

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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

Plaintiff,)

Case No. 02 C 5893

Judge Jorge L. Alonso

v.)

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

Defendants.)

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
OMNIBUS MOTION TO EXCLUDE DEFENDANTS' EXPERTS**

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PRELIMINARY STATEMENT

Through their Omnibus Motion to Exclude Defendants' Experts, Plaintiffs seek to preclude Defendants from presenting any expert testimony on the key issues that this Court has recognized are the subject of the retrial: "(1) whether plaintiffs have 'proven loss causation?'; and (2) 'If so, what is the amount of inflation caused by each of the 17 misstatements at issue?'" (Dkt. No. 2042-1.)

As Seventh Circuit precedent establishes, Plaintiffs' Omnibus Motion seeks erroneously to convince the Court to "usurp[] the role of the jury" by excluding appropriate expert testimony that calls into question the probative weight jurors should give to the analysis being advanced by Plaintiffs' expert, Daniel Fischel. *Manpower, Inc. v. Ins. Co. of Pa.*, 732 F.3d 796, 806 (7th Cir. 2013) (reversing judgment based on improper exclusion of expert testimony); *see also Smith v. Ford Motor Co.*, 215 F.3d 713, 721 (7th Cir. 2000) (same); *Walker v. Soo Line R.R. Co.*, 208 F.3d 581, 584 (7th Cir. 2000) (reversing and remanding for new trial due to improper exclusion of expert evidence). The Court should deny Plaintiffs' Omnibus Motion, because the opinions of each of the three experts that Defendants have retained to testify at the new trial meet the requirements for admission of expert testimony set forth in Rule 702 of the Federal Rules of Evidence.¹

¹ Rule 702 provides that "[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case."

Plaintiffs do not contend that any of Defendants' experts lacks sufficient "knowledge, skill, experience, training, or education" to testify as an expert about loss causation and damages. Fed. R. Evid 702(a). Professor Allen Ferrell is a Professor at Harvard Law School who also holds a Ph.D. in Economics from the Massachusetts Institute of Technology and is the author of the article cited in the Seventh Circuit's opinion in this case regarding the proper manner of accounting for firm-specific, nonfraud-related information. *See Glickenhous v. Household International, Inc.*, 787 F.2d 408, 422-23 (7th Cir. 2015). Professor Christopher James is a Professor of Finance and Economics at the University of Florida who has held positions with the Federal Deposit Insurance Corporation, the U.S. Department of the Treasury Office of the Comptroller of the Currency, and the Federal Reserve Bank of San Francisco. Professor Bradford Cornell is a Visiting Professor of Financial Economics at the California Institute of Technology and is the co-author of the sole article on which Plaintiffs' loss causation expert, Dr. Daniel Fischel, purports to base his "leakage" model of loss causation. (Dkt. No. 2068.)

Professor Ferrell will testify about the flaws he identified in Fischel's regression analysis and will present Defendants' own quantification of inflation and damages. Professor James will testify, based on his experience in the financial industry, about economic and regulatory factors during the relevant time period that were having a more detrimental effect on Household and a handful of other companies in the subprime sector of the financial industry than on companies operating in the broader financial sector. And Professor Cornell will explain that Fischel, in developing his leakage model, misapplied Professor Cornell's article and that the necessary conditions for a model of the sort described in Professor Cornell's article to reliably calculate inflation are not met here.

The testimony of Professors Ferrell, James, and Cornell will “help the trier of fact to understand the evidence or to determine a fact in issue.” Fed. R. Evid. 702(a). In remanding this case for a retrial on the loss causation element of Plaintiffs’ securities fraud claim, the Seventh Circuit acknowledged: “***Proving this element takes sophisticated expert testimony.***” *Glickenhau*s, 787 F.3d at 412 (emphasis added). So, too, does presenting a defense to loss causation. As this Court noted when it denied Plaintiffs’ motion to preclude Defendants from “substituting” new experts for the retrial: “***[T]he Seventh Circuit’s decision contemplates that there will be additional expert testimony concerning Fischel’s loss causation models.***” (Dkt. No. 2102 at 1 (emphasis added).) This Court further stated that, “because the parties will have the opportunity to explore the experts’ opinions in depositions before the case is retried, ***no one will be prejudiced if the new experts testify at the second trial.***” (*Id.* at 2 (emphasis added).)

Plaintiffs also do not contend that the opinions of Professors Ferrell, James, and Cornell are not “based on sufficient facts or data.” Fed. R. Evid. 702(b). Plaintiffs complain only that Defendants’ experts do not accept Plaintiffs’ characterizations or interpretations of certain facts and data. (Pls.’ Mot. at 10-12.) Defendants and their experts, of course, do not dispute that the jury in the first trial found that 17 of the 40 alleged misstatements were false and misleading and that Plaintiffs had not met their burden of proof with respect to the other 23 alleged misstatements. *Glickenhau*s, 787 F.3d at 424, 429. Defendants and their experts, however, are not required to accept Plaintiffs’ views about disputed facts, such as whether certain information is, or is not, fraud-related, or is, or is not, firm-specific, or accept Plaintiffs’ views on the relevance of certain facts to the loss causation and inflation issues that remain in dispute. The parties’ disagreement about such disputed facts or their implications is not a ground to exclude the testimony of Defendants’ experts. *See* Fed. R. Evid. 702, advisory committee’s note (2000

amendments) (explaining that Rule 702's "emphasis on 'sufficient facts or data' is not intended to authorize a trial court to exclude an expert's testimony on the ground that the court believes one version of the facts and not the other"); *Manpower*, 732 F.3d at 808 ("These precedents teach that arguments about how the selection of data inputs affect the merits of the conclusions produced by an accepted methodology should normally be left to the jury.").

The testimony of each of Defendants' experts also is "the product of reliable principles and methods," Fed. R. Evid. 702(c), and each expert has "reliably applied the principles and methods to the facts of the case," Fed. R. Evid. 702(d). Professor Ferrell employed one of the *same* methodologies as Plaintiffs' loss causation expert, *i.e.*, an event study based on a regression analysis (albeit without the flaws in Fischel's use of that methodology that Professor Ferrell has identified in his reports). In denying Defendants' *Daubert* motion to exclude Fischel's testimony, this Court noted that an event study is an accepted methodology, and further remarked that "analyzing market data based on their expertise is what economic experts do, as evidenced by the report of defendants' expert Professor Ferrell, who did the same thing." (Dkt. No. 2012 at 4, 5.) With respect to Professor James, "Rule 702 specifically contemplates the admission of testimony by experts whose knowledge is based on experience." *Walker*, 208 F.3d at 591. And Professor Cornell, as the co-author of the sole article on which Fischel purported to base his leakage model, is uniquely positioned to explain to the jury the necessary preconditions for application of the model described in his article and how Fischel has misapplied the model described in Professor Cornell's own article.

Because Plaintiffs are unable to identify any legitimate ground under Rule 702 to exclude the testimony of Professors Ferrell, James, and Cornell, they present a hodgepodge of other arguments in their Omnibus Motion. As demonstrated below, these arguments either (i) are

based on legally erroneous premises (*e.g.*, that statements by this Court in its ruling on Defendants' *Daubert* motion, or by the Seventh Circuit in the Background section of its opinion, constitute findings of fact that are binding as law of the case); (ii) go to the weight, rather than the admissibility, of Defendants' experts' testimony; or (iii) rehash arguments that the Court already has rejected.

For these reasons and the reasons described more fully herein, the Court should deny Plaintiffs' Omnibus Motion and, in accordance with the Seventh Circuit's directive and this Court's earlier rulings, allow Defendants to present a full and fair defense to the loss causation element of Plaintiffs' securities fraud claim.

ARGUMENT

I. There Is No Basis To Exclude the Testimony of Professors Ferrell and James About the Effect of Firm-Specific, Nonfraud-Related Information on Household's Stock Price.

Plaintiffs argue that Professors Ferrell and James should be precluded from offering expert testimony about the effect of firm-specific, nonfraud-related factors on Household's stock price because: (i) Professors Ferrell and James have "contorted" the definition of the term "firm-specific" (Pls.' Mot. at 5-9); (ii) Professors Ferrell's and James' opinions on this topic are "impermissibly speculative" (*id.* at 9-10); (iii) Professors Ferrell's and James' opinions are contradicted by record evidence; (*id.* at 10-11); and (iv) this Court already "held" that the information identified by Professors Ferrell and James is *not* firm-specific, nonfraud-related information. (*Id.* at 6-7, 14.) None of these contentions has merit.

A. Professors Ferrell and James Have Not "Contorted" the Definition of the Term "Firm-Specific."

Plaintiffs seek to exclude the testimony of Professors Ferrell and James, asserting that they have "contorted" the definition of the term "firm-specific" by including in their analyses

nonfraud factors that did not affect *solely* Household, but rather affected other companies operating in the same subsectors of the financial industry as Household, and which were not captured by the broad S&P Financials Index that Fischel selected as his industry index. (Pls.’ Mot. at 6.) As discussed below, Plaintiffs’ argument is based on the false premises that: (i) at trial, the jury’s determination of loss causation will be based only on whether or not nonfraud information is “firm-specific”; and (ii) Professors Ferrell and James in fact have contorted the meaning of “firm-specific.”

As to the first premise, put simply, the jury will be asked to decide at trial whether or not Plaintiffs have met their burden to prove that inflation in Household’s stock price was *caused by fraud*. As the Seventh Circuit stated when it summarized the Supreme Court’s holding in *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005): “So in order to prove loss causation, plaintiffs in securities-fraud cases need to isolate the extent to which a decline in stock price is due to fraud-related corrective disclosures **and not other factors**.” *Glickenhau*s, 787 F.3d at 421 (emphasis added). As to any stock price declines that the jury concludes were caused by something other than the revelation of the falsity of the 17 established misstatements, loss causation will not have been proven by Plaintiffs.

