

**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. )		

**DEFENDANTS’ MOTION *IN LIMINE* NO. 3  
TO EXCLUDE PLAINTIFFS’ EXPERT FROM  
EXPRESSING OPINIONS NOT PREVIOUSLY DISCLOSED**

Defendants respectfully move the Court to preclude Plaintiffs’ expert, Professor Daniel R. Fischel, from expressing at trial any opinion not previously disclosed to Defendants. In support of this motion, Defendants state as follows:

1. Plaintiffs intend to call Professor Daniel R. Fischel, a witness retained by Plaintiffs to provide expert testimony in this case, to testify as an expert at trial.
2. Pursuant to Federal Rule of Civil Procedure 26(a)(2)(B), a witness retained to provide expert testimony must prepare a written report disclosing, inter alia, “a complete statement of all opinions the witness will express and the basis and reasons for them.” Fed. R. Civ. P. 26(a)(2)(B)(i). This disclosure must be made “at least 90 days before the date set for trial.” Fed. R. Civ. P. 26(a)(2)(D)(i).
3. If a party fails to provide information required under Rule 26(a), that party is “not allowed to use that information” to supply evidence at trial. Fed. R. Civ. P. 37(C)(1). “The sanction of exclusion is automatic and mandatory unless the party to be sanctioned can show that

its violation of Rule 26(a) was either justified or harmless.” *NutraSweet Co. v. X-L Engineering Co.*, 227 F.3d 776, 785–86 (7th Cir. 2000) (internal quotation marks omitted); *see also, e.g., Abbot Labs. v. TorPharm, Inc.*, 2003 WL 22462614, at \*16 (N.D. Ill. Oct. 29, 2003).

4. Professor Fischel has prepared six written reports, over the course of nearly nine years, that purport to contain the disclosures required pursuant to Rule 26(a)(2)(B), including “a complete statement of all opinions the witness will express and the basis and reasons for them.” *See* Report of Daniel R. Fischel, Aug. 15, 2007 (“Fischel Report”); Rebuttal Report of Daniel R. Fischel, Feb. 1, 2008 (“Fischel Rebuttal”); Supp. Report of Daniel R. Fischel, Feb. 9, 2009 (“Fischel Supp. Report”); Second Supp. Report of Daniel R. Fischel, Sept. 22, 2015 (“Fischel Second Supp. Report”); Second Rebuttal Report of Daniel R. Fischel, Nov. 23, 2015 (“Fischel Second Rebuttal”); Sur-Rebuttal Report of Daniel R. Fischel, Feb. 16, 2016 (“Fischel Sur-Rebuttal”). These six reports constitute the “complete statement of all opinions” Professor Fischel has disclosed that he may express at the re-trial, which Professor Fischel confirmed during a February 24, 2016 deposition by testifying that no corrections to any of these reports were necessary. Ex. A, Fischel Dep. Tr. 44:5–12; 288:16–289:22.

5. Plaintiffs retained Professor Fischel to “analyze [] economic evidence as it relates to their claims, determine whether it is consistent with these claims, and if so, analyze the amount of alleged artificial inflation in Household’s stock price during the Class Period attributable to such claims.” Fischel Report ¶ 11. In his reports, Professor Fischel disclosed two alternative means of estimating the alleged artificial inflation in Household’s stock price attributable to Defendants’ misrepresentations and/or omissions. *E.g., id.* ¶¶ 30–42.

6. The first method of estimating artificial inflation that Professor Fischel disclosed is his “specific disclosure” model. *E.g., id.* ¶¶ 34–37. As relevant here, Professor Fischel

identified 14 days on which, according to him, Household's stock price movement differed from that of the market and the S&P Financials Index in a statistically significant way due to disclosures of Household's misrepresentations or omissions.<sup>1</sup> *Id.* ¶¶ 34–35. For each of these 14 days, Professor Fischel specified the precise event that constituted the disclosure. *Id.* The differences between the movement in Household's stock price and the movement of the market and the S&P Financials Index on these 14 dates represent the amount of artificial inflation in Household's stock price during the Class Period, according to Professor Fischel's specific disclosure model. Professor Fischel has never opined, in any of his six reports, that a fraud-related disclosure significantly affected Household's stock price on any other date. He confirmed during his February 24, 2016 deposition that “for purposes of [his] calculation under the specific disclosure model . . . [he] relied on those 14 dates.” Ex. A, Fischel Dep. Tr. 57:8–11.

