should preclude Plaintiffs and Professor Fischel from characterizing the first jury’s findings in any testimony or statements to, or in the presence of, the new jury. The Court will inform the new jury about the first jury’s pertinent findings regarding the fraud. To the extent that the scope of the fraud has any bearing on the loss causation issue that the new jury will decide, the jury is capable of forming its own views on that subject based on the evidence before it. The scope of the fraud found by the first jury is not a proper subject of expert testimony, nor is it one on which the jury needs expert assistance. *See* Fed. R. Evid. 702. An opinion offered by an expert “must be an *expert* opinion (that is, an opinion informed by the witness’ expertise) rather than simply an opinion broached by a purported expert,” and a district court abuses its discretion by admitting expert testimony that consists of “nothing more than drawing inferences from the evidence that [the expert] [i]s no more qualified than the jury to draw.” *United States v. Benson*, 941 F.2d 598, 604 (7th Cir. 1991). Indeed, an opinion from an expert that is not based

in his expertise may “exert[] undue influence on the jury that would be subject to control under Rule 403.” *United States v. Hall*, 93 F.3d 1337, 1343 (7th Cir. 1996).

The potential for such prejudicial influence, whether through statements by Professor Fischel or Plaintiffs, is especially high here, where the second jury was not at the first trial in which the scope of the fraud was determined. The jury is therefore vulnerable to improper influence that could be exerted by characterization of the fraud by counsel or witnesses. And, of course, a witness’s or counsel’s opinion about the scope of the fraud is irrelevant; only the findings by the first jury (and any inferences the second jury may draw from those findings) are relevant to the second jury’s assessment of the fraud.

The Court should also preclude Plaintiffs from suggesting that statements other than the 17 misstatements found by the first jury are fraudulent or arguing that any other statements were part of the fraud found by the first jury. The Seventh Circuit expressly instructed that the actionable false statements “are fixed” on remand and that Plaintiffs may not relitigate statements that the first jury rejected. *Glickenhau*s, 787 F.3d at 424, 429. The underlying matter of any alleged misstatement other than the 17 found by the first jury is irrelevant to determining the issue before the second jury, *i.e.*, whether those 17 misstatements caused Plaintiffs loss. Fed. R. Evid. 401, 402. And suggestion that any statements other than the 17 misstatements at issue were somehow fraudulent would confuse the jury about what statements are at issue and would unfairly prejudice Defendants by creating the possibility that the jury would assign causation and inflation for statements that have never been found to be fraudulent. Fed. R. Evid. 403.

#### **D. The Seventh Circuit’s Opinion and This Court’s *Daubert* Ruling**

Plaintiffs have indicated that they may attempt to introduce evidence about the Seventh Circuit’s opinion in this case or this Court’s *Daubert* ruling on remand. During his deposition on remand, Professor Fischel repeatedly referred to the Seventh Circuit’s opinion and this Court’s

February 1, 2016 *Daubert* ruling, asserting that use of a leakage model “was accepted by the trial judge, accepted by the jury, accepted by the court of appeals, and also accepted by the district court on remand from the court of appeals.” Ex. D, Fischel Dep. Tr. 151:4-8; *see id.* at 147:2-7 (same); 148:8-13 (same). In a similar vein, Professor Fischel repeatedly characterized this Court’s *Daubert* opinion, asserting that “the Court on remand” reached certain conclusions or characterized the issues in certain ways. *Id.* at 267:17-22; *see also* 273:21-274:1 (same); 274:10-14 (same); 275:15-19 (same); 276:2-3 (same); 282:11-12 (same).

In addition, during the depositions of Defendants’ loss causation experts, Plaintiffs’ counsel introduced the Seventh Circuit’s opinion as an exhibit and questioned Defendants’ experts about whether they agreed with the Seventh Circuit’s recitation of the “facts” in the background section of its opinion. *See, e.g.*, Ex. A, Ferrell Dep. Tr. 68:18-79:6; Ex. C, James Dep. Tr. 58:24-59:17 (reading a portion of the background section of the Seventh Circuit’s opinion and asking: “Do you agree or disagree with that?”); Ex. B, Cornell Dep. Tr. 160:15-16 (“Do you dispute any finding by the Seventh Circuit in this decision?”). Plaintiffs’ counsel also questioned Defendants’ experts about their understanding of the Seventh Circuit’s legal holdings. *See* Ex. A, Ferrell Dep. Tr. 33:14-16 (“Do you believe you adhered to the Seventh Circuit’s opinion in performing your analysis?”); Ex. B, Cornell Dep. Tr. 161:13-14 (“Do you dispute any analysis by the Seventh Circuit in this decision?”); *id.* at 184: 8-16 (reading a quote from the Seventh Circuit’s opinion and asking “Do you agree with that assertion?”).

The Court should preclude Plaintiffs from introducing the Seventh Circuit’s opinion or this Court’s *Daubert* opinion as an exhibit, and from making any references to, or attempting to elicit any testimony about, those opinions at trial. First of all, the Seventh Circuit’s summary in the “Background” section of its opinion does not constitute findings of fact that are binding on

remand. “[A]s everyone knows, appellate courts may not make fact findings.” *Norelus v. Denney’s, Inc.*, 628 F.3d 1270, 1293 (11th Cir. 2010); accord *DiLuzio v. Vill. of Yorkville*, 796 F.3d 604, 611 (6th Cir. 2015). An appellate court’s factual narrative, therefore, is not binding on remand. *Norelus*, 628 F.3d at 1289; see also, e.g., *In re Scarborough*, 457 Fed. App. 193, 200 (3d Cir. 2012) (“Our summary of the information presented below cannot be read as binding the factfinder on remand.”); *Mayview Corp. v. Rodstein*, 480 F.2d 714, 716 (9th Cir. 1973) (stating that the “brief statement of the facts” in the court’s opinion reversing and remanding “is of course not to be construed as binding on remand”).

Likewise, statements by this Court in its February 1, 2016, *Daubert* ruling about whether Defendants had adequately demonstrated that certain information that Professor Fischel characterized as “fraud-related” instead was “firm-specific, nonfraud-related” information does not constitute findings of fact that are binding on the jury. That determination was made in the context of deciding whether the leakage model could go to the jury; the burden has now shifted back to Plaintiffs to convince the jury that the model is the best measure of loss causation. Indeed, it would have been inappropriate for the Court to make factual findings in ruling on Defendants’ *Daubert* motion. As the Seventh Circuit has made clear, when ruling on the admissibility of expert evidence, “the court’s gatekeeping function focuses on an examination of the expert’s methodology. The soundness of the factual underpinnings of the expert’s analysis and the correctness of the expert’s conclusions based on that analysis are factual matters to be determined by the trier of fact, or, where appropriate, on summary judgment.” *Smith v. Ford Motor Co.*, 215 F.3d 713, 718 (7th Cir. 2000); see also, e.g., *In re DVI, Inc. Sec. Litig.*, No. 03-cv-5336, 2014 WL 4634301, at \*6 (E.D. Pa. Sept. 16, 2014) (explaining that “whether the factual assumptions upon which [an expert’s] opinions are proffered are fairly and fully stated” presents a question for the

jury (internal quotation marks omitted)); *Island Intellectual Prop. LLC v. Deutsche Bank AG*, No. 09-cv-2675, 2012 WL 526722, at \*5 (S.D.N.Y. Feb. 14, 2012); (“Factual determinations are the province of the jury, and the Court, in its gatekeeper function, cannot invade that province as part of its assessment of reliability.”); *Hnot v. Willis Grp. Holdings Ltd.*, No. 01-cv-6558, 2007 WL 1599154, at \*3 (S.D.N.Y. June 1, 2007) (stating that it is “up to the jury . . . to determine the facts to which the expert purports to apply his expertise”); *Diaz v. Johnson Matthey, Inc.*, 893 F. Supp. 358, 373 (D.N.J. 1995) (“A judge decides whether the experts are reliable; the jury decides whether the experts are correct.”). The jury, therefore, must determine whether or not the relevant information is “fraud-related.”

