

**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. 4
TO EXCLUDE EVIDENCE CONCERNING EXPERT WITNESSES
THAT IS UNRELATED TO THEIR OPINIONS OR TESTIMONY**

Defendants respectfully move the Court for an Order excluding evidence regarding (1) that Defendants contacted Plaintiffs' expert Professor Daniel R. Fischel to clear conflicts prior to the trial in 2009 and defense counsel's statements about Professor Fischel during prior proceedings, and (2) that Defendants' experts have in the past worked with Compass Lexecon, Professor Fischel's company. In support of this motion, Defendants state as follows:

1. Evidence that Defendants contacted Plaintiffs' expert Professor Fischel in the course of considering candidates for an expert after the complaint in this case was filed is irrelevant. Under Federal Rule of Evidence 402, evidence—including witness testimony—must be relevant in order to be admissible at trial. Federal Rule of Evidence 401 defines "relevant" evidence as something that "has any tendency to make a fact more or less probable than it would be without the evidence" and that "fact is of consequence in determining the action." The fact that Defendants contacted Professor Fischel has no bearing on this trial. *Firehouse Restaurant Grp., Inc. v. Scurmont LLC*, 2011 WL 3555704, at *7 (D.S.C. Aug. 11, 2011) (finding

communications between counsel and opposing party's expert before trial "not relevant"). Plaintiffs have demonstrated their intention to imply that Defendants would have preferred to retain Professor Fischel as their expert. Whether or not this was the case, that fact would have no bearing on the loss causation and damages issues before the jury. *House v. Combined Ins. Co. of Am.*, 168 F.R.D. 236, 248 (N.D. Ia. 1996) ("The proper evidentiary issue remains [the expert's] opinion, not how he became involved in the case, as only his opinion serves the plaintiff's proper interests in discovering the truth of the plaintiff's claims."); *see also, e.g., Stollings v. Ryobi Techs., Inc.*, 725 F.3d 753, 761 (7th Cir. 2013) (holding argument "aimed at a party's counsel" was "not relevant to any issue" in the trial and "is improper and risks depriving the party of a fair trial").

2. Even if Defendants' attempt to contact Professor Fischel were marginally relevant, permitting it to be offered would be substantially more prejudicial than probative. Federal Rule of Evidence 403 allows the Court to exclude evidence, even if relevant, so long as the "probative value" of the evidence "is substantially outweighed by a danger" of, *inter alia*, "confusing the issues, misleading the jury," and "unfair prejudice." Evidence that Defendants attempted to hire Professor Fischel would suggest to the jury that there is some special, hidden significance behind the fact that he is instead working for Plaintiffs. Rather than helping the jury, such evidence would raise new, unanswerable, and wholly irrelevant questions and thereby "direct[] the jury's focus away from the elements of the case to an extraneous and inflammatory consideration." *Stollings*, 725 F.3d at 761; *Firehouse*, 2011 WL 3555704, at *7 (finding communications between counsel and opposing party's expert before trial "could unfairly prejudice the jury as to the proper weight to be given" to the expert's testimony); *Steele v. Seglie*, 1986 WL 30765, at *5 (D. Kan. Mar. 27, 1986) (prohibiting attempt to offer evidence that

opposing counsel “had thought well enough of the witnesses to consult with them on this case” as unfairly prejudicial because jury could “misinterpret that evidence as an attempt . . . to suppress adverse testimony”); *see also United States v. Xiong*, 262 F.3d 672, 675 (7th Cir. 2001) (noting attacks on opposing counsel “can prejudice the [opposing party] by directing the jury’s attention away from legal issues”). The same standard applies when opposing counsel has retained an expert on a prior occasion, suggesting that that the mere informational communication by Defendants should also be excluded for its potential to prejudice the jury. *Peterson v. Willie*, 81 F.3d 1033, 1037-38 (11th Cir. 1996) (holding it was error to permit evidence about prior retention of expert by opposing counsel).