As to the second premise, whether a factor affecting a company’s stock price is, or is not, considered to be “firm-specific,” depends on the particular market and industry indices that an expert chooses to use in conducting a regression analysis. The fundamental dispute between the experts here is whether or not the selection of variables used in their regression analyses properly accounts for the effect of nonfraud factors on Household’s stock price. The Seventh Circuit’s decision in *Manpower* instructs that this dispute among the experts about the proper inputs to the accepted regression analysis methodology is a matter to be assessed by the jury. *Manpower*, 732

F.3d at 808 (“[T]he Supreme Court and this Court have confirmed on a number of occasions that the selection of the variables to include in a regression analysis is normally a question that goes to the probative weight of the analysis rather than its admissibility These precedents teach that arguments about how the selection of data inputs affect the merits of the conclusions . . . should normally be left to the jury.”).²

Because Fischel’s regression analysis uses only two very broad indices as variables (the S&P 500 Index and the S&P Financials Index), the residual, or “firm-specific,” price movement *per Fischel’s regression analysis* (i.e., the residual change in Household’s stock price relative to the selected market and industry indices) includes the effect of all other factors that are not accounted for by the price movements of the S&P 500 Index and the S&P Financials Index, including factors disproportionately impacting the narrower subsectors of the financial industry in which Household operated. As explained by Professor Ferrell:

The effect on Household and narrower industry sub-segments such as consumer finance, credit card, auto finance, or subprime is “firm-specific” *in the context of Professor Fischel’s model*, which controls only for the average effect during his control period of economic forces on the general economy (using the S&P 500 Index) and the financial services sector broadly defined (using the S&P Financials Index).

² For purposes of his regression analysis, Fischel selected the S&P 500 Index and the S&P Financials Index because these were the indices against which Household compared its performance in its SEC filings. (Dkt. at 1361-2, n.10, 19.). But that does not mean that these indices necessarily were the best or only indices that should have been used in performing an event study for purposes of determining loss causation and damages. *See, e.g., Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 729-30 (11th Cir. 2012) (affirming judgment in favor of defendant where plaintiffs’ expert performed a regression analysis using the S&P 500 Index and the NASDAQ Bank Index (the indices used by the defendant to compare its performance to the market and industry), but failed to account for the effect on the company’s stock price of the collapse of the Florida real estate market, which was not captured by the NASDAQ Bank Index); *see also In re Executive Telecard Sec. Litig.*, 979 F. Supp. 1021, 1027-28 & n.2 (S.D.N.Y. 1997) (concluding that expert should have used a “more precisely correlated” index for purposes of calculating damages than the Telecom Index to which the company compared its performance in its SEC filings); *In re Seagate Tech. II Sec. Litig.*, 843 F. Supp. 1341, 1348 (N.D. Cal. 1994) (“Usually, industry indices need to be specially constructed because most companies do not fit neatly into a single industry category.”).

(Ferrell Report (Dkt. No. 2060-3) ¶ 43 (emphasis added)).

Because Fischel’s leakage model treats all “firm-specific” prices movements (*i.e.*, all residual price movements after accounting for the price movements in the S&P 500 Index and S&P Financials Index) as inflation caused by the fraud, Fischel’s leakage model does not exclude the effect on Household’s stock price of *nonfraud* factors that were disproportionately affecting companies like Household that operated in the subprime sector of the financial industry. Indeed, Fischel himself has acknowledged that an expert’s selection of variables for purposes of a regression, and the expert’s resulting determination of what is “firm-specific,” will not necessarily account for the effect of all nonfraud factors on the company’s stock price. At his initial deposition in this case, Fischel testified:

If [Household] was disproportionately affected by - - hypothetically - - a regulatory change, meaning that the regulatory change has a bigger effect on its expected future profitability than for other firms, then the industry index would maybe partially pick up the effect of the change. But there still could be hypothetically a firm specific effect for Household. . . . ***[A]s a matter of statistics, is it possible that a regulatory change that affects the entire industry could affect one firm, whether Household or any other firm, disproportionately. So even though you have a control for an industry variable, you still have a firm-specific component to the return, and the answer to that is yes.***

(Fischel 3/21/08 Dep. Tr. (Ex. A) at 200:18-201:17 (emphasis added).)

When confronted with this prior testimony during his deposition on remand, Fischel attempted to draw an artificial distinction between firm-specific “information”—which he defined to require that the information pertained *only* to Household and not to any other company—and a firm-specific “effect” that could pertain to a subset of firms not captured by his regression variables. (Fischel 2/24/16 Dep. Tr. (Ex. B) at 190:20-21 (“I said ‘firm-specific effect.’ That’s not the same thing as firm-specific information.”).) That semantic turn is, at best, a distinction without a difference. The issue for the jury will be whether the various inflation

calculations properly exclude the effect of factors other than fraud on Household's stock price— regardless of whether those nonfraud factors are considered to be “firm-specific,” or to have a firm-specific “effect,” as a result of the specific market and industry indices chosen by the expert conducting the regression analysis.

Plaintiffs would have this Court hold that *all* experts at trial must accept Fischel's regression analysis as the sole model and must accept his interpretation of whether information is, or is not, “firm specific” under his analysis, or otherwise be precluded from offering their own opinions. That is incorrect under settled Seventh Circuit law. Defendants' experts are not bound to accept Fischel's selection of variables or inputs for purposes of the regression analysis that underlies his specific disclosure and leakage models. To the contrary, “the selection of the variables” and “how the selection . . . affects the merits of the conclusions produced” is a quintessential battle between the experts that is to be “left to the jury” to assess the “probative weight” of the competing analyses. *Manpower*, 732 F.3d at 808. Defendants' experts, furthermore, should be allowed to point out the deficiencies arising from Fischel's “selection of the variables to include in a regression analysis,” and how his “data inputs affect the merits of the conclusions produced,” in order that the jury properly may determine the probative weight to give to Professor Fischel's analysis. *Id.*

Plaintiffs, in effect, are seeking to transform the Seventh Circuit's threshold framework for determining whether Fischel's leakage model could even be submitted to a jury (described in Section II.B., *infra*) into a bar to Defendants' right to present expert testimony challenging that model in order for the jury to determine the probative weight that should be given to Fischel's analysis. But as both the Seventh Circuit and the Supreme Court “have confirmed on a number of occasions” the resolution of disputes about the proper inputs to an accepted methodology, and

the probative value of the experts' conflicting views as to whether a regression analysis was properly constructed and whether the results of the analysis, therefore, are reliable, are issues to "be left to the jury." *Manpower*, 732 F.3d at 808.

B. Professors Ferrell's and James' Opinions Are Not "Impermissibly Speculative."

Plaintiffs also contend that Professors Ferrell's and James' opinions are "impermissibly speculative." (Pls.' Mot. at 9.) Specifically, Plaintiffs assert that Professors Ferrell and James opine that "firm-specific, nonfraud-related information *may have* or *could have* contributed to Household's stock price decline on various days during the Leakage Period," but "[n]either expert conducts any quantitative analysis to support these opinions *in their initial reports*." (Pls.' Mot. at 9-10 (last set of emphases added).)

Notably, Plaintiffs confine their "speculative" criticism to Professors Ferrell's and James' initial reports. While Plaintiffs do not contend that the opinions and analyses set forth in Professor Ferrell's and James' *rebuttal reports* are "speculative" (*id.* at 29-32), it is those very opinions and analyses they seek to exclude. (Pls.' Mot. at 29-30.)³ The Court already denied Plaintiffs' motion to strike Defendants' experts' rebuttal reports. *See* Section VI, *infra*. Furthermore, when considered within the context of the purpose of the respective reports, Plaintiffs' "speculative" claims are groundless.

The purpose of Professors Ferrell's and James' initial reports was to address the admissibility of Fischel's leakage model in accordance with the following framework specified by the Seventh Circuit:

³ Defendants' experts' rebuttal reports contain the detail that Plaintiffs claim is lacking from their initial reports. Plaintiffs do not contend otherwise, but seek to exclude testimony about opinions set forth in the rebuttal reports on grounds that the Court already has rejected. *See* Section VI, *infra*.

If the plaintiffs' expert testifies that no firm-specific, nonfraud related information contributed to the decline in stock price during the relevant time period and explains in nonconclusory terms the basis for this opinion, then it's reasonable to expect the defendants to shoulder the burden of identifying some significant, firm-specific, nonfraud related information that *could have affected* the stock price. If they can't, then the leakage model can go to the jury; if they can, then the burden shifts back to the plaintiffs to account for that specific information or provide a loss-causation model that doesn't suffer from the same problem, like the specific-disclosure model.

*Glickenhau*s, 787 F.3d at 422 (emphasis added).

In requiring only that Defendants identify some firm-specific, nonfraud-related information that *could have affected* Household's stock price, the Seventh Circuit was mindful that the burden of proof on the loss causation element of Plaintiffs' securities fraud claim at all times remains with Plaintiffs. *See* 15 U.S.C. §78u-4(b)(4) ("In any private action arising under this chapter, the plaintiff shall have the burden of proving that the act or omission of the defendant alleged to violate this chapter caused the loss for which the plaintiff seeks to recover damages."); *accord Dura*, 544 U.S. at 345-46 (reiterating that it is the plaintiff's burden to plead and prove loss causation); *see also Glickenhau*s, 787 F.3d at 415 (acknowledging burden of proof under *Dura*).

In light of the ultimate burden of proof on the loss causation element of Plaintiffs' claim, the Seventh Circuit assigned to Defendants (for purposes of determining the admissibility of Fischel's leakage model) only a burden of production (not proof) by requiring Defendants to identify some firm-specific, nonfraud-related information that *could have affected* Household's stock price. The Seventh Circuit did *not* require Defendants to *prove* at that stage—or at any subsequent stage of the proceedings—that firm-specific, nonfraud-related information in fact caused Household's stock price decline. In addition, the Seventh Circuit clearly contemplated that the result—if Defendants failed to meet that threshold burden of production—would be that Fischel's leakage model "can go to the jury"—not that Defendants would be precluded from

presenting their own expert testimony to the jury that ultimately provides a countervailing expert view once Fischel's model got to a jury.