As for the Seventh Circuit’s and this Court’s legal holdings, it is the role of the Court—not Plaintiffs’ counsel or Plaintiffs’ expert—to instruct the jury on the applicable law. *See, e.g., United States v. Lupton*, 620 F.3d 790, 800 (7th Cir. 2010) (“Clearly, an opinion that purports to explain the law to the jury trespasses on the trial judge’s exclusive territory.” (internal quotation marks omitted)); *Klaczak v. Consol. Med. Transp. Inc.*, No. 96-cv-6502, 2005 WL 1564981, at \*3 (N.D. Ill. May 26, 2005). (“Each courtroom comes equipped with a legal expert, called a judge, and it is his or her province alone to instruct the jury on the relevant legal standards.” (internal quotation marks omitted)).

The parties, of course, will be bound at trial by the legal holdings from the Seventh Circuit and this Court and by the facts found by the first jury or stipulated to by the parties. Evidence or testimony that disregards those limits would be objectionable or legally insufficient. But the courts’ opinions are not evidence in this case and are not properly the subject of expert testimony or counsel’s commentary. *See Fed. R. Evid. 702*. Moreover, references to the courts’ opinions, especially with respect to approving use of the leakage model in certain circumstances,

would create a high risk that the jury would perceive the Court as expressing an opinion on the ultimate issue in the case, causing significant unfair prejudice. *See* Fed. R. Evid. 403. The Court should preclude Plaintiffs from introducing either court's opinion as an exhibit at trial, making any statements to or in the presence of the jury about the meaning or import of the courts' opinions, or attempting to elicit testimony from any witness about the courts' opinions.

**CONCLUSION**

Defendants respectfully request that the Court preclude Plaintiffs from introducing evidence or testimony about the prior proceedings in this case other than as reflected in stipulations or the Court's instructions to the jury.

Dated: April 22, 2016

Respectfully submitted,

/s/ R. Ryan Stoll

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**CERTIFICATE OF SERVICE**

R. Ryan Stoll, an attorney, hereby certifies that on April 22, 2016, he caused true and correct copies of the foregoing Memorandum in Support of Defendants' Motion *In Limine* No. 2 to be served via the Court's ECF filing system on the following counsel of record in this action:

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

**INDEX OF EXHIBITS TO DEFENDANTS’ MOTION *IN LIMINE* NO. 2  
TO PRECLUDE REFERENCE TO PRIOR PROCEEDINGS**

<u>Exhibit</u>	<u>Description</u>
A.	Excerpts from Deposition of Frank Allen Ferrell, III, dated February 27, 2016
B.	Excerpts from Deposition of Bradford Cornell, Ph.D., dated March 10, 2016
C.	Excerpts from Deposition of Christopher M. James, dated March 14, 2016
D.	Excerpts from Deposition of Daniel Fischel, Ph.D., dated February 24, 2016

# **EXHIBIT A**

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

No. 1:02-CV-05893

- - - - -

LAWRENCE E. JAFFE PENSION PLAN, on behalf  
of itself and all others similarly situated,  
Plaintiffs,

vs.

HOUSEHOLD INTERNATIONAL, INC., et al.,  
Defendants.

- - - - -

VIDEOTAPED DEPOSITION OF

FRANK ALLEN FERRELL, III

Saturday, February 27, 2016 9:02 a.m.

Skadden Arps LLP

500 Boylston Street, Boston, MA 02116

Reported by:

Janet Sambataro, RMR, CRR, CLR

Job No. 10022056

1 **the appellate order?**

2 MR. FITZGERALD: Objection to form. Go  
3 ahead.

4 A. I'm sorry. So in the sense that I was  
5 asked to assess the second supplemental report,  
6 and my memory is Professor Fischel references the  
7 appellate order in how he defines his scope in  
8 the second supplemental report.

9 BY MR. BROOKS:

10 **Q. Did you read the appellate order?**

11 A. I did.

12 **Q. Did you read it carefully?**

13 A. Yes.

14 **Q. Do you believe that you adhered to the**  
15 **Seventh Circuit's opinion in performing your**  
16 **analysis?**

17 A. That calls for a legal opinion. I'm  
18 not going to offer a legal opinion. All I can  
19 say is this was the scope of my assignment, as  
20 defined by counsel for Household.

21 **Q. What did you do to prepare for the**  
22 **deposition today?**

23 A. I reviewed my reports. I reviewed  
24 Professor Fischel's reports. I listened to  
25 Professor Fischel's deposition. I reviewed the

1           A.     I mean, it varied.

2           **Q.     What was the most?**

3           A.     So counsel present here were at some of  
4 the meetings, and the other person that comes to  
5 mind is Ryan Stoll from Skadden Arps.

6           **Q.     So five or six?**

7           A.     Well, just to be clear, all five or six  
8 were not present in every meeting.  So it was --  
9 but those -- as well as counsel for HSBC.  But  
10 I'm not saying they were all present for every  
11 meeting.  That's not accurate.

12          **Q.     Do you know Dr. Mukesh Bajaj?**

13          A.     I do not.

14          **Q.     Do you understand he was Household's**  
15 **prior expert in this case on loss causation and**  
16 **damages?**

17          A.     I believe that's right.

18          **Q.     You read his reports and transcripts,**  
19 **right?**

20          A.     I did.

21          **Q.     So you know he was their expert, don't**  
22 **you?**

23          A.     Yes.  I was just pausing, because I  
24 don't remember how he characterized who he was --  
25 whether he was retained by counsel or by

1 Household directly; but yes, he performed those  
2 types of analysis.

3 Q. So you read all of his reports. Is  
4 that right?

5 A. Yes.

6 Q. And you read his trial testimony.  
7 Correct?

8 A. I did.

9 Q. You read his deposition testimony.  
10 Correct?

11 A. I did.

12 Q. And was there anything that stood out  
13 to you about his methodology that was incorrect,  
14 in your opinion?

15 MR. FITZGERALD: Objection to scope  
16 here.

17 A. So you can look at Paragraph 14 in my  
18 original report and Paragraph 7 of my second  
19 report. That was not within the scope of my  
20 assignment. So you can direct me to particular  
21 portions of what he said, but it was something  
22 that I did not focus on.

23 BY MR. BROOKS:

24 Q. You read all his stuff. Right?

25 A. I did read it back in the summer, last

1 year. But again, assessing his work is outside  
2 the scope of these two reports.

3 **Q. So I'm not asking you whether it was in**  
4 **the scope of your reports. I'm asking whether**  
5 **there was anything you disagreed with from a**  
6 **methodological perspective about Dr. Bajaj's**  
7 **reports?**

8 MR. FITZGERALD: I object. Going down  
9 the line of inquiry, if he's not retained to  
10 analyze Dr. Bajaj's testimony, you have an  
11 expert, asking him to do it on the fly doesn't  
12 seem to me to be appropriate.