7. The second method of estimating artificial inflation that Professor Fischel disclosed is the “leakage” model. *E.g., id.* ¶¶ 38–42. Professor Fischel opines that information related to the fraud was released on dates on which Household's stock price movement did *not* differ significantly from that of the market or the S&P Financials Index, and that this so-called “leakage” of information, and “market participants’ attribution of [Household's stock price] decline to [] fraud-related information” means that the total underperformance of Household's stock price relative to the market and its industry represents the amount of artificial inflation in Household's stock price during the Class Period. Throughout his various reports, Professor Fischel points to specific dates on which, according to him, disclosures of fraud-related

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<sup>1</sup> Those dates are: November 15, 2001; December 3, 2001; December 5, 2001; December 12, 2001; February 27, 2002; July 26, 2002; August 14, 2002; August 16, 2002; August 27, 2002; September 3, 2002; September 22, 2002; October 4, 2002; October 10, 2002; and October 11, 2002. Fischel Report ¶¶ 34–35.

information constituting “leakage” occurred. *Id.* ¶¶ 12–27; Fischel Second Supp. Report ¶¶ 11, 14, 17, 24, 27, 36, 39, 44, 57, 68; Fischel Second Rebuttal ¶¶ 85; *see also* Fischel Rebuttal ¶ 19 (“[T]he other dates in § III of [the Fischel Report] . . . provided the basis for my conclusion[] that . . . leakage of artificial inflation from the price caused Household’s long-run relative stock price underperformance during this period.”). He also identified specific events that, in his opinion, constituted “leakage.” *See id.* Although Professor Fischel uses certain vague and imprecise descriptions, like “overwhelming evidence of leakage,” he has only properly disclosed to Defendants his opinion that “leakage” of fraud-related information occurred on the dates, and in the manner, specifically set forth in his reports.

8. Despite having six opportunities to disclose all of the dates on which he believes a “specific disclosure” or “leakage” of fraud-related information occurred, Professor Fischel indicated at his February 24, 2016 deposition that he may attempt to opine at the re-trial as to additional “specific disclosure” or “leakage” dates or events. For example, Professor Fischel stated at least seven times that he “could have included more dates under the specific disclosure model.” Ex. A, Fischel Dep. Tr. 49:19–23; *see id.* 51:25–52:4; 52:11–18; 53:2–11; 55:3–12; 57:3–11; 62:21–63:1. Likewise, Professor Fischel repeatedly referred to the “leakage” of information about Defendants’ misstatements and/or omissions as “continuous,” *id.* 30:15–19; a “stream of information,” *id.* 65:18–20; “massive,” *id.* 154:6; and “extreme,” *id.* 154:9. He even went so far as to say—for the first time after six reports over nine years—that there were “close to 100 fraud-related events and disclosures during the Class Period.”<sup>2</sup> *Id.* 94:24–95:1. And he

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<sup>2</sup> Professor Fischel attributed this figure to the trial testimony of a defense expert no longer involved in this matter. He did not, however, disclose during the deposition what he considered these “close to 100 fraud-related events and disclosures” to be. Nor was this information included in any written report Professor Fischel has disclosed to Defendants. This “sketchy and  
(cont'd)

explicitly stated that “[i]f there’s any reason that comes to my attention between now and the time of trial or during trial to make any modification to either of the quantifications, of course I would take that into account . . . .” *Id.* 43:22–44:1.