3. For similar reasons, defense counsel’s opinions about Professor Fischel expressed during the previous trial, *see, e.g.*, Trial Tr. 2856:18-2857:3; 4602:5-8; 4611:4-5; 4627:10-14, are both irrelevant and unduly prejudicial. Because attorney questions and arguments are not evidence, what Defendants’ counsel said in the prior trial has zero probative value. *Federal Civil Jury Instructions of the Seventh Circuit* § 1.06. Nor do counsel’s opinions about Professor Fischel’s expertise make any fact at issue in this trial more or less probable. *See Fed. R. Evid.* 401. But even if what Defendants’ counsel said about Professor Fischel in the last trial were probative, it would only be so in order to impeach Defendants’ counsel or to bolster Professor Fischel’s credibility, both of which would be unfairly prejudicial under Rule 403. First, attempting to impeach Defendants’ counsel (which has changed since the first trial)—by highlighting defense counsel’s statements in the first trial—is improper. *See Stollings*, 725 F.3d at 761; *Gruca v. Alpha Therapeutic Corp.*, 51 F.3d 638, 645-46 (7th Cir. 1995) (finding argument “directing jury’s attention” away from conduct at issue in trial was “impermissible”); *Xiong*, 262 F.3d at 675. Second, attempting to bolster Professor Fischel’s credibility using prior statements

by Defendants' counsel on Professor Fischel's expertise would only serve to confuse the jury about the issues it must determine, threaten to create a mini-trial about what Defendants' counsel truly thinks of Professor Fischel's expertise, and unfairly prejudice the jury against Defendants by implying that their counsel agrees (or cannot question) the new conclusions he reached before the second trial. *See, e.g., Firehouse*, 2011 WL 3555704, at *7.

4. While deposing Defendants' experts Dr. Allen Ferrell and Dr. Bradford Cornell, Plaintiffs asked a series of questions about the experts' respective past work with Compass Lexecon, a company of which Professor Fischel is CEO and Chairman. Specifically, Plaintiffs asked Dr. Cornell about his position as a senior consultant at Compass Lexecon, his work with a number of support staff there, his opinions about members of the staff, and whether he considered the staff and Professor Fischel himself to be trustworthy and competent. Ex. A, Cornell Dep. Tr. 39:25-49:25. Plaintiffs also asked Dr. Ferrell about his contract with Compass Lexecon, his work with members of the staff, his opinions of them, and whether he believes that Professor Fischel is honest and trustworthy. Ex. B, Ferrell Dep. Tr. 29:7-32:3; 66:19-68:19; 90:6-91:2. If offered at trial, evidence about the work of Defendants' experts with Professor Fischel's company would be irrelevant and therefore should be excluded. As explained above, Rules 401 and 402 prohibit evidence that does not make any fact of consequence in the trial more or less likely. Defendants' experts were retained to provide their opinions as to the issues of loss causation and damages. Their opinions about Professor Fischel's company and support staff have no bearing on these issues.

5. Even if Dr. Ferrell's and Dr. Cornell's opinions about Compass Lexecon were relevant, they would certainly be substantially more prejudicial than probative under Rule 403. Defendants' experts would be asked about their personal opinions of Professor Fischel and his

company, while at the same time offering testimony that they disagree with Professor Fischel's opinions as to the relevant issues. Compass Lexecon is neither a party to nor a witness in the trial and permitting evidence about it would surely confuse the jury and cloud the issues. *See, e.g., Sec. & Exch. Comm'n v. Ferrone*, 2016 WL 723017, at *3 (N.D. Ill. Feb. 22, 2016) ("Evidence is unfairly prejudicial if it appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or otherwise may cause a jury to base its decision on something other than the established propositions in the case.").

WHEREFORE, the Court should grant Defendants' Motion *In Limine* No. 4 and exclude evidence regarding (1) that Defendants contacted Professor Fischel to clear conflicts prior to the trial in 2009 and defense counsel's statements about Professor Fischel during prior proceedings, and (2) that Defendants' experts have in the past worked with Compass Lexecon, Professor Fischel's company.