In their initial reports, Professors Ferrell and James followed the Seventh Circuit's directive exactly and identified information that they contend was firm-specific, nonfraud-related information that "may have" or "could have" contributed to Household's stock price decline. (Pls.' Mot. at 9.) Professors Ferrell's and James' adherence to the Seventh Circuit's framework did not render their initial reports "impermissibly speculative." For example, Professor James testified at his deposition: "The first report was to identify factors that may have a disproportionate impact. And then in the second report, I demonstrate that those factors that I've identified, in-fact, did have a disproportionate impact." (James Dep. Tr. (Ex. C) at 15:9-15:13.)

In any event, even in the absence of the Seventh Circuit's opinion, there would be no ground to exclude the opinions set forth in Professors Ferrell's and James' initial reports as "impermissibly speculative." Although Fed. R. Evid. 704 *allows* an expert to express an opinion about the ultimate issue facing the jury, "[n]othing in that rule, or any other rule governing expert testimony, *requires* an expert to opine on the ultimate issue in order to have his testimony admitted." *Walker*, 208 F.3d at 587 & n.2 (emphasis added). The initial reports raise issues that appropriately call into question the probative value of Fischel's analysis, which should be considered and weighed by the jury.

In *Walker*, the Seventh Circuit rejected the defendants' contention that the plaintiff's expert's testimony that electrical trauma *could* have caused the plaintiff's lowered IQ should have been excluded because the expert "does not *state definitively* that the electrical trauma caused the drop in Mr. Walker's IQ." *Id.* (emphases added). The Seventh Circuit explained: "Dr. Pliskin is not required to have an opinion on that ultimate question to be permitted to testify. His

testimony could assist the trier of fact even if he cannot say with complete certainty that electrical trauma caused Mr. Walker's decline in functioning." *Id.*; see also, e.g., *Smith*, 215 F.3d at 721 (holding that district court erred in excluding testimony of experts on the ground that "neither expert could *conclusively determine* whether a design or manufacturing defect caused the failure in the steering gearbox to occur." (emphasis added)). There is, therefore, no basis for Plaintiffs' assertion that the opinions set forth in Professors Ferrell's and James' initial reports are "impermissibly speculative."

C. Plaintiffs' Contention that Professors Ferrell's and James' Opinions Are Contradicted by Record Evidence Provides a Basis for Cross-Examination, Not Exclusion of Their Testimony.

Defendants and their experts are not required to accept Plaintiffs' construction of the evidence. As the Advisory Committee's note to Fed. R. Evid. 702 explains: "When facts are in dispute, experts sometimes reach different conclusions based on competing versions of the facts. The emphasis in [Rule 702] on 'sufficient facts or data' is not intended to authorize a trial court to exclude an expert's testimony on the ground that the court believes one version of the facts and not the other." Fed. R. Evid. 702, advisory committee's note (2000 amendments).

The authorities on which Plaintiffs rely (Pls.' Mot. at 11) are inapposite. Unlike here, in each of the cases cited by Plaintiffs, the experts ignored undisputed evidence that contradicted their opinions. For example, in *Longtop Financial Technologies Securities Litigation*, 32 F. Supp. 3d 453, 462 (S.D.N.Y. 2014), the district court precluded an expert from testifying that the company's internal controls and financial statements were free from error based upon the results of audits, where the company's auditing firm, in its resignation letter, warned that "continuing reliance should no longer be placed on our audit reports on the previous financial statements," and attributed its resignation to the recently identified falsity of the company's financial records.

In *Lava Trading, Inc. v. Hartford Fire Insurance Co.*, 03 Civ. 7037 (PKC) (MHD), 2005 U.S. Dist. LEXIS 4566 (S.D.N.Y. Feb. 14, 2005), the district court refused to admit the testimony of an expert who had been hired to calculate lost revenue due to a business interruption. The court did so because the expert “began with the client’s guesses and ultimately relied on them because his ‘sense’ was that they were plausible, while he avoided meaningful inquiry into whether they had a basis in fact.” *Id.* at *47. In addition, the court found that emails produced by the plaintiff revealed that it “was not ‘financially crippled’ or operationally devastated during the six months following September 11, as [the expert] suggested.” *Id.* at *60. And in *Barber v. United Airlines, Inc.*, 17 F. App’x 433, 441 (7th Cir. 2001), the Seventh Circuit affirmed judgment as a matter of law for the defendant in an air crash case after a jury trial in which the district court refused to admit the testimony of plaintiff’s expert, who ignored uncontroverted evidence of weather conditions and the testimony of the pilot and co-pilot.

Here, the disputed evidentiary matter is whether the 17 established misrepresentations caused economic loss, and if so, the amount of inflation attributable to each misrepresentation. That the experts dispute which items of evidence are salient to that determination, and dispute the application of underlying evidence to the methodologies used for that determination, does not provide a basis for exclusion of the evidence. *Manpower*, 732 F.3d at 808 (holding that “the selection of the variables to include in a regression analysis” and “arguments about how the selection of data inputs affect the merits of the conclusions” are issues for the jury to consider and noting that “an expert’s reliance on faulty information is a matter to be explored on cross-examination; it does not go to admissibility”); *accord Ernst v. City of Chicago*, 39 F. Supp. 3d 1005, 1015 (N.D. Ill. 2014) (denying motion to exclude expert testimony where defendants’ objections to testimony presented a “roadmap for . . . cross-examination” (quoting *Manpower*,

732 F.3d at 810)).

D. This Court Did Not “Hold” that the Information Identified by Professors Ferrell and James Is Not Firm-Specific, Nonfraud-Related Information.

In ruling on Defendants’ *Daubert* motion, the Court reviewed “the categories of disclosures that defendants characterize as firm-specific and unrelated to fraud,” and only in the context of deciding whether Fischel’s leakage model could be presented to the jury, expressed *the Court’s view* that they “are neither.” (Dkt. No. 2102 at 6.) This statement by the Court in ruling on Defendants’ *Daubert* motion was not an ultimate finding of fact on these disputed issues, but rather a threshold determination at the *Daubert* stage that reflected the parties’ respective burdens at that stage as set forth in the Seventh Circuit’s opinion. To accept Plaintiffs’ construction of the Court’s *Daubert* ruling and to remove this contested issue from the jury would be plain legal error.

Courts do not make ultimate factual findings in ruling on a *Daubert* motion. *See, e.g., Stollings v. Ryobi Techs., Inc.*, 725 F.3d 753, 765 (7th Cir. 2013) (“[T]he district court’s role as gatekeeper does not render the district court the trier of all facts relating to expert testimony.”).

As the Seventh Circuit has made clear, in 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, 215 F.3d at 718 (emphases added); *accord Manpower*, 732 F.3d at 808 (“The reliability of data and assumptions used in applying a methodology is tested by the adversarial process and determined by the jury; the court’s role is generally limited to assessing the reliability of the methodology—the framework—of the expert’s analysis.”).

Whether the information that the parties' experts contend affected Household's stock price is, or is not, firm-specific, and is, or is not fraud-related, are questions of fact that must be resolved by the jury. *See, e.g., Liberty Media Corp. LMC v. Vivendi Universal, S.A.*, 923 F. Supp. 2d 511, 520 (S.D.N.Y. 2013) (denying motion for judgment as a matter of law because "a reasonable juror could have found that none of the ostensible confounding events put forth by Vivendi were both non-fraud-related and affected Vivendi's share price," and rejecting contention that testimony of plaintiffs' expert should have been excluded: "The weighing of the experts' conflicting testimony [about "the significance of non-fraud-related news on the nine materialization days"] was a matter for the jury and will not be disturbed by this Court."). This Court did not—and could not—resolve these contested issues of fact in ruling on Defendants' *Daubert* motion. Plaintiffs' attempt to suggest otherwise provides no basis to exclude Professors Ferrell's and James' testimony and invites plain legal error.

In cases like this that involve "a classic battle of the experts," the Seventh Circuit repeatedly has admonished that the factfinder must "determine what weight and credibility to give the testimony of each expert." *Gicla v. United States*, 572 F.3d 407, 414 (7th Cir. 2009); *see also Wipf v. Kowalski*, 519 F.3d 380, 385 (7th Cir. 2008) ("[I]n a case of dueling experts . . . it is left to the trier of fact . . . to decide how to weigh the competing expert testimony."); *Spesco, Inc. v. Gen. Elec. Co.*, 719 F.2d 233, 237-38 (7th Cir. 1983) ("It is within the province of the jury to determine which of two contradictory expert statements is deserving of credit.").

In sum, because the Court has decided to allow the jury to hear Fischel's testimony that there was no firm-specific, nonfraud-related information that affected Household's stock price, the Court also should allow the jury to hear the competing testimony of Defendants' experts that Household's stock price was affected by nonfraud-related information that has not been

accounted for adequately in Fischel’s analyses—regardless of any view the Court may hold about the persuasiveness of the expert opinions. *See, e.g., Olson v. Ford Motor Co.*, 481 F.3d 619, 626 (8th Cir. 2007) (“Rule 702 does not permit a judge to weigh conflicting expert testimony, admit the testimony that he or she personally believes, and exclude the testimony that he or she does not personally believe.”). Or in the words of the Seventh Circuit: “An expert may provide expert testimony based on a valid and properly applied methodology and still offer a conclusion that is subject to doubt. ***It is the role of the jury to weigh these sources of doubt.***” *Stollings*, 725 F.3d at 766 (emphasis added); *see also Manpower*, 732 F.3d at 810 (holding, where each of the district court’s criticisms of plaintiff’s expert “was a comment on the soundness of the factual underpinnings of his calculation,” that the court “supplanted th[e] adversarial process with its admissibility determination, leaving Manpower with no competent evidence to prove its business interruption damages and ensuring summary judgment for [the opposing party]”).