9. Pursuant to Rule 37(C)(1), Professor Fischel should not be permitted to testify that a “specific disclosure” or “leakage” of fraud-related information occurred on any date, or in any manner, that was not disclosed in his expert reports. *See NutraSweet*, 227 F.3d at 785–86 (district court did not abuse its discretion by precluding expert from testifying about opinions not included in expert witness report). Given that Professor Fischel could have, on multiple occasions, supplemented his opinions, and that he had nine years in which to research events that occurred in 2001 and 2002, there can be no justification for such a failure to disclose. Moreover, this failure to disclose would be highly prejudicial to Defendants, given that the deadline for disclosures has passed, that the trial is in less than two months, and that Defendants’ experts have prepared to offer testimony to rebut Professor Fischel’s opinions based on the information included in his reports. *See id.* (“[F]ailure to file a supplemental report was not harmless. . . . The trial was in less than two months . . . and the pretrial order was due in about three weeks.”); *Finley v. Marathon Oil Co.*, 75 F.3d 1225, 1230–31 (7th Cir. 1996) (district court did not abuse its discretion in excluding expert evidence disclosed close to the start of trial because allowing such evidence would have created “a heavy burden of meeting the new evidence at trial with [the defendant’s] own experts’ analysis”).

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*(cont’d from previous page)*

vague” reference certainly does not constitute a proper disclosure pursuant to Rule 26(a)(2). *See Smith v. Union Pacific R. Co.*, 168 F.R.D. 626, 628–29 (N.D. Ill. 1996).

WHEREFORE, the Court should grant Defendants' Motion *In Limine* No. 3 and preclude Professor Fischel from expressing at trial any opinion previously not disclosed to Defendants for the reasons stated above.

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 Defendants' Motion *In Limine* No. 3 To Exclude Plaintiffs' Expert from Expressing Opinions Not Previously Disclosed to be served via the Court's ECF filing system on the following counsel of record in this action:

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# **EXHIBIT A**

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 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 different models that yield completely different  
2 results on 384 out of 389 days? Why aren't you just  
3 offering the model that you think is right?

4 MR. BURKHOLZ: Objection to form.

5 BY THE WITNESS:

6 A. First of all, what I offer to the jury  
7 is a function of what I am asked in light of  
8 applicable judicial rulings at the time.

9 But if I am asked and permitted to  
10 testify about both, I will testify about why there  
11 are two different methods, why they're both  
12 accepted, what determines whether one is more  
13 accurate than the other and why under the facts and  
14 circumstances of this case I believe that the  
15 quantification, including leakage, is the preferable  
16 methodology because of the massive evidence of  
17 leakage during the leakage period.

18 BY MR. FARINA:

19 Q. Are there any adjustments that you would  
20 make for either of these models to be more reliable?

21 A. I think they are perfectly reliable  
22 based on what I know as of now. If there's any  
23 reason that comes to my attention between now and  
24 the time of trial or during trial to make any  
25 modification to either of the quantifications, of

1 course I would take that into account and give it  
2 whatever weight was appropriate or turns out to be  
3 appropriate based on whatever the facts and  
4 circumstances are at that time.

5 Q. Sitting here today, this is your best  
6 shot, there is nothing you would do to make your  
7 leakage model more reliable or the results more  
8 accurate?

9 A. Sitting here today there is no change  
10 that I would make to the leakage model, the  
11 quantification, including leakage based on what I  
12 know as of this time, correct.

13 Q. All right.

14 MR. BURKHOLZ: Is this a good break  
15 point? We've been going about an hour.

16 MR. FARINA: Let me ask one follow-up  
17 question.

18 BY MR. FARINA:

19 Q. Just to be precise because you answered  
20 it a little different than I asked it. You think  
21 these are the most accurate estimates of inflation  
22 that you're capable of generating sitting here  
23 today?

24 A. As of this point in time, using these  
25 two different methodologies based on the facts and

1           caused by the disclosure of the information; is that  
2           fair?

3           A.       Yes, and that I could have possibly  
4           added more but I didn't.

5           Q.       And you said in your testimony that you  
6           were very careful that you only wanted to include  
7           those dates that met those two criteria; is that  
8           right?

9           A.       I mean you keep reading the words over  
10          and over again. That's what I said.

11          Q.       Okay. So there were no other dates  
12          apart from the 14 where you concluded that there was  
13          a statistically significant price reaction where you  
14          reasonably believed that that price reaction was  
15          caused by the disclosure of fraud-related  
16          information.