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. 4 To Exclude Evidence Concerning Expert Witnesses that Is Unrelated to Their Opinions or Testimony 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
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LAWRENCE E. JAFFE PENSION PLAN,)		
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**INDEX OF EXHIBITS TO DEFENDANTS’ MOTION *IN LIMINE* NO. 4
TO EXCLUDE EVIDENCE CONCERNING EXPERT
WITNESSES THAT IS UNRELATED TO THEIR OPINIONS OR TESTIMONY**

<u>Exhibit</u>	<u>Description</u>
A.	Excerpts from Deposition of Bradford Cornell, Ph.D., dated March 10, 2016
B.	Excerpts from Deposition of Frank Allen Ferrell, III, dated February 27, 2016

EXHIBIT A

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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.

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 **Q** Were there any substantive edits that you
2 took -- by anybody?

3 A No, I don't think so.

4 **Q** Okay. Okay. You know Professor Fischel
5 personally, right?

6 A Yes.

7 **Q** When did you first meet him?

8 A Many years ago. 25 years ago.

9 **Q** Okay. Have you ever read his work prior to
10 your engagement as an expert in this case?

11 A Yes. I cite it in the Cornell and Morgan
12 paper, for example.

13 **Q** What work of Professor Fischel have you read?

14 A Primarily his work that overlaps with
15 finance. He's done a good deal of legal work that
16 I'm not familiar with but -- he's written some
17 papers on law and finance, such as the one I cite in
18 Cornell and Morgan.

19 **Q** Why have you reviewed that work?

20 A Because it was relevant to the research I was
21 doing.

22 **Q** Why?

23 A Because it was a known published article on
24 the subject.

25 **Q** Okay. You're employed as a senior consultant

1 by Professor Fischel's company, Compass Lexecon,
2 right?

3 A By Compass Lexecon. It's actually owned by
4 FTI, not Professor Fischel.

5 Q Do you understand Professor Fischel's
6 position there?

7 A I think he's one of the two co-presidents.

8 Q Okay. He's the head of the company; is that
9 right?

10 A Well, he -- you'd have to ask he and
11 Mr. Orszag, who is the president of Compass, who
12 exactly is what. But Mr. Orszag and Mr. Fischel are
13 the senior executives.

14 Q Okay. Have you ever used Mike Keable from
15 Compass Lexecon to support your expert work?

16 A Yes.

17 Q You worked with him in Transocean, right?

18 A I don't recall him in Transocean, no.

19 Q You worked with him in Enron, correct?

20 A Actually, when I was working on Enron, I was
21 at CRA, and Cravath brought in Compass Lexecon. And
22 I think Mr. Keable was one of the people that
23 Cravath retained, who was helping me, even though I
24 was at another firm.

25 Q What cases have you worked on with Mr. Keable

1 **from Compass Lexecon?**

2 A The one I really recall is Facebook.

3 **Q Okay. Did he support your expert work in**
4 **that case?**

5 A So far, yes. He's been involved.

6 **Q Okay. What's your opinion of Mr. Keable?**

7 A He's a good, competent guy.

8 **Q Reliable?**

9 A I've -- he has been to me. When I've asked
10 him to do things or work with me, he's always been
11 responsive.

12 **Q Do you believe he's talented?**

13 MR. STOLL: Objection to form.

14 THE WITNESS: Well, I've never really
15 evaluated him. The work product that he's done for
16 me -- we've gone back and forth until we were both
17 satisfied.

18 BY MR. DROSMAN:

19 **Q You said you believed he's competent,**
20 **correct?**

21 A Well, I -- no. I said I've never really
22 evaluated him. He's in the Chicago office, so we
23 work together infrequently. When we've worked
24 together, I've been satisfied with the work product.