II. Professor Ferrell Did Not Fail To Consider or Refuse To Answer Questions About the “Underlying Fraud.”

Plaintiffs contend that Professor Ferrell should be precluded from testifying because he “can’t or won’t describe the fraud in this case, which renders his opinion that certain information is unrelated to the fraud utterly unreliable.” (Pls.’ Mot. at 12.) This argument is based on Plaintiffs’ mischaracterization of what constituted “the underlying fraud.”

Throughout this litigation, Plaintiffs have proceeded as if the fraud at issue in this case consisted of Household’s lending practices, its practice of re-aging delinquent accounts, and its accounting practices that led to the restatement of Household’s financial statements. Plaintiffs continue to do so in their Omnibus Motion. (Pls.’ Mot. at 28 (asserting that “the underlying fraud in this case . . . relat[es] to predatory lending, reaging or restatement”).) This case, however, is a

securities fraud case—*not* a case about Household’s business practices. It is well-settled that the securities laws do not regulate a company’s business practices. *See Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 477-79 (1977); *accord Ray v. Karris*, 780 F.2d 636, 641 (7th Cir. 1985) (“It is axiomatic after *Santa Fe* . . . that no cause of action will be implied under the securities laws for alleged corporate mismanagement.”); *see also, e.g., SEC v. Jakubowski*, 150 F.3d 675, 680 (7th Cir. 1998) (explaining that “corporate mismanagement and similar wrongs do not violate Rule 10b-5 even though they may affect the price at which securities trade”).

Professor Ferrell did not fail to consider the “underlying fraud.” The fraud in this securities case consisted of the 17 statements that the first jury found to be false and misleading, as reflected on the jury verdict form. (Dkt. No. 1611.) Professor Ferrell carefully reviewed the jury verdict form, among other materials. At his deposition, Professor Ferrell was asked: “What did you do to learn about the details of defendants’ fraud, if anything?” Professor Ferrell responded:

Well, I spent a significant amount of time reading the—the Corrected Amended Consolidated Class Action Complaint for violation of the federal securities law. ***I read the jury verdict form, where the jury specifically found 17 misrepresentations, also rejected a number of other misrepresentations. So my understanding is that’s the finding that has not been vacated.*** . . . And I did read some of the court orders to get an understanding of the context. And I did review a number of materials from the initial litigation, if I can call it that.

(Ferrell Dep. Tr. (Ex. D) at 51:9-24 (emphases added).)

By contrast, it is Fischel who admitted during his recent deposition that he has never reviewed the jury’s verdict form, does not know whether the jury found that 17 out of 40 alleged misstatements were false and misleading and 23 were not, and made no adjustments to his loss causation models to account for the jury’s finding that only 17 of the 40 alleged misstatements

were false and misleading (other than his required adjustment for the March 23, 2001 statement). (Fischel 2/14/16 Dep. Tr. (Ex. B) at 8:21-11:19.)

Rather than failing to consider the fraud, Professor Ferrell simply refused to accept Plaintiffs' mischaracterization of the fraud. When asked whether he understood that the verdict form "doesn't list the details of the fraudulent business practices," Professor Ferrell responded:

I disagree with that characterization. The fraud—the fraud that was found by the jury is specifically identified by the jury on the jury verdict form. My understanding, but I'm not giving a legal opinion, is that that constitutes the entirety of the fraud at issue in this case. That is, the 17 material misrepresentations and omissions, as found by the jury.

(Ferrell Dep. Tr. (Ex. D) at 56:5-18.) Similarly, when asked about his understanding of the "details" of the "predatory lending fraud that the defendants committed," Professor Ferrell explained that the "predatory lending fraud" consisted of "the material misstatements that the jury found on the verdict form, which is listed in my Appendix B, that relate to predatory lending." (*Id.* at 54:4-8.) Professor Ferrell added: "And that would be the most accurate and complete answer to your question, as to what constitutes the fraud with respect to predatory lending." (*Id.* at 54:8-11.) There is, therefore, no basis for Plaintiffs' assertion that Professor Ferrell failed to consider the "underlying fraud."

Professor Ferrell, furthermore, did not refuse to answer questions about the "underlying fraud." At his deposition, Plaintiffs' counsel introduced the Seventh Circuit's opinion as an exhibit and proceeded to ask Professor Ferrell a series of questions about whether he agreed with the "findings" set forth in the Background section of the opinion. Plaintiffs contend that they were entitled to discover "whether, how and why Ferrell's assumptions departed from *the*

Seventh Circuit's findings, which are the law of the case." (Pls.' Mot. at 15 (emphasis added).)⁴

The Seventh Circuit, however, did not make any findings of fact. "As everyone knows, appellate courts may not make fact findings." *Norelus v. Denny'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 is not the law of the case and is not binding on remand. *Norelus*, 628 F.3d at 1289; see also, e.g., *In re Scarborough*, 457 F. App'x 193, 200 n.12 (3d Cir. 2012) ("Our summary of the information presented below cannot be read as binding the fact-finder on remand."); *Mayview Corp. v. Rodstein*, 480 F.2d 714, 716 (9th Cir. 1973) (stating that the "brief statement of facts" in the court's opinion reversing and remanding "is of course not to be construed as binding upon remand"); *Van de Sande v. Van de Sande*, No. 05 CV 1182, 2008 WL 239150, at *7 (N.D. Ill. Jan. 29, 2008) (explaining that a statement in the Seventh Circuit's opinion that children were "habitual residents of Belgium" was not a "conclusive determination," but rather "simply a statement describing the case as the parties presented it in the district court").

Benuzzi v. Board of Education, 119 F. Supp. 3d 917 (N.D. Ill. 2015), on which Plaintiffs rely (Pls.' Mot. at 14), provides no support for Plaintiffs' position that an appellate court's summary in the Background section of its opinion constitutes "findings of fact" that are binding on remand. *Benuzzi* simply states the well-settled proposition that, on remand, "the district court is required to comply with the express or implied rulings of the appellate court." 119 F. Supp. 3d at 923 (quotations and citation omitted). Applying this principle, the district court in *Benuzzi* held that the defendant was not entitled to conduct additional discovery and move again for summary

⁴ The purported "findings" by the Seventh Circuit as to which Plaintiffs attempted to question Professor Ferrell are set forth on page 14 of Plaintiffs' Motion.

judgment with respect to one of plaintiff's claims that was remanded for trial, because the Seventh Circuit's remand order did not provide for the reopening of discovery. *Id.* at 923-24.

Because the Seventh Circuit did not make any findings of fact, Plaintiffs' counsel's questions about whether Professor Ferrell agreed with the Seventh Circuit's non-existent factual "findings" went beyond the scope of permissible discovery. Professor Ferrell's answers to these questions would have been irrelevant, and thus inadmissible at trial, and would not have led to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1).

Counsel for Defendants, moreover, made clear that there was no objection to questions about Professor Ferrell's understanding of any underlying facts, as opposed to questions about whether or not he agreed with the Seventh Circuit's "findings." Counsel for Defendants stated: "I have the same objection to asking him to agree or disagree with the Seventh Circuit. You can ask him if X happens, does Y happen, I'm fine with that. But he shouldn't be opining about what he thinks of a legal - - of a Court opinion." (Ferrell Dep. Tr. (Ex. D) at 140:25-141:5.)

In response to Defendants' counsel's objection, Plaintiffs' counsel had no problem rephrasing questions to seek *relevant* evidence. For example, after counsel for Defendants objected to a question about whether Professor Ferrell agreed with a statement in the Seventh Circuit's opinion, Plaintiff's counsel rephrased the question as follows: "Independent of this document [the Seventh Circuit's opinion], do you agree that the truth about Household's fraud came to light over a period of about a year through a series of disclosures that began when California sued Household over its predatory lending practices?" (*Id.* at 78:2-7.) Defendants' counsel objected only to the form of this question. (*Id.* at 78:8) Plaintiffs, therefore, were in no way impeded from questioning Professor Ferrell about *relevant* information.

Notably, Plaintiffs did not file a motion to compel answers to their questions about Professor Ferrell's agreement or disagreement with the Seventh Circuit's opinion, and even if they had, "a court need not compel the discovery of information that falls outside the scope of proper discovery under Federal Rule of Civil Procedure 26(b)(1)." *EEOC v. Freeman*, 288 F.R.D. 92, 98 (D. Md. 2012). Under these circumstances, in which the Seventh Circuit vacated a billion dollar judgment and remanded for a retrial on loss causation, there is no proper basis to bar Professor Ferrell from testifying at trial because he was instructed not to answer improper questions about whether he agreed with the Seventh Circuit's nonexistent "findings." Plaintiffs cite no authority that would support such an extreme ruling.

III. Professor Ferrell Did Not Violate Fed. R. Civ. P. 26(a)(2).

Plaintiffs also seek to bar Professor Ferrell's testimony on the ground that he violated Fed. R. Civ. P. 26(a)(2) by allegedly failing to disclose his reasons for selecting the companies included in the CSFB Specialty Finance Universe when he created his industry index. (Pls.' Mot. at 18.) This assertion is refuted by Professor Ferrell's report.

As a witness who was specifically retained to testify at trial, Professor Ferrell was required to serve an expert report that disclosed, among other things, "the facts or data" he considered in forming his opinions. Fed. R. Civ. P. 26(a)(2)(B)(ii). Professor Ferrell did just that.

In support of his opinion that Fischel's leakage model does not reliably exclude the effects of nonfraud-related information on Household's stock price, Professor Ferrell (i) described the sectors in which Household operated, as reported by Household in its SEC filings (Ferrell Report (Dkt. No. 2060-3) ¶¶ 37-40); (ii) noted that Household was one of only five consumer finance companies included among the 81 companies in the S&P Financials Index that Fischel selected as his industry index (*id.*, ¶ 41); and; (iii) explained that Household's peers,

which consisted of other consumer or specialty finance companies, particularly those with a subprime focus, were included in the Credit Suisse First Boston (CSFB) Specialty Finance Universe, which included credit card companies (Capital One, CompuCredit, MBNA, Metris, and Providian), auto finance companies (AmeriCredit Financial and WFS Financial), and more diversified companies (like American Express and The CIT Group). (*Id.* ¶ 42.) In short, Professor Ferrell disclosed his reasons for using the companies in the CSFB Specialty Finance Universe when constructing his industry index.