17          A.       I mean, I think the testimony speaks for  
18          itself. To the extent, I'm just skimming it, it  
19          looks like the context is -- of my answer is that I  
20          could have included more dates under the specific  
21          disclosure model. I think that's also clear from my  
22          reports that have been submitted subsequent to the  
23          trial. But I didn't and I just relied on those 14.

24          Q.       And you relied on those 14 days where  
25          there was a statistically significant movement and

1 disclosure days, correct?

2 A. Correct.

3 Q. And again, it's a statistically  
4 significant price movement. And here you said you  
5 had to be reasonably confident that that movement  
6 was caused by fraud related information, correct?

7 A. Correct.

8 Q. So if you were not reasonably confident,  
9 you did not include a particular day as a specific  
10 disclosure day. You had to be reasonably confident  
11 that the price movement on that day was caused by  
12 the disclosure of fraud-related information.

13 A. Again, I think the testimony speaks for  
14 itself, but that's basically correct.

15 Q. So there are no other days other than  
16 the 14 that you selected where there was a  
17 statistically significant price movement and a  
18 reasonable belief on your part, to use your words,  
19 that that movement was caused by the disclosure of  
20 fraud information?

21 A. Well, as I think I just said, looking at  
22 the context of the previous testimony that you  
23 showed me and I think as is also clear from my  
24 reports, there's some judgment involved in this and  
25 I possibly could have added some other days which

1 would have increased the amount of inflation under  
2 the specific disclosure model. But I relied on  
3 these 14 because I thought those were the clearest  
4 examples.

5 Q. So exercising your judgment at the time,  
6 you determined that there were only 14 days with a  
7 statistically significant price movement where you  
8 had a reasonable belief that that price movement was  
9 disclosed by the disclosure of fraud information.

10 That was your judgment at the time?

11 A. It was my judgment at the time. And the  
12 reason that I didn't include more, which arguably I  
13 could have as described in the testimony and also as  
14 is clear from the reports that I've submitted, was  
15 that I decided to exercise my judgment based on the  
16 facts and circumstances in connection with  
17 particular disclosures to limit my specific  
18 disclosure model to those 14.

19 Q. Professor Fischel, you testified as to  
20 the criteria that you applied, you testified three  
21 times, and the criteria that you applied were what I  
22 just said, a statistically significant price  
23 movement and some amount of confidence on your part  
24 that that movement was caused by the disclosure of  
25 fraud information.

1                   Is that still your testimony?

2           A.       I certainly have not changed my  
3           testimony. I just want to put my testimony in  
4           context, which you keep leaving out, of the  
5           possibility of adding other dates, which I didn't  
6           do, which could have been done, and if I had done  
7           would have increased the amount of artificial  
8           inflation under the specific disclosure model.  
9           That's clear from my testimony, it's also clear from  
10          the reports that I have submitted subsequent to the  
11          trial.

12                   With that modification of your  
13          question, which you keep leaving out, I would agree  
14          with what you said.

15          Q.       Well, the question that you were asked,  
16          if you look at Page 2628, by the lawyer representing  
17          the plaintiffs was:

18                   "QUESTION: Why were these 14 days  
19                   selected?"

20                   That's the context in which you  
21          answered the question, correct?

22                   MR. BURKHOLZ: You're asking him a  
23          different question from the answer that you were  
24          asking him about before. Now you're on -- you were  
25          on 2627 before, now you're on 2628?

1 price reaction."

2 Did I read it correctly?

3 A. You read it correctly. And the only  
4 thing I'm pointing out for purposes of giving a more  
5 complete description of the context, there are a  
6 couple of lines in the answer above, the same answer  
7 to the same question about what would I have done if  
8 I had done what the defendants' expert at the trial  
9 suggested in connection with what is referred to in  
10 the question as the hundred fraud-related  
11 disclosures that he identified during the leakage  
12 period.

13 And what I said was, if I used that  
14 approach suggested by the defendants' expert, my  
15 calculation of artificial inflation under the  
16 specific disclosure model would have gone up from  
17 \$7.97 to approximately \$15.