25 **Q Do you believe he's honest?**

1 MR. STOLL: Objection to form.

2 THE WITNESS: I don't know of any instance
3 where he's told me other than the truth. I couldn't
4 judge his general character. I don't know him well
5 enough.

6 BY MR. DROSMAN:

7 Q You wouldn't want to work with people who you
8 didn't believe were honest, to support your expert
9 work, correct?

10 MR. STOLL: Objection to form.

11 THE WITNESS: That would be wise. Yes. I
12 would pursue that strategy.

13 BY MR. DROSMAN:

14 Q Okay. Have you ever used Peter Clayburgh
15 from Compass Lexecon to support your expert work?

16 A Yes.

17 Q What cases?

18 A I couldn't tell you exactly, but Peter's out
19 in Pasadena, so we've probably worked together on
20 five to ten assignments.

21 Q What's your opinion of Mr. Clayburgh?

22 A He's a competent, energetic, young man.

23 Q Okay. Do you believe he's honest?

24 MR. STOLL: Objection to form.

25 THE WITNESS: Again, I don't have any

1 personal experience to believe otherwise.

2 BY MR. DROSMAN:

3 Q You wouldn't use him to support your expert
4 work if you didn't believe he was honest, correct?

5 MR. STOLL: Objection to form.

6 THE WITNESS: I think that's fair. I -- I
7 use people that I trust.

8 BY MR. DROSMAN:

9 Q Okay. And you trust Mr. Clayburgh, right?

10 MR. STOLL: Objection to form.

11 THE WITNESS: I haven't -- like I say, I've
12 had no reason not to, in my experience with him.

13 BY MR. DROSMAN:

14 Q You trust Mr. Keable, right?

15 MR. STOLL: Objection to form.

16 THE WITNESS: That was the same answer.

17 BY MR. DROSMAN:

18 Q Is that a yes?

19 A That I have no reason not to.

20 Q Okay. Have you ever used David Strahlberg
21 from Compass Lexecon to support your expert work?

22 A Not that I recall, no.

23 Q Okay. What is your opinion of
24 Professor Fischel as an expert on loss causation and
25 damages?

1 MR. STOLL: Objection to form.

2 THE WITNESS: Dan is a very experienced
3 expert witness, but I've never tried to answer that
4 question that you just asked.

5 BY MR. DROSMAN:

6 **Q Do you believe that he's brilliant?**

7 MR. STOLL: Objection to form.

8 THE WITNESS: I really -- the only people --
9 person I've really called "brilliant," in my
10 experience, was Richard Feynman. So -- I just have
11 a very high standard there; so -- Dan's a -- a noted
12 scholar and -- but I don't make that assessment.

13 BY MR. DROSMAN:

14 **Q Do you believe that Professor Fischel is**
15 **honest?**

16 MR. STOLL: Objection to form.

17 THE WITNESS: Again, I -- in his dealings
18 with me, he's always been honest.

19 BY MR. DROSMAN:

20 **Q You trust Professor Fischel, right?**

21 MR. STOLL: Objection to form.

22 THE WITNESS: I have had no reason not to.

23 BY MR. DROSMAN:

24 **Q So you do?**

25 A Yeah, I think.

1 MR. STOLL: Objection to form.

2 THE WITNESS: I think I do, yes.

3 MR. STOLL: Objection to form.

4 BY MR. DROSMAN:

5 Q You agree that he's prominent in the field of
6 financial analysis, right?

7 A I think of him, actually, more as a legal
8 scholar than a financial scholar.

9 Q Well, you agree that he's prominent in
10 determining the impact of the false statement on the
11 stock price, right?

12 MR. STOLL: Objection to form.

13 THE WITNESS: I've never really asked myself
14 that question. I've never tried to evaluate him
15 that way.

16 BY MR. DROSMAN:

17 Q Well, why don't you try now, as I'm sitting
18 here asking you that question?

19 MR. STOLL: Objection to form.

20 THE WITNESS: Yeah, I really can't. You
21 know, if I were asked to review Professor Fischel's
22 work, such as for promotion in an academic
23 institution, maybe I could do that, but I really
24 haven't done it.