13 MR. BROOKS: Are you going to instruct  
14 him not to answer? I think I'm entitled to ask.

15 MR. FITZGERALD: You're asking him to  
16 critique somebody he wasn't asked to critique  
17 before on the fly, which I don't think is  
18 appropriate.

19 MR. BROOKS: You can instruct him not  
20 to answer. I don't think it's proper. But I  
21 don't want to get in a big discussion with you.

22 MR. FITZGERALD: Why don't we move on  
23 from this. Let me talk to co-counsel at a break  
24 as to what the understanding is, so we can  
25 revisit it. I just don't -- I just don't think



1 you have a right to take an expert who is  
2 testifying about a topic, then make your expert  
3 analyze something else. But why don't we talk  
4 about it at a break, so I don't run the clock on  
5 you? You move on and we'll come back.

6 MR. BROOKS: I mean, he's testifying  
7 about loss causation and damages. That's what  
8 Dr. Bajaj testified about. Right?

9 MR. FITZGERALD: Right.

10 MR. BROOKS: It's the same topic.

11 BY MR. BROOKS:

12 Q. In performing your work, did you  
13 believe it was important to stay consistent with  
14 Dr. Bajaj's prior opinions?

15 A. No. My understanding of my role is I  
16 was to provide my own independent expert analysis  
17 within the scope, as defined in Paragraph 7 of  
18 my -- of my rebuttal report, and Paragraph 14 of  
19 my original report.

20 Q. You understand that Dr. Bajaj worked  
21 with Cornerstone, just like you're working with  
22 Cornerstone, don't you?

23 A. That, I didn't know.

24 Q. His deposition?

25 A. You know, that could well be the case,

1 but I don't have a recollection of that.

2 **Q. So you didn't think it was important to**  
3 **stay consistent with Dr. Bajaj's opinions because**  
4 **that wasn't the scope of your work. Is that your**  
5 **testimony?**

6 MR. FITZGERALD: Objection to form.

7 You can answer.

8 A. My -- my role, as I understand it, is  
9 to provide my -- my own best independent analysis  
10 within the scope of my assignment, as defined in  
11 Paragraph 14 of my original report and  
12 Paragraph 7 of my rebuttal report.

13 BY MR. BROOKS:

14 **Q. So whether or not you conflicted with**  
15 **prior evidence that Household had put on at the**  
16 **previous trial was not your concern?**

17 MR. FITZGERALD: Objection --

18 BY MR. BROOKS:

19 **Q. Is that fair to say?**

20 MR. FITZGERALD: -- to form.

21 A. That's not fair to say. I reviewed the  
22 evidence and provided an independent analysis of  
23 the evidence within the scope. And the scope,  
24 again, is to assess -- reading from my original  
25 report, to assess Professor Fischel's second

1 supplemental report. So that would obviously  
2 include his analysis, his statements in that  
3 report. And then Paragraph 7 of the rebuttal, I  
4 was asked to assess Professor Fischel's second  
5 rebuttal report. And so that was my scope.

6 **Q. Do you know who William Aldinger is?**

7 A. Yes. Generally speaking.

8 **Q. Who is that?**

9 A. He's a Household official, and I think  
10 I have a footnote where I list the individual  
11 defendants. I don't -- I didn't memorize them.  
12 But he's -- he was, at some point, a Household  
13 official.

14 **Q. Did you read his trial testimony?**

15 A. My memory is -- my memory is that  
16 Professor Fischel cites to -- I would have to  
17 review Professor Fischel.

18 My memory he does cite to some trial  
19 testimony. It might have been of that  
20 individual. I just -- I just would have to look  
21 again to refresh my recollection.

22 **Q. I asked if you read his trial**  
23 **testimony, Mr. Aldinger's?**

24 A. Yeah. So my memory is that  
25 Professor Fischel cites to some of that trial

1 **choice on expert engagements. Right?**

2 MR. FITZGERALD: Objection to form.

3 A. Well, if it's a contract, it's not a  
4 choice. So, yes, I do use Compass Lexecon unless  
5 they're conflicted or for whatever other reasons  
6 Compass Lexecon decides not to provide support.

7 BY MR. BROOKS:

8 **Q. You entered into this contract with**  
9 **Compass Lexecon on your own freewill. Is that**  
10 **right?**

11 A. Yes.

12 **Q. That was a choice you made?**

13 A. It is.

14 MR. FITZGERALD: Objection to form.

15 BY MR. BROOKS:

16 **Q. And that contract that requires you to**  
17 **go to Compass Lexecon first for support. Right?**

18 A. Yes. They have a right of first  
19 refusal pursuant to my contract.

20 (United States Court of Appeals  
21 for the Seventh Circuit Opinion, No. 13-3532  
22 marked Exhibit 3.)

23 BY MR. BROOKS:

24 **Q. The court reporter has handed you**  
25 **Exhibit 3. This is the Seventh Circuit's opinion**

1 in this case, which is listed in your reliance  
2 materials. Right?

3 A. Correct.

4 Q. So turn to Page 2 of Exhibit 3. And in  
5 the last paragraph, in the first column, it  
6 begins "Between." Do you see that?

7 A. I do.

8 Q. It says, "Between the summers of 1999  
9 and 2001, Household's stock rose from around \$40  
10 per share to the mid 60s and by July of 2001 was  
11 trading as high as \$69," and you agree with that.  
12 Right?

13 A. I have no reason to disagree with that.

14 Q. And then looking up to the prior  
15 paragraph it says, in the second sentence, "In  
16 1999, company executives implemented an  
17 aggressive growth strategy in pursuit of a higher  
18 stock price." Do you see that?

19 A. I do.

20 Q. Do you disagree with that finding?

21 MR. FITZGERALD: So let me stop you  
22 here. Are you asking him to verify what the  
23 words are on the Seventh Circuit opinion or --  
24 he's not offered, I mean, to ask him to agree or  
25 disagree with facts and opinion. That's not the

1 scope of his testimony. He's here to offer  
2 testimony about damages that flow from a finding.  
3 And asking him if the judge found it was raining  
4 on a certain day, agree or disagree, it's beyond  
5 the scope.

6 MR. BROOKS: Okay. You can answer.

7 MR. FITZGERALD: He's not here to offer  
8 an opinion on facts -- we can all argue about  
9 what the legal significance of the findings. But  
10 I don't understand why you're going to ask him to  
11 opine on whether or not sentences in a legal  
12 opinion are true. That's not within the scope.

13 BY MR. BROOKS:

14 **Q. Go ahead and answer. Just answer the**  
15 **question.**

16 MR. BROOKS: Are you going to instruct  
17 him not to answer? This isn't a 30(b)(6)  
18 deposition. This is one of his reliance  
19 materials and I'm entitled to examine him on it.  
20 He relied on this.

21 MR. FITZGERALD: Okay.

22 MR. BROOKS: He said he read it  
23 carefully.

24 MR. FITZGERALD: What are you asking?

25 Are you asking --

1 MR. BROOKS: I'm asking him whether he  
2 agrees with these findings. If he agrees with  
3 them, he can say yes. If he doesn't, he can say  
4 no.

5 MR. FITZGERALD: And on what basis --

6 MR. BROOKS: And then we'll follow up.

7 MR. FITZGERALD: Okay. I'm going to  
8 direct him not to answer. He's not here to offer  
9 factual opinions. He's here to offer a  
10 scientific method to calculate damages based upon  
11 a finding of liability. And to ask an expert  
12 witness, agree or disagree with fact findings, if  
13 that's what they are, from the Seventh Circuit  
14 opinion, I don't think is appropriate.