18 But I didn't do that for the reason  
19 that you've quoted several times now and also have  
20 quoted in connection with the testimony that you  
21 referred to behind Tab 1.

22 Q. So at the time that you created your  
23 models exercising your own independent judgment, you  
24 determined that there were only 14 days during the  
25 entire class period where there was a statistically

1           A.       I really don't have anything to add.  
2       Those are the days that I used for purposes of my  
3       quantification. As I described in my testimony, if  
4       I had done what the defendants suggested I would  
5       have come up with a higher number. I've also  
6       described how I could have come up with a higher  
7       number in my subsequent reports.

8                        But for purposes of my calculation  
9       under the specific disclosure model in the trial and  
10      also presently, I relied on those 14 dates for the  
11      reasons stated in my trial testimony.

12      BY MR. FARINA:

13           Q.       So as to the 11 consistent with leakage  
14      days where there was a statistically significant  
15      price movement, you did not include those as  
16      specific disclosure days because you were not  
17      reasonably confident that the movement observed on  
18      those days was caused by the disclosure of fraud  
19      information, correct?

20                       MR. BURKHOLZ: Objection. Asked and  
21      answered.

22      BY THE WITNESS:

23           A.       You know, I think I know what you're  
24      referring to. That's different from what I talked  
25      about in the trial where I was reacting to a

1           you observed information that was consistent with  
2           leakage. All right?

3           A.        If that's what you're telling me, that's  
4           fine.

5           Q.        You're familiar with your own report  
6           that you use that terminology?

7           A.        I am, but I don't know what you're  
8           referring to in your question. If you're saying  
9           there are 11 dates where I used this language, I  
10          haven't checked, but I'm happy to accept your  
11          representation to that effect.

12          Q.        Sure. And on none of those 11 days  
13          where you said you identified information consistent  
14          with leakage could you come to a reasonable belief  
15          that the statistically significant price decline  
16          that you observed was caused by the disclosure of  
17          fraud-related information, correct?

18          A.        Yes, in terms of what I did. I think,  
19          as I said in the trial in a slightly different  
20          context and as is clear from these reports, there is  
21          some judgment involved and it's possible that some  
22          of these dates could have been included in the  
23          specific disclosure model to increase inflation, but  
24          I decided not to do that and to rely on the 14, 10  
25          negative and 4 positive, to the best of my

1 recollection.

2 Q. So you exercised your judgment at the  
3 time and you determined that the 14 days met your  
4 criteria and the 11 days did not?

5 A. Correct.

6 Q. And that was your judgment, that was  
7 your choice as to which days to include in each  
8 category, correct?

9 A. That's right. And the same with the  
10 hundred fraud-related disclosures that the  
11 defendants identified during the leakage period.

12 Q. And you testified before the break that  
13 sitting here today this was your -- this is your  
14 best shot, you don't want to make any corrections or  
15 changes or adjustments to either of your models, you  
16 believe that the models are as reliable and accurate  
17 as you could possibly make them as they currently  
18 exist.

19 MR. BURKHOLZ: Objection. It's a  
20 compound question.

21 But go ahead and answer it.

22 BY THE WITNESS:

23 A. I don't have any changes to the  
24 testimony that I gave I think in response to that  
25 same question before the break.

1 with respect to the 11, I think there is a matter of  
2 judgment involved. If I had included some or all of  
3 them inflation would have increased, but I decided  
4 not to do so and rely on the 14.

5 BY MR. FARINA:

6 Q. All right. Let's talk a little bit  
7 about the leakage model specifically.

8 A. Okay.

9 Q. Your leakage period starts on 11/15/01  
10 and continues through 10/11/02, correct?

11 A. Correct.

12 Q. So that is about 10 months and 228  
13 trading days, correct?

14 A. I didn't count but, again, I'm happy to  
15 accept your representation.

16 Q. Good. So what exactly was leaking over  
17 this ten-month period?

18 A. I think a stream of information of  
19 various types relating to the fraudulent misleading  
20 disclosures that Household made about -- in three  
21 different areas: predatory lending, re-aging, and  
22 its accounting practices in connection with its  
23 credit card business which ultimately led to a  
24 restatement, a series of events and disclosures over  
25 time which led market participants to believe over

1 with that?