25 BY MR. DROSMAN:

1 **Q** So you can't tell me whether you believe he's
2 prominent in determining the impact of a false
3 statement on a stock price, right?

4 MR. STOLL: Objection to form --

5 THE WITNESS: I've just never --

6 MR. STOLL: -- and asked and answered.

7 THE WITNESS: I've just never asked myself
8 that question.

9 BY MR. DROSMAN:

10 **Q** Okay. Now, you spend considerable time
11 reading the work of other experts in the field of
12 financial analysis, right?

13 A I don't think I understand the question. You
14 mean other professors who do research in finance?

15 **Q** Well, you believe that there are some people
16 who are experts in the field of financial analysis,
17 right?

18 A How are you defining "financial analysis"?
19 What's published in the leading journals, such as
20 the Journal of Finance or the Journal of Financial
21 Economics?

22 **Q** Sure. Is that how you would understand the
23 term?

24 A That's how finance professors typically
25 understand the term; it's scholars who publish in

1 leading academic journals. But there's lots of
2 financial analysis that isn't academic.

3 Q Okay. Using your working definition of it,
4 you've spent considerable time reading that work,
5 right?

6 A The academic work, absolutely, yes.

7 Q Okay. And you've been able to identify some
8 people whose work is more reliable than others,
9 right?

10 A I've been able to identify people who I think
11 have made intriguing and important contributions. I
12 don't know if I'd use the word "reliable." There's
13 great debate in finance as to what techniques are
14 still reliable -- or are reliable.

15 Q Well, the authors of the articles that you
16 yourself rely upon in your papers that you write for
17 publication are individuals who you believe are more
18 reliable than others, right?

19 MR. STOLL: Objection to form.

20 THE WITNESS: Not necessarily. I may cite a
21 paper because it's prominent, and not agree with the
22 conclusions.

23 BY MR. DROSMAN:

24 Q If you cite a paper approvingly, then
25 presumably you agree with the author's conclusions,

1 correct?

2 MR. STOLL: Objection to form.

3 THE WITNESS: If I agree with the author's
4 conclusions, I will say so in -- specifically. I
5 could cite a paper approvingly because it's well
6 regarded, but not agree with it.

7 BY MR. DROSMAN:

8 Q Okay. You're familiar with
9 Professor Fischel's article "Use of Modern Finance
10 Theory in Securities Fraud Cases Involving Actively
11 Traded Securities," right?

12 A I haven't read it in many years, but I'm --
13 yes, I'm familiar with it.

14 Q Okay. In fact, you've cited it in your
15 papers, right?

16 A I cite it in the Cornell and Morgan paper. I
17 remember that.

18 Q Okay. You've never cited it in any other
19 papers?

20 A I probably have.

21 Q You wrote a paper -- University of Utah Law
22 Review, right?

23 A Yes.

24 Q You cited it in that, right?

25 A I don't recall.

1 **Q** Would you agree that Professor Fischel's
2 **article "Use of Modern Finance Theory in Securities**
3 **Fraud Cases Involving Actively Traded Securities" is**
4 **the seminal article describing the application of**
5 **financial economics to securities fraud litigation?**

6 MR. STOLL: Objection to form.

7 THE WITNESS: I wouldn't agree or disagree.
8 I never asked myself that question. It is a widely
9 cited paper and it's one that people writing in the
10 area ought to consider.

11 BY MR. DROSMAN:

12 **Q** **Why?**

13 A Because it's wide -- it was one of the first
14 written. It was written way back in the early '80s,
15 and therefore it's been commonly cited, and to not
16 cite it would be an oversight.