15 MR. BROOKS: Okay. I think it's  
16 completely inappropriate to instruct him not to  
17 answer. If that's your instruction, that's fine.  
18 I'm going to ask my questions and you can  
19 instruct him or not instruct him. All right?

20 MR. FITZGERALD: Okay.

21 BY MR. BROOKS:

22 Q. So you're not going to answer that  
23 question?

24 MR. FITZGERALD: I'm directing him not  
25 to answer that question.

1           A.     I will follow the instruction.

2 BY MR. BROOKS:

3           **Q.     The next sentence reads, "Over the next**  
4 **two years, the stock price rose dramatically but**  
5 **the company's growth was driven by predatory**  
6 **lending practices." Do you see that?**

7           A.     I do.

8           **Q.     Do you disagree with that finding by**  
9 **the Seventh Circuit?**

10           MR. FITZGERALD: Same objection. Same  
11 instruction.

12           A.     I'll follow the instruction.

13 BY MR. BROOKS:

14           **Q.     The Seventh Circuit continued, "This,**  
15 **in turn, increased the delinquency rate of**  
16 **Household's loans, which the executives then**  
17 **tried to mask with creative accounting." Do you**  
18 **agree with that?**

19           MR. FITZGERALD: Same instruct -- same  
20 objection. Same instruction.

21 BY MR. BROOKS:

22           **Q.     Do you disagree with it?**

23           MR. FITZGERALD: Same objection. Same  
24 instruction.

25



1 BY MR. BROOKS:

2 Q. Do you understand what that means, sir?

3 MR. FITZGERALD: Same objection. Do  
4 you --

5 BY MR. BROOKS:

6 Q. Do you understand what it means that  
7 Household's predatory lending increased the  
8 delinquency rate of Household's loans, which the  
9 executives then tried to mask with creative  
10 accounting?

11 MR. FITZGERALD: Same objection. Same  
12 instruction.

13 BY MR. BROOKS:

14 Q. Do you have any understanding as to  
15 what that means, sir?

16 MR. FITZGERALD: Same objection. Same  
17 instruction. You're going to have him opine on  
18 an opinion --

19 BY MR. BROOKS:

20 Q. They continue, "Their technique was to  
21 reage delinquent loans to distort a popular  
22 metric that investors use to gauge the quality of  
23 loan portfolios, the percentage of loans that are  
24 two or more months delinquent." Do you see that,  
25 sir?

1           A.    I do see that.

2           **Q.    Do you agree with that?**

3                   MR. FITZGERALD:  Same objection.  Same  
4 instruction.

5           A.    I'll follow the instruction.

6 BY MR. BROOKS:

7           **Q.    Do you dispute that finding by the**  
8 **Seventh Circuit?**

9                   MR. FITZGERALD:  Same objection.  Same  
10 industry.

11          A.    I'll follow the instruction.

12 BY MR. BROOKS:

13          **Q.    Do you understand what that means, sir,**  
14 **that sentence?**

15                   MR. FITZGERALD:  Same objection.  Same  
16 industry.

17          A.    I'll follow the instruction.

18 BY MR. BROOKS:

19          **Q.    Do you have any idea what it means that**  
20 **Household and the executives' technique was to**  
21 **reage delinquent loans to distort a popular**  
22 **metric that investors used to gauge the quality**  
23 **of loan portfolios, the percentage of loans that**  
24 **are two or more months delinquent?  Do you have**  
25 **any idea what that means?**

1 MR. FITZGERALD: Same objection.

2 Continuing instruction.

3 A. I'll follow the instruction.

4 BY MR. BROOKS:

5 Q. They continued, "Household also  
6 improperly recorded the revenue from four credit  
7 card agreements that would ultimately issue  
8 corrections in August 2002." Do you see that?

9 A. I do see that.

10 Q. That was the restatement. Right?

11 MR. FITZGERALD: Same objection. Same  
12 instruction.

13 A. I'll follow the instruction.

14 BY MR. BROOKS:

15 Q. You don't know whether that was a  
16 restatement. Is that fair to say?

17 MR. FITZGERALD: Same objection. Same  
18 instruction.

19 A. I'll follow the instruction.

20 BY MR. BROOKS:

21 Q. Do you have any idea what that sentence  
22 means, sir?

23 MR. FITZGERALD: Same objection. Same  
24 instruction.

25

1 BY MR. BROOKS:

2 Q. You're unwilling to tell me whether you  
3 know what that means?

4 MR. FITZGERALD: Same objection. Same  
5 instruction.

6 A. I'll follow the instruction.

7 BY MR. BROOKS:

8 Q. Turning to the next paragraph, skipping  
9 the sentence we already covered, the Court  
10 continued, "But the reality of Household's  
11 situation" --

12 A. I'm sorry. Where are you?

13 Q. In the next paragraph.

14 A. On the second column?

15 Q. Second sentence, first column.

16 A. Okay. First column.

17 MR. FITZGERALD: Is it okay if I point  
18 him to it?

19 MR. BROOKS: Yeah.

20 MR. FITZGERALD: He's over here  
21 (indicating), the truth --

22 THE WITNESS: Oh, but the reality, is  
23 that what --

24 MR. FITZGERALD: Yes.

25 THE WITNESS: Okay. I see that. Sorry

1 about that.

2 BY MR. BROOKS:

3 Q. The Court wrote, "But the reality of  
4 Household's situation eventually caught up with  
5 its stock price. The truth came to light over a  
6 period of about a year through a series of  
7 disclosures that began when California sued  
8 Household over its predatory lending."

9 Do you see that?

10 A. I do.

11 Q. Do you understand what that means, sir?

12 MR. FITZGERALD: Objection. Same  
13 objection.

14 BY MR. BROOKS:

15 Q. Do you agree or disagree that the --

16 A. I follow -- I'll follow the  
17 instruction.

18 Q. Do you agree or disagree that the truth  
19 came to light over a period of about a year  
20 through a series of disclosures that began when  
21 California sued Household over its predatory  
22 lending?

23 MR. FITZGERALD: Same objection. Same  
24 instruction.

25 A. I'll follow the instruction.

1 BY MR. BROOKS:

2 Q. Independent of this document, do you  
3 agree that the truth about Household's fraud came  
4 to light over a period of about a year through a  
5 series of disclosures that began when California  
6 sued Household over its predatory lending?

7 MR. FITZGERALD: Objection to form.

8 A. So in my report, and I would go to my  
9 rebuttal report, I do have a specific disclosure  
10 model where I analyze Professor Fischel's  
11 14 purported specific disclosure days. And it is  
12 true that those 14 days are over a period of  
13 time, but on specific days. I believe the first  
14 of those 14 -- but I would just go to my  
15 Exhibit 3a and 3b of my rebuttal report.

16 So looking at Exhibit 3a of my rebuttal  
17 report, the first purported corrective disclosure  
18 in Professor Fischel's specific disclosure model  
19 is November 15th. And in Professor Fischel's  
20 specific disclosure model, it ends on October 11,  
21 2002. And, of course, I also have my corrected  
22 Fischel regression with respect to these dates.

23 MR. BROOKS: So I'll move to strike  
24 that as nonresponsive.

25

1 BY MR. BROOKS:

2 Q. My question is: Do you agree that the  
3 truth about Household's fraud came to light over  
4 a period of about a year through a series of  
5 disclosures that began when California sued  
6 Household over its predatory lending?