Furthermore, even if Plaintiffs had identified some violation of Rule 26(a)(2)(B)(ii) (and they have not), that violation was harmless. “Courts look to several factors when deciding if non-compliance with Rule 26(a) is harmless, including prejudice or surprise, the ability to cure the prejudice, the likelihood of disruption at trial, and bad faith or willfulness.” *Rabin v. Cook Cty.*, No. 09 C 8049, 2015 WL 1926420, at *4 (N.D. Ill. Apr. 27, 2015) (citing *Tribble v. Evangelides*, 670 F.3d 753, 760 (7th Cir. 2012)). Plaintiffs were not prejudiced by Professor Ferrell’s disclosures, nor is there any evidence of bad faith or willfulness on the part of Defendants.

Plaintiffs and their expert had no trouble understanding and responding to Professor Ferrell’s description about his use of the CSFB Specialty Finance Universe in constructing his industry index. In Fischel’s Second Rebuttal Report, Fischel noted that Professor Ferrell’s industry index included the nine firms in the CSFB Specialty Finance Universe, but contended that one of those firms (The CIT Group) was not publicly traded for much of the leakage period. (Fischel Second Rebuttal Report (Dkt. No. 2067-1) ¶ 11 & n.15.) Fischel then purported to test Professor Ferrell’s results if The CIT Group were excluded from the CSFB Specialty Finance Universe. (*Id.*) And as is evident from Plaintiffs’ Omnibus Motion, Plaintiffs’ counsel was well prepared to (and did) question Professor Ferrell extensively at his deposition about his use of the

CSFB Specialty Finance Universe. (Pls.’ Mot. at 19-22.) Plaintiffs, therefore, were not “ambushed” by Professor Ferrell’s disclosures in his expert report. (Pls.’ Mot. at 2.)

Because Professor Ferrell’s report complied with Fed. R. Civ. P. 26(a)(2), and because of the complete lack of prejudice to Plaintiffs or bad faith on the part of Defendants, the Court should deny Plaintiffs’ motion to exclude Professor Ferrell’s testimony. *See, e.g., Rabin*, 2015 WL 1926420, at *5 (denying motion to exclude expert’s testimony due to alleged violation of Rule 26(a)(2)(B), where, after reviewing the transcript of the expert’s deposition, the court stated it would be “hard-pressed” to conclude that opposing counsel was unable to examine the expert thoroughly, and because there was “no evidence of any bad faith or willfulness on the part of Defendants nor that non-compliance is likely to disrupt trial”).

IV. Plaintiffs’ Criticisms of Professor James’ Opinions Go to the Weight, Rather than the Admissibility, of Professor James’ Testimony.

Plaintiffs seek to preclude Professor James from testifying because he did not perform an event study to support his opinion that, during the relevant period, there were economic and regulatory factors that had a more adverse effect on companies operating in the subprime sector of the financial industry than on companies that operated in the broader financial sector. (Pls.’ Mot. at 22-26.) Professor James, however, was not retained to perform an event study or otherwise to quantify the *amount* of fraud-induced inflation in Household’s stock price at various points in time. That work was performed by Professor Ferrell.

Professor James was retained because of his extensive personal experience in the financial industry. As the Seventh Circuit repeatedly has noted, “Rule 702 specifically contemplates the admission of testimony by experts whose knowledge is based on experience.” *Walker*, 208 F.3d at 591; *accord Smith*, 215 F.3d at 717-18; *see also Metavante Corp. v. Emigrant Sav. Bank*, 619 F.3d 748, 761 (7th Cir. 2010) (“An expert’s testimony is not unreliable

simply because it is founded on his experience rather than on data; indeed, Rule 702 allows a witness to be ‘qualified as an expert by knowledge, skill, *experience*, training, or education.’” (quoting Fed. R. Evid. 702)); *United States v. Conn*, 297 F.3d 548, 556 (7th Cir. 2002) (observing that “the Advisory Committee notes to Rule 702 specifically note that ‘[i]n certain fields, experience is the predominant, if not the sole, basis for a great deal of reliable expert testimony’”) (citation omitted)).

Courts, therefore, routinely admit the testimony of experts who are qualified to express opinions based on their personal experience in a particular industry. *See, e.g., Lutheran Homes, Inc. v. Lock Realty Corp. IX*, Case No. 1:14-CV-102 JD, 2015 WL 8180196, at *7 (N.D. Ind. Dec. 7, 2015) (“[B]ecause Mr. Decker was qualified based on his experience in the field and adequately traced his reasoning from that experience to his conclusions, the absence of a formal, scientific methodology does not justify the exclusion of his testimony”); *United States Gypsum Co. v. Lafarge N. Am. Inc.*, 670 F. Supp. 2d 748, 756 (N.D. Ill. 2009) (“On the first point—what information was generally available in the wallboard industry—the opinion of a person who spent decades as a senior manager in that industry is sufficiently expert and reliable.”); *Gipson v. Wells Fargo Bank, N.A.*, 460 F. Supp. 2d 9, 10-11 (D.C. Cir. 2006) (holding that expert testimony about lending industry practices and standards based upon personal experience was admissible).

Plaintiffs do not dispute that Professor James has extensive experience in the financial industry. Instead, they contend that Professor James’ opinions are unreliable because the companies that Professor James identified as Household’s peers “are not peers of Household.” (Pls.’ Mot. at 24-25.) The parties’ disagreement over which companies were “peers” of Household is not a basis to exclude Professor James’ testimony. *See, e.g., Smith*, 215 F.3d at 718

(“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.”); *cf. Manpower*, 732 F.3d at 808 (explaining that “the selection of the variables to include in a regression analysis is normally a question that goes to the probative weight of the analysis rather than to its admissibility”).⁵

As for Plaintiffs’ contention that Professor James changed his opinions in his rebuttal report or at his deposition (Pls.’ Mot. at 24), that contention (even if true) would provide only a ground for cross-examination—not exclusion of Professor James’ testimony. Even if Professor James’ testimony were “shaky” (which it is not), the Supreme Court has admonished: “Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” *Daubert*, 509 U.S. at 596; *see also, e.g., Lapsley v. Xtek, Inc.*, 689 F.3d 802, 805 (7th Cir. 2012) (“A *Daubert* inquiry is not designed to have the district judge take the place of the jury to decide ultimate issues of credibility and accuracy.”).⁶

V. There Is No Basis To Exclude Professor Cornell’s Opinion that Fischel Misapplied Professor Cornell’s Own Paper and that the Result of that Misapplication Is an Unreliable Opinion by Fischel.

Professor Cornell will testify at trial that Fischel got it wrong and *misapplied* Professor

⁵ There is no basis for Plaintiffs’ suggestion that there is only one accepted “methodology” for selecting peer companies, or that an expert must use the same “methodology” for selecting peer companies in every case. (Pls.’ Mot. at 24-25.) As discussed above, the selection of peer companies depends on the facts of a particular case and the expert’s judgment. *See supra* at 6-7 & n.2.

⁶ In a further baseless attempt to exclude Professor James’ testimony, Plaintiffs point to the fact that, at his deposition, Professor James described his comparison of Household’s performance to the performance of its peers as being “very much in the spirit of a propensity score matching technique.” (Pls.’ Mot. at 26.) Professor James, however, does not claim to have performed a propensity score matching, nor was he required to do so to offer an expert opinion, based on his knowledge of and experience in the financial industry, about which companies were Household’s peers and what factors were affecting companies in the subprime sector disproportionately during the relevant period.

Cornell's paper. This testimony could not be more relevant and potentially helpful to the jury.

Professor Cornell is the co-author of the sole article relied on by Plaintiffs' expert, Fischel, in constructing his leakage model of loss causation. (Fischel Report (Dkt. No. 1361-2) at 23 n.22 (citing B. Cornell and R. G. Morgan, "Using Finance Theory to Measure Damages in Fraud on the Market Cases," 37 UCLA L. Rev. 883 (June 1990)).) Indeed, Fischel referred to the Cornell and Morgan article or Professor Cornell's model as the basis for Fischel's leakage model *over 90 times* during his deposition. (Fischel 2/24/16 Dep. Tr. (Ex. B) at 308; *see also, e.g., id* at 37:7-12 ("The calculation of inflation under the leakage model comes directly from an article written by Cornell and Morgan."); *id.* at 80:2-6 ("[W]hen you keep referring to my model, it is my quantification of leakage but the model originated with - - in an article by Cornell and Morgan which I concluded was appropriate to use under the facts and circumstances of this case."); *id.* at 91:8-9 ("I used a model developed by Cornell and Morgan to measure the effect of leakage.").

Contrary to Plaintiffs' assertion, Professor Cornell has made clear that he is *not* offering an analysis of "firm-specific, nonfraud information" (a task undertaken by Professor Ferrell) and does not intend to offer testimony analyzing whether or not information is "firm-specific, nonfraud information" at trial. Thus, the sole issue raised by Plaintiffs is inapposite. Rather, Professor Cornell will testify that Fischel misapplied Professor Cornell's paper and that the results of that misapplication are unreliable:

Q. Professor Cornell, what do you understand to be your scope of assignment regarding the opinions that you're to offer in this trial?

A. As I've stated earlier in response to some of the questioning, it was two basic things: Did Professor Fischel follow a procedure laid out by Mr. Morgan and me in an – in an article we published; and second, does the leakage approach, as operationalized by Professor Fischel, measure inflation with enough reliability that it can be confidently – or reasonably relied on.