17 **Q** **You couldn't tell me whether it's seminal?**

18 MR. STOLL: Objection to form.

19 THE WITNESS: That's a very loaded word in
20 academia. No, I couldn't tell you.

21 BY MR. DROSMAN:

22 **Q** **Well, how would you describe the paper?**

23 A The -- one of the earliest efforts to explore
24 how finance theory could be applied in litigation in
25 measuring damages.

EXHIBIT B

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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 my instructions and supervision. I did have
2 Cornerstone, for some of the non-fraud
3 information, I asked them to sort of put in the
4 block quotes that I had selected. There was some
5 editing, grammatical work that they helped me on.
6 But with those caveats, I wrote the report.

7 Q. You know Professor Fischel personally.
8 Correct?

9 A. I do.

10 Q. And you have a contract to do work for
11 his company, Lexecon. Is that right?

12 A. I do have a contract with Lexecon.

13 Q. And that contract gives Lexecon a right
14 of first refusal to support your expert work. Is
15 that right?

16 A. Yes.

17 Q. And you often use Lexecon's support
18 staff to support your expert work. Correct?

19 A. Yes.

20 Q. And, in fact, you're currently using
21 Lexecon support staff to support some of your
22 expert work. Right?

23 A. Yes.

24 MR. FITZGERALD: Objection to form.

25 You mean in other cases?

1 MR. BROOKS: In other cases.

2 A. So with the clarification, I want to
3 clarify for the record, not in this case.

4 BY MR. BROOKS:

5 Q. And does that include Mike Keable at
6 Lexecon?

7 A. Yes.

8 Q. And what is your opinion of Mike Keable
9 as an economist?

10 A. I like Mike and I think -- I think --
11 and I think highly of Mike.

12 Q. Is he reliable?

13 A. In the cases I've worked on, I found
14 him to be reliable.

15 Q. Do you think he's talented?

16 A. I do.

17 Q. Do you think he's honest?

18 A. I do.

19 Q. Do you think that -- withdrawn.

20 And have you worked with Peter Clayburgh
21 before?

22 A. I have.

23 Q. And what do you think of Mr. Clayburgh?

24 A. I like him, and I think he's smart.

25 Q. Is he reliable?

1 A. In the -- I don't have as much
2 experience with him that I have with others, but
3 in the few matters I worked with him, I found him
4 to be reliable on the cases that I worked on.

5 **Q. Did you find him to be talented?**

6 A. Yes.

7 **Q. And honest?**

8 A. Yes. I wouldn't work with somebody I
9 didn't think was honest.

10 **Q. And have you worked with David**
11 **Strahlberg?**

12 A. I know I've talked to him. It's
13 possible I worked on a case with him, but I don't
14 recall, offhand, working with him on a case.
15 Again, I could be misremembering. It's possible
16 that he was involved in some capacity on a matter
17 that I was involved in, but I don't have a
18 specific recollection of him working on a case.

19 **Q. What is your opinion of**
20 **Professor Fischel as an economist?**

21 A. I think he is very smart and talented,
22 and I like him.

23 **Q. Would you say he's brilliant?**

24 A. I would say he's a brilliant legal
25 academic.

1 Q. And do you think Professor Fischel is
2 honest?

3 A. I do.

4 Q. So turning to Paragraph 14 in your
5 report, Exhibit 1 here, this is your assignment.
6 Correct?

7 A. The assignment in this report is
8 reflected in Paragraph 14.

9 Q. And who defined the assignment?

10 A. Counsel for Household.

11 Q. And I see that you cited the appellate
12 order in Footnote 21 in that paragraph. Do you
13 see that?

14 A. I do.

15 Q. And that's the Seventh Circuit's
16 appellate order in this case. Right?

17 A. Yes.

18 Q. And was your assignment informed by the
19 appellate order?

20 A. Well, as I said, the assignment was
21 defined by counsel for Household. And that was
22 to assess Professor Fischel's second supplemental
23 report. And in the second supplemental report,
24 he references the appellate order, is my memory.