7 MR. FITZGERALD: And same objection.  
8 If you're reading the Seventh Circuit opinion and  
9 asking whether he agrees with the fact-findings  
10 or not, same instruction. If you want to ask him  
11 questions independently of the Seventh Circuit  
12 opinion as to when the disclosure period was, I  
13 think he properly answered it. You can ask him  
14 that.

15 BY MR. BROOKS:

16 Q. Do you agree or not that the truth  
17 about Household's fraud came to light over a  
18 period of about a year?

19 A. That's a very general statement. My --  
20 my specific analysis, my scientifically based  
21 rigorous methodology for analyzing the disclosure  
22 period, you know, is reflected in Exhibit 3a,  
23 among other exhibits, and discussion that I have  
24 in the report. And it is true that the first  
25 date in that model is November 15th, 2001.

1 not to answer.

2 A. I mean, I read it over the summer to  
3 get an understanding of the context of the case.  
4 But, you know, I was not asked to review or  
5 assess what he did or didn't do. So if you have  
6 a specific aspect of his methodology, you know,  
7 it would be helpful for me to see it. But it was  
8 just something I wasn't focused on.

9 BY MR. BROOKS:

10 Q. You indicated in your Exhibit B to your  
11 report that you relied on Dr. Bajaj's reports and  
12 testimony. What did you rely on that for?

13 A. To understand the context of the case.  
14 So obviously there's been a lot of reports and  
15 litigation well before I was retained, and so it  
16 was for that purpose.

17 Q. Was there any other reason that you  
18 relied on Dr. Bajaj's reports and testimony?

19 A. No.

20 Q. And as you're sitting here, you can't  
21 think of something that stood out to you as  
22 methodologically unsound about Dr. Bajaj's  
23 analysis?

24 MR. FITZGERALD: Continuing objection.  
25 Not directing him -- I'm not preventing him from



1 BY MR. BROOKS:

2 Q. Can you think of anything that he did,  
3 as you're sitting here right now, that you  
4 disagreed with from a methodological perspective?

5 MR. FITZGERALD: Same objections and  
6 asked and answered.

7 A. I have the same response. I don't have  
8 a clear enough recollection of the report to have  
9 an opinion on it, sitting here today. I was  
10 asked to assess what Professor Fischel did. And  
11 on that, I have opinions.

12 BY MR. BROOKS:

13 Q. Did you ever develop an opinion about  
14 Dr. Bajaj's methodologies?

15 MR. FITZGERALD: Same objection.

16 A. No. Not -- not -- not -- the answer is  
17 no, in the sense that I was asked to provide an  
18 independent opinion and analysis of what  
19 Professor Fischel said or what Professor Fischel  
20 did. And so that was my focus.

21 BY MR. BROOKS:

22 Q. Okay. You have Exhibit 5 in front of  
23 you. This is Professor Fischel's original report  
24 dated August 15th, 2007. Correct?

25 A. August 15 -- yes. That's correct.

# **EXHIBIT B**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION

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

Plaintiffs,

vs. No. 1:02-CV-05893

HOUSEHOLD INTERNATIONAL,  
INC., et al.,

Defendants.

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VIDEOTAPED DEPOSITION OF BRADFORD CORNELL, Ph.D.

Los Angeles, California

Thursday, March 10, 2016

Volume I

Reported By:  
CHERYL R. KAMALSKI  
CSR No. 7113

Job No.: 10022554

1 BY MR. DROSMAN:

2 Q Did you rely on anything that Professor Bajaj  
3 did?

4 A Not that I recall, no.

5 Q Okay. Any other opinions that you relied on  
6 by either Ferrell or James that we haven't  
7 discussed, for the purposes of either one of your  
8 two expert reports in this case?

9 A As I said, if there was something further  
10 than what I've mentioned here, it would be cited in  
11 my report -- my reports.

12 Q You read the Seventh Circuit's Court of  
13 Appeals May 21, 2015 decision in Craig Strem versus  
14 Household, right?

15 A Yes.

16 Q Okay. In fact, your Appendix C indicates  
17 that you relied on that decision, right?

18 A I don't recall actually relying on it. I  
19 recall reading it. I felt it was fair to put it in  
20 because it gave me background information, but I  
21 don't recall relying on it in any way.

22 Q Okay. You list it under the heading  
23 "Materials Relied Upon," right?

24 A I interpreted that broadly; that anything I  
25 read and considered, that I relied upon.

1           A     I don't recall.

2           **Q     Okay.  You read Mukesh Bajaj's expert**  
3 **reports, right?**

4           A     At one time.

5           **Q     Okay.  It's -- they're listed in your**  
6 **Exhibit C -- correct -- or your Appendix C to your**  
7 **Exhibit 1?**

8           A     Yes.

9           **Q     You relied on those, right?**

10          A     No, I don't think so.

11          **Q     You listed them under your reliance**  
12 **materials, though, right?**

13          A     Yes.

14          **Q     Okay.  You read Mukesh Bajaj's deposition**  
15 **transcript, right?**

16          A     Parts of it I went back to.  I read it many  
17 years ago, and then I -- I did go back and look at  
18 parts of it.

19          **Q     And you also listed his deposition transcript**  
20 **under your Appendix C to your Exhibit 1, right?**

21          A     Yes.  And just to be clear, I wanted to be  
22 complete in this.  There can be things that I rely  
23 on, in the sense that I read it to just inform  
24 myself and then never used; things that I --  
25 actually influenced my opinion.  I used the broader

1 definition of "relied on" here. Some of these  
2 things, such as the order and the Bajaj work, I did  
3 look at; I wanted to understand it, but it had no  
4 direct impact on my analytical work.

5 **Q You relied on his deposition testimony; is**  
6 **that correct -- Mr. Bajaj's?**

7 MR. STOLL: Objection to form.

8 THE WITNESS: I think I just --

9 MR. STOLL: Mischaracterizes the testimony,  
10 and asked and answered.

11 THE WITNESS: Yeah, I think I just answered  
12 that to -- the best I can.

13 BY MR. DROSMAN:

14 **Q Did you read Dr. Bajaj's trial testimony?**

15 A It would be the same answer with respect to  
16 his deposition -- assuming it's on here.

17 **Q You read it; is that correct?**

18 A I read it at one time. I looked back at it.  
19 I didn't use it in developing any of my opinions in  
20 this case.

21 **Q You listed it under your Appendix C,**  
22 **reliance -- "Materials Relied Upon," right?**

23 A For the reasons I just described.

24 **Q Did you, in fact, list his trial testimony**  
25 **under your "Materials Relied Upon" in your**

1 **Exhibit 1?**

2 MR. STOLL: Objection to form. Asked and  
3 answered.

4 THE WITNESS: I did, for the reasons I just  
5 described.

6 BY MR. DROSMAN:

7 **Q Okay. Were there any parts of Dr. Bajaj's**  
8 **methodology that were incorrect?**

9 MR. STOLL: Objection to form. Beyond the  
10 scope.

11 THE WITNESS: I don't know. I didn't look at  
12 it that carefully, or with that in mind.

13 BY MR. DROSMAN:

14 **Q Well, let me just ask you: Did you disagree,**  
15 **from a methodological standpoint, with any part of**  
16 **Dr. Bajaj's reports?**

17 MR. STOLL: Objection to form and beyond the  
18 scope.

19 THE WITNESS: I didn't read them that  
20 carefully or for that purpose, and I don't know.

21 BY MR. DROSMAN:

22 **Q Do you know who William Aldinger is?**

23 A He's a Household executive.

24 **Q Do you know his position?**

25 A Well, there were three key executives -- and

1 attempting to parse those things, even if I could do  
2 so, because it is a legal document, not an academic  
3 article in my profession.