(Cornell Dep. Tr. (Ex. E) at 224:13-23). Professor Cornell has concluded, and will testify, that his paper has not been correctly applied by Fischel and that, for a number of reasons, including the misspecification of Fischel's leakage model and the analysis of its output, Fischel's misapplication of the Cornell and Morgan article is not reliable. (*Id.* at 231-232.)

As Cornell and Morgan explain in their article, the model described therein is only appropriately applied in an almost antiseptic hypothetical where: (1) "all parties to the litigation agree on how to measure the market and the industry," 37 U.C.L.A. Law Rev. 898, n. 41; (2) "the industry variable includes all systematic factors that affect the security's return other than the market," *id.*; and (3) the "litigants agree on the form of the model and on how to estimate the parameters," *id.* at 898, n. 42. None of these preconditions is met in this case, as Professor Cornell notes by recognizing the disputes between Fischel and Professor Ferrell with respect to these fundamental preconditions.

Plaintiffs' suggestion that Professor Cornell is simply acting as the "mouthpiece" for Professor Ferrell (Pls.' Mot. at 28) assumes wrongly that Professor Cornell is somehow "vouching for the truth" of Professor Ferrell's expert opinions or "parroting" Professor Ferrell's expert opinions. Professor Cornell is offering his own, independent opinion that Fischel is fundamentally wrong in how he misapplied Professor Cornell's academic paper.

Professor Cornell's reference to Professor Ferrell's analyses is, moreover, entirely proper. "Under Rule 703, an expert's testimony may be formulated by the use of the facts, data and conclusions of other experts." *Barris v. Bob's Drag Chutes & Safety Equipment, Inc.*, 685 F.2d 94, 101 (3d Cir. 1982); *see also, e.g., Janopoulos v. Harvey L. Walner & Assocs.*, 866 F. Supp. 1086, 1095 (N.D. Ill. 1994) ("[A]n expert may rely in part on information supplied by another expert."); *accord Estate of Burns v. Williamson*, No. 11-cv-3020, 2015 U.S. Dist. LEXIS 94900,

at *20 (C.D. Ill. July 21, 2015) (citing cases). In fact, as the Seventh Circuit has observed, “courts frequently have pointed to an expert’s reliance on the reports of others as an indication that their testimony is reliable.” *Walker*, 208 F.3d at 588.

Professor Cornell, furthermore, has a series of criticisms regarding Fischel’s misapplication of the Cornell & Morgan paper and the resulting errors of the output resulting from the misapplication of the paper, that are wholly unaddressed by Plaintiffs and that have nothing to do with Professor Ferrell’s analyses (*e.g.*, flaws arising from the “compounding error terms” and the improper window used for a single-firm analysis). Finally, because Fischel testified more than 90 times that, in formulating his leakage model, he relied on an article by Professor Cornell (whom Fischel knew had been retained by Defendants and already provided a report in the very case at hand), Plaintiffs cannot reasonably expect that Professor Cornell’s testimony that Fischel got it wrong with respect to Cornell’s own article should be excluded.

VI. This Court Already Rejected Plaintiffs’ Argument that Defendants’ Experts Should Be Precluded from Offering Certain Opinions Set Forth in Their Rebuttal Reports.

Plaintiffs also contend that Professors Ferrell, James, and Cornell should be precluded from offering certain opinions set forth in their rebuttal reports because, according to Plaintiffs, those opinions should have been set forth in their initial reports. (Pls.’ Mot. at 29-32.) This Court, however, already *rejected* this argument.

Defendants served the rebuttal reports of Professors Ferrell, James, and Cornell on December 21, 2015. (Dkt. No. 2074.) On January 6, 2016, Plaintiffs filed a motion to strike these rebuttal reports on the ground, among others, that they contained opinions that Plaintiffs contended should have been set forth in Defendants’ experts’ initial reports. (Dkt. No. 2086.) The Court denied that motion on February 1, 2016, and gave Plaintiffs the opportunity to respond to the rebuttal reports by filing a sur-rebuttal. (Dkt. No. 2102.) Plaintiffs availed

themselves of that opportunity and served their expert's sur-rebuttal report on February 17, 2016. (Dkt. No. 2130-12.)⁷

Plaintiffs, therefore, essentially are seeking reconsideration of this Court's February 1 Order. But as this Court has admonished, "[m]otions for reconsideration serve a limited function; to correct manifest errors of law or fact or to present newly discovered evidence." *In re Discover Fin. Servs. Derivative Litig.*, No. 12 C 6436, 2016 WL 1056654, at *1 (N.D. Ill. Mar. 17, 2016) (internal quotations and citation omitted). They "do not provide an opportunity to litigate previously rejected arguments." *Id.* (quotations and citation omitted). Because Plaintiffs present no valid reason for the Court to reconsider its February 1 Order, the Court should deny Plaintiffs' motion to preclude Defendants' experts' from testifying about the opinions set forth in their rebuttal reports.

VII. The Testimony of Defendants' Experts Is Not Cumulative.

Finally, Defendants argue that the testimony of Defendants' experts should be excluded because it is cumulative. (Pls.' Mot. at 32-36.) Once again, Plaintiffs are incorrect.

"Evidence is 'cumulative' when it adds very little to the probative force of the other evidence in the case, so that if it were admitted its contribution to the determination of truth would be outweighed by its contribution to the length of the trial, with all the potential for confusion, as well as prejudice to other litigants, who must wait longer for their trial, that a long trial creates." *United States v. Williams*, 81 F.3d 1434, 1443 (7th Cir. 1996); *see also United*

⁷ As discussed in Section I.B., *supra*, Defendants' experts' initial reports addressed only the threshold issue of the admissibility of Fischel's leakage model, in accordance with the framework for addressing that issue set forth in the Seventh Circuit's opinion. In opposing Plaintiffs' motion to strike Defendants' experts' rebuttal reports, Defendants explained why they believed that this Court's scheduling order dated September 8, 2015 contemplated that Defendants would provide their affirmative evidence of loss causation in subsequent reports. (Dkt. No. 2097.)

States v. Bradley, 145 F.3d 889, 894 (7th Cir. 1998) (stating that a piece of evidence is not cumulative if its evidentiary value outweighs its contribution to the length of the trial).

Professor Ferrell, an MIT-trained economist, will testify about the flaws he identified in Fischel's regression analysis by using well-accepted econometric measures, and his development of Defendants' competing quantification of inflation and damages. Professor James, an industry expert, will testify about economic and regulatory factors during the relevant time period that were having a more detrimental effect on Household and other companies in the subprime sector than on companies operating in the broader financial services sector. And Professor Cornell, the co-author of the sole article on which Fischel purported to base his leakage model, will explain why Fischel's leakage model is inconsistent with model presented in the Cornell and Morgan article. This evidence is *not* cumulative.

Plaintiffs, however, contend that the evidence is cumulative because all three of Defendants' experts reach the same conclusion—that Fischel's leakage model is unreliable—and because Professors Ferrell and James rely on some of the same evidence. But these facts do not render their testimony cumulative. *See, e.g., On Track Innovations Ltd. v. T-Mobile USA, Inc.*, 106 F. Supp. 3d 369, 414 (S.D.N.Y. 2015) (noting that “it is also the case that experts may opine on the same topic without being duplicative inasmuch as each brings a different perspective from different fields of expertise”) (internal quotations and citation omitted)); *Abbott Point of Care, Inc. v. Epocal, Inc.*, 868 F. Supp. 2d 1310, 1331-32 (N.D. Ala. 2012) (finding, after reviewing experts' reports and credentials, that evidence was not cumulative, despite fact that both experts relied on some of the same evidence and reached similar conclusions, and explaining: “Due to the nuances in the two experts' respective backgrounds and proposed testimony, the court concludes that both should be allowed to testify at trial.”).

Nor does the fact that Professor Ferrell relied, in part, on Professor James' identification of nonfraud factors that were affecting companies in the subprime industry, or that Professor Cornell relied, in part, on the results of Professor Ferrell's regression analysis, render Defendants' experts' testimony cumulative. *See, e.g., IBM Corp. v. BGC Partners, Inc.*, No. 10 Civ. 128(PAC), 2013 WL 1775437, at *11 (S.D.N.Y. Apr. 25, 2013) (holding expert testimony was not cumulative where "Geisman opines on software pricing models, while Dr. Blackburn relies on Geisman's work in providing an economic analysis of the damages claimed by IBM," and explaining: "Dr. Blackburn's reliance on Geisman's work is permitted and does not render [his] expert report unnecessarily cumulative." (citation and internal quotations omitted)).

Defendants, furthermore, have no intention of presenting cumulative testimony at the trial. As Plaintiffs note, Defendants already have notified Plaintiffs' counsel that Professor Cornell will not testify at trial about two examples of firm-specific, nonfraud-related information he identified in his report (Pls.' Mot. at 27)—testimony that arguably *would* be cumulative.

The Court, moreover, can take appropriate steps at trial if any testimony that Defendants attempt to present appears to be cumulative. *See, e.g., Abbott Point of Care*, 868 F. Supp. 2d at 1333 (refusing to preclude testimony based on plaintiff's assertion that it was cumulative, directing defendant "to plan the testimony of those two experts in order to minimize any overlap or repetition," and stating: "[I]f the testimony of the second expert called to the stand begins to become cumulative of the testimony of the first of them to testify, the court could take appropriate action to minimize any undue delay in the proceedings.").

The Court, therefore, should deny Plaintiffs' motion to exclude the testimony of Defendants' experts on the ground that their testimony is cumulative.

CONCLUSION

For the reasons set forth herein, the Court should deny Plaintiffs' Omnibus Motion To Exclude Defendants' Experts in its entirety and allow Defendants to present a full and fair defense to the loss causation element of Plaintiffs' securities fraud claim.