25 Q. Was the scope of your work informed by

1 Q. Mr. James and Cornell. Is that right?

2 A. That's my general understanding, for
3 what it's worth.

4 Q. And are the same folks supporting
5 Christopher James as are supporting you?

6 A. I don't know.

7 Q. And what about Cornell, are the same
8 folks supporting Cornell?

9 A. I don't know.

10 Q. And you don't know one way or the other
11 whether anyone from this team at Cornerstone
12 worked with Dr. Bajaj previously. Is that your
13 testimony?

14 A. It is.

15 Q. Do you have an understanding as to
16 whether anyone on this Cornerstone team was
17 working on Household before you were retained?

18 A. I don't know either way.

19 Q. How did you select Cornerstone, if you
20 did?

21 MR. FITZGERALD: Objection to form.

22 A. So as we discussed earlier, I do have a
23 contract with Compass Lexecon, and unless --
24 sorry, I would use them unless they're
25 conflicted. That's obviously the case here. And

1 I've worked with Cornerstone, and more
2 specifically the Cornerstone LA office on a -- on
3 several matters in the past. So I had a high
4 level of confidence in the quality of the work
5 and the support that I would receive.

6 BY MR. BROOKS:

7 **Q. So did you choose Cornerstone or did**
8 **counsel suggest them?**

9 A. My -- again, this is going back to the
10 summer. My memory was it was a conversation
11 about what would make sense in terms of support.
12 I gave my views. And I just remember there was a
13 back and forth. So I don't remember it as being
14 a directive from either party.

15 **Q. So Compass Lexecon is your first choice**
16 **provider of support for these expert engagements.**
17 **Correct?**

18 MR. FITZGERALD: Objection to form.

19 A. That's not quite my testimony. My
20 testimony is I have a contractual obligation to
21 use them as support unless they're conflicted,
22 which was -- which was the case here.

23 BY MR. BROOKS:

24 **Q. So you entered into a contract**
25 **requiring you to make Compass Lexecon your first**

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 would not work with somebody I thought was
2 dishonest. His characterization, focusing on
3 that, in his deposition of what I'm saying, I do
4 believe is a dishonest characterization of what I
5 very clearly say in my report.

6 **Q. Are you going to stop working with**
7 **Professor Fischel?**

8 MR. FITZGERALD: Objection.

9 A. Well, my contract is not with Professor
10 Fischel. It's with Compass Lexecon.

11 BY MR. BROOKS:

12 **Q. What's his position at Compass Lexecon?**

13 A. He is the CEO and chairman of Compass
14 Lexecon.

15 **Q. Are you going to stop working for**
16 **Compass Lexecon?**

17 MR. FITZGERALD: Objection.

18 A. I have no present intent to -- no, I'm
19 not going to stop. But that does not foreclose
20 me from giving my honest opinion about his
21 characterization of my report in this matter on
22 which, in this matter, we strongly disagree. And
23 I strongly take issue with the
24 mischaracterization and the false statement that
25 I'm opining that the fraud or, according to him,

1 the fraud caused negative damages. That's just
2 simply false.

3 BY MR. BROOKS:

4 **Q. In your opinion, did the fraud cause**
5 **inflation, positive inflation?**

6 A. So, again, with the caveat that I'm not
7 opining on whether there was fraud or not,
8 accepting the jury verdict of a specific finding
9 of 17 misrepresentations and omissions, I go to
10 great length in my report that if you take out
11 the confounding days, there's no reliable basis
12 to say it's positive. But I believe damages are
13 positive. But it goes to the question whether
14 there's a reliable basis to actually calculate
15 damages.

16 If you ignore the confounding information on
17 the four specific days, then you get a damages
18 calculation of 4.19. And I discussed the issues
19 that arise when you think about how to deal with
20 the confounding four days.

21 **Q. So you believe --**

22 A. But I believe -- I believe the specific
23 disclosure model is, and how I analyze it with a
24 properly specified model is a scientifically
25 rigorous, appropriate way, the standard way to