4 BY MR. DROSMAN:

5 **Q Well, regardless of how you read it, is there**  
6 **anything that struck you as incorrect when you read**  
7 **the Seventh Circuit's opinion?**

8 MR. STOLL: Object -- objection to form.  
9 Objection; calls for legal conclusions. Objection;  
10 it's a misuse of this document with this witness.

11 THE WITNESS: I don't remember it well enough  
12 to answer that question. If you want to point me to  
13 a specific part, I could maybe answer that.

14 BY MR. DROSMAN:

15 **Q Do you dispute any finding by the Seventh**  
16 **Circuit in this decision?**

17 MR. STOLL: Objection to form. Objection;  
18 that's a misuse of this document.

19 THE WITNESS: I didn't address it with that  
20 in mind. I wanted to understand the background.  
21 But the focus of my work was Professor Fischel and  
22 his model. And while this helped me understand the  
23 context, I wasn't attempting to agree or disagree  
24 with it.

25 BY MR. DROSMAN:



1           **Q    How did the Seventh Circuit's opinion help**  
2 **you to understand the context?**

3           A    Because it discusses the Court's view of the  
4 models and, you know, what they're looking for, the  
5 reason they remanded the case, the -- back for  
6 another trial.

7           **Q    Did you dispute any conclusion by -- by the**  
8 **Seventh Circuit in the decision?**

9           MR. STOLL:  Objection to form.  It's an  
10 improper use of this document, beyond the scope.

11           THE WITNESS:  Not that I recall.

12           BY MR. DROSMAN:

13           **Q    Do you dispute any analysis by the Seventh**  
14 **Circuit in this decision?**

15           MR. STOLL:  Continued objection to form and  
16 that's an improper use of this document, calls for  
17 legal conclusions.

18           THE WITNESS:  I really haven't attempted to  
19 analyze it in that -- in that regard.

20           BY MR. DROSMAN:

21           **Q    If you could turn to page 3 of Exhibit 6.**  
22 **And do you see the final paragraph begins "Between**  
23 **the summers of 1999 and 2001...?"**

24           A    Yes.

25           **Q    Okay.  And it says:**

1 slowly there are reports from other oil companies  
2 that they didn't find any reserves in the area, or  
3 the area's not geologically appropriate, et cetera,  
4 et cetera, and over time the market may come to  
5 conclude, without a specific disclosure, that there  
6 is, in fact, no oil reserve. I can envision  
7 something like that happening.

8 Q Okay. If you look at -- down at the bottom,  
9 the Seventh Circuit is quoting its case in  
10 Schleicher. Do you see that?

11 A Yes.

12 Q And the quote is, quote, "Truth can come out  
13 and affect the market price in advance of a formal  
14 announcement," end quote. Do you see that?

15 A Yes.

16 Q Do you agree with that assertion?

17 MR. STOLL: Same objection; misuse of this  
18 document with the witness. Calls for a legal  
19 conclusion -- I'm sorry.

20 And again, Counsel, just so you're clear, you  
21 can ask questions independent of this document.  
22 It's inappropriate to be using the Seventh Circuit  
23 decision in this way.

24 THE WITNESS: I think that assertion is  
25 consistent with what I just said.

# **EXHIBIT C**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION

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

Plaintiffs,

vs. No. 1:02-CV-05893

HOUSEHOLD INTERNATIONAL,  
INC., et al.,

Defendants.

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VIDEOTAPED DEPOSITION OF CHRISTOPHER M. JAMES  
Los Angeles, California  
Monday, March 14, 2016  
Volume I

Reported By:  
CHERYL R. KAMALSKI  
CSR No. 7113

Job No.: 10022555

1 credit performance metrics. In evaluating a  
2 financial institution's performance, there's a  
3 number of metrics that you can look to. So what --  
4 beyond -- your question's a very general one.

5 BY MR. DOWD:

6 **Q Okay. And are you rendering an opinion as to**  
7 **whether investors considered Household's two-plus or**  
8 **delinquency statistics to be important or not?**

9 A I haven't been asked to address that  
10 particular issue, whether -- you know, how they  
11 reported their two-plus delinquencies was material  
12 to investors. You know, as a -- just a general  
13 background, in evaluating performance, I don't think  
14 you focus on one particular credit metric -- be it  
15 the 60-day-plus or 90-day-plus -- but you look at  
16 the performance overall using a variety of different  
17 credit metrics.

18 **Q Okay. Is one of the credit metrics you would**  
19 **have considered for Household the two-plus**  
20 **statistic?**

21 A Not in isolation. Certainly it may be one  
22 that was considered. But it would be considered in  
23 the context of other credit metrics as well.

24 **Q I'm looking at the very end of that page 3 of**  
25 **the Seventh Circuit opinion. It says "The truth**

1 came to light over a period of about a year through  
2 a series" --

3 A I'm sorry. I didn't mean to interrupt you.

4 Q Sure. The very last sentence on that page,  
5 going over to the top of the next page.

6 A Ah. Okay.

7 Q Just go ahead and read it. That's fine.

8 A Okay.

9 Q Okay. It says:

10 "The truth came to light over a  
11 period of about a year through a  
12 series of disclosures that began  
13 when California sued Household over  
14 its predatory lending."

15 You read that?

16 A Yes.

17 Q Do you agree or disagree with that?

18 MR. FARINA: Same objection I expressed  
19 before.

20 THE WITNESS: I mean, I think that they're --  
21 they're providing an overview of particular relevant  
22 issues in the case. So -- as I understand the  
23 allegations, the -- there's allegations that the --  
24 the alleged misstatements -- that there were certain  
25 alleged curative disclosures during the observation

1 days.

2 BY MR. DOWD:

3 Q You mentioned Professor Ferrell's activities  
4 in connection with the case, correct?

5 A Yes.

6 Q Do you rely on any of Professor Ferrell's  
7 analysis in rendering your opinion?

8 A I certainly considered it. And I think  
9 it's -- his analysis is consistent with mine. But  
10 in terms of would my report -- could my report be  
11 used on a standalone basis? Yes. There's nothing  
12 in my report that I perceive as being dependent upon  
13 a particular conclusion or opinion that  
14 Professor Ferrell is rendering.

15 Q Okay. Did you consider anything that  
16 Dr. Bajaj testified to or wrote in his reports?

17 A No.

18 Q Why'd you read his testimony?

19 A I think that I was reading his testimony for  
20 context, you know, when I was first retained.  
21 There's a previous trial, and I was trying to  
22 understand what the -- the issues were in the case.

23 Q Do you know Dr. Bajaj?

24 A I don't know him personally, no.

25 Q Okay. Have you ever worked with him on a

# **EXHIBIT D**



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, )  
Plaintiffs, ) Lead Case No.  
vs. ) 1:02-CV-05893  
HOUSEHOLD INTERNATIONAL, )  
INC., et al., )  
Defendants. )

VIDEOTAPED DEPOSITION OF DANIEL FISCHER, Ph.D.

February 24, 2016

Chicago, Illinois

9:00 a.m.

Reported By:  
Sheri E. Liss, CRR  
Job No. 42823

1 MR. FARINA: Sure. It's actually in the  
2 document.

3 BY MR. FARINA:

4 Q. The way this works is you have the --  
5 it's broken out in different sections. The section  
6 we're in right now is just a list of the statements.  
7 But if you go further in the document, you'll see  
8 that the statements are actually laid out. So it's  
9 towards the back. So 38 is on Page 26 of the second  
10 part of the document.