Dated: April 25, 2016

Respectfully submitted,

/s/R. Ryan Stoll

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CERTIFICATE OF SERVICE

R. Ryan Stoll, an attorney, hereby certifies that on April 25, 2016, he caused true and correct copies of the foregoing Defendants' Response to Plaintiff's Omnibus Motion To Exclude Defendants' Experts to be served via the Court's ECF filing system on the following counsel of record in this action:

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R. Ryan Stoll

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EXHIBIT A

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,)	
Plaintiffs,)	
vs.)	No. 02 C 5893
HOUSEHOLD INTERNATIONAL, INC.,)	
et al.,)	
Defendants.)	

The videotape deposition of
DANIEL R. FISCHEL, taken before Richard H. Dagdigian,
Illinois CSR No. 084-000035, Notary Public, Cook
County, Illinois, pursuant to the Federal Rules of
Civil Procedure for the United States District Courts
pertaining to the taking of depositions, at 115 South
LaSalle Street, Suite 2910, Chicago, illinois,
commencing at 8:56 a.m. on the 21st day March 2008.

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1 selling single premium credit insurance, and a lot of
 2 people are unhappy about that, they think it's a bad
 3 product, it's predatory, it's unfair, it's improper
 4 -- whatever pejorative terms you want to put on it --
 5 and information comes out that suggests that these
 6 criticisms are going to bear fruit in the form of
 7 Household stopping selling single premium credit
 8 insurance, the stock price could go down even though
 9 the product itself was well known?
 10 MR. BURKHOLZ: Objection, form.
 11 A Well, I guess I have a couple of reactions
 12 to that.
 13 First, I don't think that -- or that the
 14 factual predicate of your question fairly describes
 15 what I described in my report as market participant's
 16 analysis of why Household stock price was declining.
 17 Secondly, because there is an industry
 18 variable in my regression, a second industry variable
 19 based on the industry variable that Doctor Bajaj
 20 claims that we should have included, any change in
 21 the regulatory framework that affects the
 22 profitability of the entire industry is going to be
 23 taken into account in my analysis.
 24 So I guess for those reasons, both of those

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1 reasons, the predicate of your question I don't think
 2 would have any effect on my opinions.
 3 Q Bear with me. I'm trying to find an
 4 exhibit.
 5 We can't seem to find the exhibit. But I
 6 will just read to you from an analyst report, and one
 7 of the things it says is, "We suspect" -- it's not
 8 important for the point -- it's not important for the
 9 point. I just want to read the sentence.
 10 "We suspect that Household may have become
 11 more of a lightning rod for consumer groups as it is
 12 the only large public company in the space".
 13 And --
 14 MR. BURKHOLZ: I'm sorry, Exhibit I, you said?
 15 BY MR. OWEN:
 16 Q My question is, if that's in fact the case,
 17 wouldn't a change in the regulatory approach on a
 18 subject, say, like single premium credit insurance
 19 have an effect on Household that wouldn't be
 20 registering with respect to other companies in the
 21 industry index that you used?
 22 MR. BURKHOLZ: Objection, form.
 23 A Well, first of all, I know I used an
 24 industry index, but I also used the industry index

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1 that Doctor Bajaj identified as the proper industry
 2 index to use.
 3 So --
 4 BY MR. OWEN:
 5 Q I'm not quarreling with the industry index
 6 that you selected or the one Bajaj selected. It's
 7 really a question of what's going to show up in that
 8 index.
 9 If Household is the biggest player in that
 10 field, and a change is made that affects Household
 11 more than anybody else, isn't that going to be
 12 something that could produce a significant impact on
 13 Household's stock price after controlling for
 14 industry and market forces?
 15 MR. BURKHOLZ: Objection, form.
 16 A I would say yes, potentially, but not
 17 simply because it's the biggest.
 18 If it disproportionately affected by --
 19 hypothetically -- a regulatory change, meaning that
 20 the regulatory change has a bigger effect on its
 21 expected future profitability than for other firms,
 22 then the industry index would maybe partially pick up
 23 the effect of the change.
 24 But there still could be hypothetically a

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1 firm specific effect for Household.
 2 BY MR. OWEN:
 3 Q And that would be because, notwithstanding
 4 the fact that it was a known product, a disclosed
 5 product, or almost because of the fact that it was a
 6 disclosed product?
 7 A Well, that's a separate issue. I wasn't
 8 speaking about the actual facts and circumstances of
 9 the case.
 10 I was just speaking, as a matter of
 11 statistics, is it possible that a regulatory change
 12 that affects the entire industry could affect one
 13 firm, whether Household or any other firm,
 14 disproportionately.
 15 So even though you have a control for an
 16 industry variable, you still have a firm specific
 17 component to the return, and the answer to that is
 18 yes.
 19 Q So my point, I guess, is that the fact that
 20 a product that Household sells is being called
 21 predatory, notwithstanding the fact that it's been
 22 disclosed, could have a negative effect on Household
 23 that would show up in the form of negative price
 24 changes after controlling for industry and market

EXHIBIT B

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

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8

1 THE VIDEOGRAPHER: We are now on the
2 record. This marks the beginning of Media No. 1 in
3 the deposition of Daniel Fischel in the matter of
4 Lawrence E. Jaffe, et al., versus Household
5 International, et al., in the U.S. District Court,
6 Northern District of Illinois, Eastern Division.
7 This deposition is being held at 155 North Wacker
8 Drive, Chicago, Illinois on February 24, 2016 and
9 the time is now 9:10 a.m. All attorneys present
10 will be noted on the stenographic record. Will the
11 court reporter please swear in the witness.
12 (Whereupon, the witness was
13 duly sworn.)
14 DANIEL FISCHEL, Ph.D.,
15 having been first duly sworn, was examined and
16 testified as follows:
17 EXAMINATION
18 BY MR. FARINA:
19 **Q. Good morning, Professor Fischel.**
20 A. Good morning.
21 **Q. Let me start by handing you what we've**
22 **marked as Exhibit 1, and we're going to start at 1**
23 **and run consecutively.**
24 A. Okay.
25

9

1 (Whereupon, Exhibit 1 marked.)
2 (Whereupon, the document was
3 tendered.)
4 BY MR. FARINA:
5 **Q. You're familiar with that document?**
6 A. No, I'm not actually. I don't know what
7 this is.
8 **Q. I'll tell you this is the verdict form**
9 **from the first trial. It's the one that the jury**
10 **actually filled out.**
11 **Have you looked at this verdict**
12 **form since the first trial?**
13 A. No, I didn't look at it at the time or
14 I -- and I haven't look at it subsequently.
15 **Q. So you haven't used this verdict form in**
16 **any way in creating your damages models?**
17 A. I have not. My damages models predated
18 the existence of this form.
19 **Q. Now, when you presented your damages**
20 **models in the first trial, you were making certain**
21 **assumptions about liability; is that correct?**
22 A. That's probably fair to say. That's
23 correct.
24 **Q. And the jury in the first trial actually**
25 **made findings as to liability. And at the time, the**

10	<p>1 plaintiffs were presenting 40 separate alleged</p> <p>2 misstatements.</p> <p>3 Do you recall that?</p> <p>4 A. No, I don't.</p> <p>5 Q. Okay.</p> <p>6 A. I'm not disagreeing, I just don't recall</p> <p>7 it one way or the other.</p> <p>8 Q. And you understand that the jury in the</p> <p>9 first trial agreed with the plaintiffs as to 17 of</p> <p>10 the alleged misstatements and disagreed with the</p> <p>11 plaintiffs as to 23 of the alleged misstatements.</p> <p>12 A. Again, that may be right. I don't know.</p> <p>13 But I don't have any familiarity with that one way</p> <p>14 or the other.</p> <p>15 Q. So that's not something that you've</p> <p>16 taken into account in presenting your damages model</p> <p>17 in the retrial?</p> <p>18 A. I haven't specifically taken that into</p> <p>19 account, no.</p> <p>20 Q. Could you take a look at the document</p> <p>21 that's before you? And if you want to peruse the</p> <p>22 document, that's fine with me, but I would like to</p> <p>23 direct you to Page 40 of the document.</p> <p>24 A. Okay. All right. I have it.</p> <p>25 Q. So the way this is laid out, there is a</p>	12	<p>1 never looked at this document. And like I said, it</p> <p>2 didn't play any role in the damage analysis that I</p> <p>3 did either at the trial or what I have presented in</p> <p>4 my reports in connection with the potential retrial.</p> <p>5 Q. All right. If you would flip to Page</p> <p>6 39.</p> <p>7 A. Okay. I have it.</p> <p>8 Q. So this is statement 39. You'll see the</p> <p>9 jury rejected that alleged misstatement as well?</p> <p>10 A. I see that.</p> <p>11 Q. And I take it your answer is the same,</p> <p>12 you haven't reduced your damages in any way to take</p> <p>13 into account that the jury rejected this particular</p> <p>14 alleged misstatement?</p> <p>15 A. It's really the same answer. This</p> <p>16 document played -- this particular document played</p> <p>17 no role in my analysis of my damage model or</p> <p>18 calculations. The only adjustments I made are the</p> <p>19 ones that I've stated.</p> <p>20 Q. Okay. But it's not just this document.</p> <p>21 Your model doesn't take into account the fact that</p> <p>22 the jury rejected this alleged misstatement.</p> <p>23 A. I can't speak to this alleged</p> <p>24 misstatement because I don't know what this</p> <p>25 particular misstatement means in the connection --</p>
11	<p>1 separate question for each of the 40 alleged</p> <p>2 misstatements. And the jury decided whether or not</p> <p>3 Household and the individuals had made misstatements</p> <p>4 that were actionable or not made misstatements, and</p> <p>5 this particular page goes to statement No. 40.</p> <p>6 Do you see that?</p> <p>7 A. I see it, yes.</p> <p>8 Q. And do you see that the jury rejected</p> <p>9 the alleged misstatement No. 40?</p> <p>10 A. I do.</p> <p>11 Q. All right. Now, did you make any</p> <p>12 adjustment to your damages analysis to take into</p> <p>13 account that the jury had rejected this alleged</p> <p>14 misstatement?</p> <p>15 A. As I said, I didn't look at this</p> <p>16 document. I think I adjusted my -- the dates for</p> <p>17 the beginning of my damage calculations using the</p> <p>18 exact same model with one slight adjustment for the</p> <p>19 first three days. That's all I did.</p> <p>20 Q. So I'll represent to you that the</p> <p>21 statements run chronologically, so statement No. 40</p> <p>22 would be the last alleged misstatement. And if you</p> <p>23 want to verify that I can walk you through the</p> <p>24 document.</p> <p>25 A. You could do whatever you'd like. I've</p>	13	<p>1 in connection with the case. I did modify my model</p> <p>2 to have a different starting date because of what I</p> <p>3 understood the jury found with respect to what the</p> <p>4 jury considered to be the first false and misleading</p> <p>5 statement so I did take the -- my understanding of</p> <p>6 the jury verdict into account in that way.</p> <p>7 I also made a slight adjustment for</p> <p>8 the first three days of the class period based on</p> <p>9 what -- I guess what I call the new class period</p> <p>10 based on my understanding of the 7th Circuit</p> <p>11 opinion. But other than that, I kept everything the</p> <p>12 same.</p> <p>13 Q. And if you would turn to Page 14 of the</p> <p>14 document.</p> <p>15 A. Okay. I have it.</p> <p>16 Q. That is statement No. 14, and you'll see</p> <p>17 that there are "yes" boxes checked or "yes" lines</p> <p>18 checked. I'll represent to you that that's the</p> <p>19 first alleged misstatement that the jury found.</p> <p>20 So your testimony is you took this</p> <p>21 particular misstatement into account by adjusting</p> <p>22 the starting point for your model; is that fair?</p> <p>23 A. I don't know if it's fair or not. I</p> <p>24 don't want to comment on this particular document</p> <p>25 because, as I said, I've never seen it, I didn't</p>