2 A. That sounds right. Again, I haven't  
3 gone back and counted them.

4 Q. There are 93 days of the 228 days where  
5 the inflation, according to the model, goes up. I  
6 know you're not going to count them all up, but  
7 would you accept that?

8 A. I would certainly accept there are a lot  
9 of days where the amount of inflation increases day  
10 over day.

11 Q. And if you look at this exhibit and the  
12 prior exhibit, you'll see that there are only two  
13 days out of the 93 days where there was an actual  
14 misrepresentation found by the jury where the stock  
15 goes up.

16 Would you accept that?

17 A. I wouldn't accept it because I don't  
18 know what was found by the jury. I know that the  
19 jury found that there were certain days that should  
20 be included in my quantification of inflation using  
21 specific disclosures. I know that.

22 But there are a lot of disclosures  
23 during the class period. As I said, the defendants  
24 produced an exhibit of I think close to 100  
25 fraud-related events and disclosures during the

1 class period.

2 I can't speak to what was in the  
3 jury's mind with respect everything that was said on  
4 every single day. So when you keep asking me what  
5 the jury found with respect to what was said or  
6 disclosed on every single day, maybe you can poll  
7 the jury, if you're allowed to do that, but I don't  
8 know. I don't know what was in the jury's mind.

9 I do know what the jury concluded  
10 with respect to the days that were appropriately  
11 considered under my quantification of inflation  
12 based on specific disclosures. They adopted my  
13 testimony -- I'm sorry, they based their -- I take  
14 back what I just said. They adopted my testimony on  
15 leakage. I don't know what they concluded based  
16 on -- what they concluded with respect to my  
17 testimony of quantification of inflation based on  
18 specific disclosures.

19 Q. Take a look at Exhibit 5. We'll just  
20 take a particular day.

21 A. Okay.

22 Q. On March 4, 2002, what happened to the  
23 artificial inflation pursuant to the model that you  
24 offered, the quantification including leakage?

25 A. It went up from, it looks like \$19.02 to

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 other than the contractual relationship we have with  
2 our parent. I can't remember whether it's changed  
3 in any way over the past 10 years, but, in other  
4 words, there's a lot of different splits based on  
5 the overall profitability of the firm and the way  
6 that the firm's bonus pool is calculated.

7 Q. How is Compass Lexecon being compensated  
8 in this case?

9 A. We send out bills on a monthly basis  
10 using our standard billing practices and the bills  
11 get paid.

12 Q. Is there any form of incentive  
13 compensation attached to this case for Compass  
14 Lexecon?

15 A. No.

16 Q. Do you have any corrections that you  
17 feel you need to make to any of your reports in this  
18 matter?

19 A. No. I guess you identified one article  
20 that we mentioned that appears to have been  
21 published at an earlier point in time. I would like  
22 to look at that. It wouldn't affect my conclusion  
23 in any event that that date is not a date where  
24 there was a non-fraud related firm-specific event  
25 that caused the statistically significant negative

1 return on that date. But because of that other  
2 paragraph about referencing the later article, I at  
3 least want to check about what we could figure out  
4 about the relationship between the later article and  
5 the earlier article, but it wouldn't affect any  
6 conclusion that I reached about the lack of need to  
7 make any adjustment to either of my quantifications  
8 of inflation other than for the first three days  
9 under the leakage model which has and the specific  
10 disclosure model which has nothing to do with  
11 whether that article appeared earlier or later.  
12 It's really just something I want to investigate  
13 because you pointed it out, but no analysis or  
14 conclusion that I reached in any way depends on it.

15 Q. Are there any other corrections that you  
16 can think of that you would want or need to make?

17 A. Well, as I said, there's not going to be  
18 any correction made. I just want to make sure that  
19 I should have referenced the earlier article in  
20 addition to the later article, but I don't think I  
21 would call it a correction because nothing's going  
22 to change regardless.

23 Q. Did you go back and review the testimony  
24 you provided at trial?

25 A. You know, I would say not in any