11 A. Okay. I have it.

12 Q. Actually, it runs on two.

13 MR. BURKHOLZ: Is it 38 you're asking  
14 him about?

15 MR. FARINA: Yes.

16 BY MR. FARINA:

17 Q. So you see the statement 38?

18 A. I do.

19 Q. So how did the misrepresentation that is  
20 statement 38 cause inflation in Household's stock  
21 according to your model?

22 A. I'm not sure how to answer that other  
23 than what I've already said. My understanding is  
24 that the jury found that Household and its  
25 executives executed a massive fraud. The first

1 statements that were rejected by the jury that come  
2 after the first misstatement found by the jury, the  
3 fact that the jury rejected those misstatements did  
4 not cause you to change in any way your opinion?

5 MR. BURKHOLZ: Objection. Asked and  
6 answered.

7 BY THE WITNESS:

8 A. Well, I mentioned that I did make an  
9 adjustment for the first three days based on my  
10 understanding of the holding of the court of appeals  
11 and because the jury found that Household and its  
12 executives committed a massive fraud in the three  
13 areas that I identified, which was originally  
14 assumption and now is established by the jury in  
15 subsequent judicial rulings, other than changing the  
16 starting date and making the adjustment for the  
17 three days, that's what I did.

18 BY MR. FARINA:

19 Q. All right. So the jury's -- if you  
20 could take that document, open it up again to Page  
21 35.

22 A. Okay.

23 Q. I'll try to run through this quickly,  
24 but the jury's finding as to statement No. 35 didn't  
25 impact your model in any way?

1 also a discussion of that in the 7th Circuit opinion  
2 and also in the district court opinion on remand as  
3 well.

4 Q. Professor Fischel, both of your models  
5 are purporting to measure inflation in Household's  
6 share price on each of these days, correct?

7 A. At that level of generality, correct.

8 Q. Okay.

9 A. But in different ways measuring  
10 different things.

11 Q. I understand they're doing it in  
12 different ways, but they're both supposed to be  
13 measuring the same thing, correct?

14 A. Depends what you mean by "same thing."  
15 I mean, one is assuming that there's continuous  
16 leakage of information as the market -- as market  
17 participants learn the massive fraud by Household  
18 and its executives, and the other is not making that  
19 assumption.

20 So for that reason you would expect  
21 there to be differences in the calculation of the  
22 magnitude of artificial inflation on particular  
23 days.

24 Q. So your leakage model assumes that fraud  
25 inflation is continuously leaking out of Household's

1 damages. And if I'm wrong about that, that's fine.

2 But it would make it a lot easier  
3 for us to go forward in this deposition if you could  
4 answer my questions based on your understanding of  
5 your own opinion irrespective of what you think the  
6 jury did or didn't find.

7 Is that fair?

8 A. I don't think it is fair. If you want  
9 me to make an assumption contrary to what I believe,  
10 I'm willing to do it depending on the nature of the  
11 question. I understand that there's issues as to  
12 the proper, I guess you could say the proper way to  
13 measure the effect of the fraud.

14 But I don't understand that the  
15 existence of leakage is something that hasn't been  
16 determined by the jury and, as I said, supported in  
17 subsequent judicial rulings with the caveat that I  
18 understand that there's a dispute about how to  
19 measure it, although the defendants' experts haven't  
20 made any such attempt.

21 But in any event, that's my  
22 understanding again without in any way trying to  
23 suggest that I'm offering any legal opinions.

24 Q. Do you think the jury in the second  
25 trial is afraid to reject your leakage model?

1           were found by the jury and 23 that were rejected.  
2           We've highlighted the 17 -- the days on which there  
3           was one of the 17 misrepresentations found by the  
4           jury. And there is no misrepresentation found by  
5           the jury during the period when your model says that  
6           the artificial inflation in Household stock went  
7           from \$12.47 to \$23.94; isn't that correct?

8           A.       It's a highly misleading question  
9           because first of all, it ignores the fact that the  
10          jury also found the existence of leakage, since you  
11          keep asking me what the jury found, and because of  
12          the jury finding of leakage, its findings are not  
13          limited to particular alleged false and misleading  
14          statements.

15                               And secondly, it is my  
16          quantification of leakage but it's based on a model  
17          developed by Cornell and Morgan which I concluded  
18          was appropriate to use under the facts and  
19          circumstances of this case.

20          Q.       The output of the model as reflected in  
21          this exhibit is that the inflation nearly doubles  
22          during a period when there was no misrepresentation  
23          found by the jury; isn't that true?

24          A.       I think I just answered that question.  
25          There's no highlighted yellow date, but the question

1           A.       I haven't checked. All I know is what I  
2 did in this case was accepted by the jury. And the  
3 concept of applying a leakage model, as I understand  
4 it, again, without offering any legal opinion, as I  
5 understand it was endorsed and accepted by the court  
6 of appeals as well as by the district court on  
7 remand from the court of appeals.

8                       But I have not made any attempt to  
9 investigate what methodologies are being used or not  
10 used in other securities fraud cases, the thousands  
11 that you mentioned, if that's the correct number.

12           Q.       You're not aware of any other case in  
13 which a model like the leakage model offered here  
14 has been used?

15           A.       I am not aware one way or the other  
16 because I never -- I haven't made any attempt to  
17 survey all of the securities fraud cases that have  
18 ever been filed.

19           Q.       Wouldn't you be interested to know  
20 whether or not the model you're offering in this  
21 case has ever actually been accepted or advanced by  
22 any other expert in any other case?

23           A.       I guess it could be interesting  
24 possibly, but what I really care about is the  
25 relevance and the applicability of the leakage model

1 under the facts and circumstances of this case.

2 It's possible that other cases don't have the same  
3 evidence of a massive fraud that exists in this  
4 case, I don't know.

5 But what I tried to do is apply the  
6 model I thought was appropriate under the facts and  
7 circumstances of the case, as I understood them.  
8 And as I said, my understanding is the methodology  
9 that I used was approved by the original district  
10 court, accepted by the jury, accepted by -- at least  
11 the concept of a leakage model, accepted by the  
12 court of appeals and also accepted by the district  
13 court on remand with the caveat that it was just  
14 based on my understanding as opposed to any legal  
15 opinion that I'm offering.

16 Q. The specific disclosure model that  
17 you're offering is much more of a conventional  
18 standard damages for inflation analysis for  
19 securities cases; isn't that true?

20 A. I think that's fair, much more commonly  
21 used in my experience.

22 Q. The specific disclosure model where  
23 corrective disclosures are identified on  
24 statistically significant days and that is used to  
25 calculate inflation in some form or another, that is



1                   But what I know is that the concept  
2                   of leakage and the use of a leakage model to measure  
3                   the existence of leakage, at least based on my  
4                   understanding, as I've said, was accepted by the  
5                   trial judge, accepted by the jury, accepted by the  
6                   court of appeals and also accepted by the district  
7                   court on remand from the court of appeals, at least  
8                   that's my understanding of what's occurred.

9                   And I think the reason is that the  
10                  methodology that's used has to apply to the facts  
11                  and circumstances that you're trying to analyze.

12                 The concept of analyzing leakage,  
13                 if you put to one side the -- your comment about  
14                 securities filings, which I haven't analyzed, but  
15                 the concept of leakage and trying to measure the  
16                 effect of leakage, as I said is a -- in my reports  
17                 is widely accepted, analyzed in many, many academic  
18                 studies precisely because in situations where  
19                 there's reason to believe that there's evidence of  
20                 leakage, if you're a researcher, it would be a  
21                 fundamental economic error to analyze the effect of  
22                 information on prices and ignore the evidence of  
23                 leakage.

24                 That's why it's been analyzed  
25                 repeatedly in academic studies, in standard academic

1 that I've seen in 30 years.

2 But the other thing that I'd say is  
3 you can't divorce the methodology from the facts and  
4 circumstances that the methodology applies to. I  
5 mean it may be that the massive evidence of fraud  
6 and the massive evidence of leakage of that fraud  
7 that occurred in this case doesn't happen very  
8 often; that the fraud in this case and the leakage  
9 of the fraud in this case is extreme and therefore  
10 doesn't happen everyday.

11 But that wouldn't in any way  
12 suggest that there's anything wrong with applying a  
13 leakage model. That would just suggest that the  
14 fraud in this case and the leakage of that fraud in  
15 this case is so extreme that it doesn't happen very  
16 often.

17 Q. Are you aware of any other securities  
18 class action in which artificial inflation was  
19 estimated using residual returns that were not  
20 statistically significant?

21 MR. BURKHOLZ: Same objection. Asked  
22 and answered.

23 BY THE WITNESS:

24 A. Again, I haven't made any attempt to  
25 survey every other case. The leakage model as

1 statistically significant negative days, that I was  
2 investigating the 26 during the leakage period, that  
3 there was no reason to conclude that negative result  
4 was attributable to non-fraud related firm-specific  
5 information, which was my principal inquiry in light  
6 of my understanding of the limited purpose of the  
7 remand from the 7th Circuit.

8 Q. You've explained though today that  
9 information that is not firm-specific can have a  
10 firm-specific effect on particular companies,  
11 correct?

12 A. Potentially, that's right.

13 Q. Did you do any analysis to determine  
14 whether or not information on April 29 had a  
15 disproportionate impact on Households that was  
16 entirely unrelated to the fraud?

17 A. Well, first of all, I don't think it's  
18 accurate, and if I remember correctly, the Court on  
19 remand made this point to say that Household's --  
20 the problems that Household experienced in the  
21 subprime market were completely unrelated to fraud,  
22 which was the premise of your question. I think the  
23 evidence is quite to the contrary. But more  
24 generally, I did attempt to analyze in a variety of  
25 ways whether the various different constantly

1 of the remand, my principal focus was to determine  
2 whether there was any non-fraud related  
3 firm-specific information that was responsible for a  
4 statistically significant decline in price. That  
5 was the principal investigation that I performed in  
6 response to my understanding of the limited purpose  
7 of the remand.

8           Apart from that, I also tried to  
9 identify any particular information about what was  
10 happening on any particular days that I thought was  
11 relevant for purposes of including in the report,  
12 but, as I said, the only things that mattered, given  
13 the limited purpose of the remand as I understood  
14 it, is whether any of the days where I found  
15 statistically significant negative returns during  
16 the leakage period that were not included in my  
17 specific -- quantification of inflation based on  
18 specific disclosures, whether any of those negative  
19 returns were attributable to non-fraud related  
20 firm-specific information.

21           And to the extent, what you're  
22 showing me suggests that there's some industry  
23 effect that would not qualify as firm-specific  
24 information, as I think the Court of -- that the  
25 district Court just found on remand, if I remember

1           correctly.

2                           And in addition to that, to the  
3           extent that there's some suggestion independent of  
4           whether this article appeared earlier, that just  
5           looking at these security price returns, that  
6           there's some reason to conclude that problems in the  
7           subprime industry were responsible for these  
8           returns.

9                           There's several points that could  
10          be made. One is that as the Court on remand itself  
11          recognized, if I recall correctly, it's very hard to  
12          disentangle Household's industry problems, which it  
13          in fact denied, with the fraud that it was  
14          committing.

15                          And beyond that, I also attempted  
16          to analyze statistically whether any of the  
17          constantly changing alternative industry indexes  
18          proposed by the defendants' experts that had more of  
19          a subprime focus in contrast with what Household  
20          itself disclosed as to what it should be compared  
21          to, whether that had any impact on my quantification  
22          of inflation based on leakage.

23                          And as I've said several times and  
24          is discussed in my report, if anything, if I had  
25          done what the defendants experts have suggested, the

1           inflation that I would have calculated would have  
2           been even larger than what I in fact calculated  
3           using the model that I did based on what Household  
4           itself said in the real world.

5           Q.       Just to be clear as to what you did and  
6           what you did not do, when you were looking for  
7           "firm-specific information," the way you interpret  
8           that term, you were looking for information that  
9           only affected Household, only Household and not some  
10          subsector of the industry or some information that  
11          might have disproportionately impacted a smaller  
12          number of firms. In order for it to be  
13          firm-specific, as you understand it, it had to be  
14          Household and only Household?

15          A.       I don't think that's an accurate  
16          description of what I did or, for that matter, the  
17          way the term firm-specific, at least based on my  
18          understanding, was used by both the Court of Appeals  
19          and the Court in this case on remand.

20          Q.       If there's information that applied,  
21          let's pick an example, a dramatic increase in credit  
22          card defaults by subprime customers. If that -- you  
23          would say that's not firm-specific information,  
24          correct?

25          A.       I would say an industry disclosure like

1           that I would not consider to be firm-specific  
2           information. But I would also conclude, as I  
3           believe the Court in this case did on remand, that  
4           it's -- that would be some combination of an  
5           industry related disclosure and a fraud related  
6           disclosure to the extent with respect to Household,  
7           that Household had inflated its results because of  
8           the fraud that it committed and as a result the  
9           manifestation of problems was going to have a -- in  
10          some sense a disproportionate or unique effect on  
11          Household precisely because of the combination of  
12          the industry event and the leakage of the fraud  
13          being revealed to the marketplace.

14                                But I also, again, just to repeat  
15          again --

16           Q.        Can you --

17           A.        Let me finish.

18                                I tested specifically and  
19          statistically whether there was any reason to  
20          believe there was any greater unexplained  
21          performance of Household if I used and added the  
22          constantly changing different industry indexes that  
23          the defendants' experts proposed, and I concluded  
24          that inflation would only have -- my quantification  
25          of inflation would only have been larger had I added

1 the relevant question on remand from the 7th  
2 Circuit. These cherry-picked dates tell you nothing  
3 about how Household performed relative to these  
4 companies or subprime indexes over the entire  
5 leakage period. They tell you nothing about what --  
6 how my quantification of leakage would be affected,  
7 if at all, by the addition of extra independent  
8 variables based on the constantly changing proposed  
9 indexes of defendants' experts, and these exhibits  
10 also fail to take into account the fact that was  
11 demonstrated at trial and recognized, as I  
12 understand it, by the Court in this case on remand  
13 that a lot of what is suggested by this -- these  
14 exhibits as industry related was in fact fraud  
15 related and that, as I said, is sort of nowhere  
16 taken into account in these exhibits.

17 Q. You twice said that these dates were  
18 cherry-picked. Do you know what these dates are?

19 A. They're single dates which give a  
20 misleading impression, an incorrect impression about  
21 the comparison of Household's performance relative  
22 to the two indexes but also indexes of the  
23 constantly changing set of firms that the  
24 defendants' experts have proposed as more comparable  
25 than the firms that Household itself determined to