34	<p>1 A. I would have to look again at the</p> <p>2 specific dates, but I'm sure you're reading it</p> <p>3 correctly.</p> <p>4 Q. All right. So on one of your models,</p> <p>5 the specific disclosure model, the inflation is</p> <p>6 going down by \$2.39, and on your other model for</p> <p>7 that exact same time period the inflation is going</p> <p>8 up by \$1.74, correct?</p> <p>9 A. I haven't checked the dates, I haven't</p> <p>10 checked the arithmetic, but I'm sure your arithmetic</p> <p>11 with respect to the particular dates is correct.</p> <p>12 But I already said you could have</p> <p>13 situations under the leakage model where inflation</p> <p>14 goes in different directions than it does under the</p> <p>15 specific disclosure model precisely because the</p> <p>16 specific disclosure isn't attempting to measure the</p> <p>17 effective leakage and the leakage model is. So when</p> <p>18 you're measuring two different things you can get</p> <p>19 two different results, and that's what this</p> <p>20 particular exhibit demonstrates.</p> <p>21 Q. Well ultimately they're both measuring</p> <p>22 artificial inflation, and one of your models tells</p> <p>23 you that the artificial inflation is going down and</p> <p>24 the other one says that the artificial inflation is</p> <p>25 going up, correct?</p>	36	<p>1 A. \$5.30.</p> <p>2 Q. On 7/31/02, according to your specific</p> <p>3 disclosure model, what is the amount of inflation in</p> <p>4 Household's share price?</p> <p>5 A. \$3.10.</p> <p>6 Q. So under your specific disclosure model</p> <p>7 that model is telling you that the inflation has</p> <p>8 gone down by \$2.20, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Let's look at your other model. Your</p> <p>11 other model is telling you something very different,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. Your other model says that the inflation</p> <p>15 actually goes up by \$2.19 during that same time</p> <p>16 period.</p> <p>17 A. If you want me to do the arithmetic. I</p> <p>18 am happy to take your --</p> <p>19 Q. Subject to correction, it's \$9.30 on</p> <p>20 July 23 and then it goes up to \$11.49.</p> <p>21 A. Correct.</p> <p>22 Q. So in your inflation model where you</p> <p>23 have this continuous leakage of inflation, the</p> <p>24 artificial inflation is actually going up and in</p> <p>25 your other model it's going in the opposite</p>
35	<p>1 A. I agree with the second part of your</p> <p>2 question. With respect to the first part, if you</p> <p>3 keep leaving out that they're measuring inflation in</p> <p>4 different ways, one measuring inflation just based</p> <p>5 on a series of corrective disclosures and one</p> <p>6 measuring inflation based on leakage over lengthy --</p> <p>7 a lengthy period, from November 15, 2001 to October</p> <p>8 11, 2002, it's not surprising that in fact you would</p> <p>9 expect that you would get two different calculations</p> <p>10 because you're measuring inflation in two different</p> <p>11 ways for reasons that I explained to the jury in the</p> <p>12 first trial.</p> <p>13 I also talked about which measure I</p> <p>14 thought was more accurate and the reasons I thought</p> <p>15 it was more accurate. But that's why you get</p> <p>16 different numbers.</p> <p>17 Q. Okay. Take a look at the time period</p> <p>18 July 23, 2002 through July 31, 2002.</p> <p>19 A. I am sorry. Could you give me the dates</p> <p>20 again?</p> <p>21 Q. Sure. July 23, 2002.</p> <p>22 A. Yes.</p> <p>23 Q. So according to your specific disclosure</p> <p>24 model, what is the amount of artificial inflation in</p> <p>25 Household's share price?</p>	37	<p>1 direction.</p> <p>2 MR. BURKHOLZ: Objection to form.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Well, it may be true as a matter of</p> <p>5 arithmetic, but again, both models are tailored to</p> <p>6 the facts and circumstances of the case. And using</p> <p>7 standard methodology, the -- and in fact, the</p> <p>8 calculation of inflation under the leakage model</p> <p>9 comes directly from an article written by Cornell</p> <p>10 and Morgan, Cornell being one of the defendants'</p> <p>11 experts in the case as the correct way to measure</p> <p>12 inflation in the presence of leakage.</p> <p>13 And the back-casting approach used</p> <p>14 in the specific model again is very, very standard</p> <p>15 in these type of cases and again recognized in a lot</p> <p>16 of the secondary literature. So what's what I did.</p> <p>17 BY MR. FARINA:</p> <p>18 Q. That's fine. But you did it two ways,</p> <p>19 in one way the inflation goes up and the other way</p> <p>20 it goes down in the same period of time.</p> <p>21 MR. BURKHOLZ: Objection. That's</p> <p>22 actually not accurate, your question, but go ahead.</p> <p>23 BY MR. FARINA:</p> <p>24 Q. Do you agree with that?</p> <p>25 A. Again, I'd have to look at the specific</p>

78	<p>1 those indices both declined during your leakage</p> <p>2 period. Your point is that Household declined more,</p> <p>3 correct?</p> <p>4 A. I think that is something I stated in my</p> <p>5 reports. I think that's correct.</p> <p>6 Q. All right.</p> <p>7 A. And possibly at the trial as well.</p> <p>8 Q. So any time the performance of</p> <p>9 Household's stock on any day during your leakage</p> <p>10 period was different than the predicted return, you</p> <p>11 attributed that difference to the leakage of</p> <p>12 fraud-related information, correct?</p> <p>13 A. It is true that the -- in the leakage</p> <p>14 period, the actual return on every day is replaced</p> <p>15 by a predicted return produced by a particular</p> <p>16 regression, and that difference is an input into the</p> <p>17 calculation of artificial inflation under the</p> <p>18 leakage model, that's correct.</p> <p>19 Q. Okay. So any time there is a departure</p> <p>20 from the predicted return, that is attributed by</p> <p>21 your model to artificial inflation?</p> <p>22 A. Well, during a period of leakage --</p> <p>23 Q. During a period of leakage.</p> <p>24 A. When there is no leakage, actual returns</p> <p>25 are used in the calculation. And I don't want to</p>	80	<p>1 But I also think it's important</p> <p>2 when you keep referring to my model, it is my</p> <p>3 quantification of leakage but the model originated</p> <p>4 with -- in an article by Cornell and Morgan which I</p> <p>5 concluded was appropriate to use under the facts and</p> <p>6 circumstances of this case.</p> <p>7 BY MR. FARINA:</p> <p>8 Q. Your model, the way it works, rejects</p> <p>9 the possibility that any departure from the</p> <p>10 predicted return could have been caused by something</p> <p>11 other than the leakage of fraud-related information;</p> <p>12 isn't that true?</p> <p>13 A. I'm not going to keep repeating the</p> <p>14 caveat when you keep referring to the term "my</p> <p>15 model," but that's my quantification of leakage. If</p> <p>16 you use that language, then we won't have to have</p> <p>17 this modification of your question every time you</p> <p>18 ask it.</p> <p>19 But the way that the leakage model</p> <p>20 works is exactly as you describe, you know, with the</p> <p>21 result that positive divergences, as well as</p> <p>22 negative divergences between actual and predicted</p> <p>23 returns are all factored into the quantification of</p> <p>24 leakage.</p> <p>25 Q. The fraud inflation pursuant to your</p>
79	<p>1 keep adding this caveat to what you keep saying in</p> <p>2 your question, but it is true that I applied a</p> <p>3 leakage model and I concluded that it was</p> <p>4 appropriate to apply under the facts and</p> <p>5 circumstances of this case, but I don't want to</p> <p>6 claim credit for the existence of the model, which I</p> <p>7 think was developed in an article by Cornell and</p> <p>8 Morgan.</p> <p>9 Q. Professor Fischel, just mechanically,</p> <p>10 during your 228 trading day leakage period,</p> <p>11 mechanically the way your model works is that any</p> <p>12 residual on any day, that residual is attributed to</p> <p>13 the leakage of fraud-related information. That's</p> <p>14 just how your model works, correct?</p> <p>15 MR. BURKHOLZ: Objection. Compound and</p> <p>16 asked and answered.</p> <p>17 BY THE WITNESS:</p> <p>18 A. Well, I'm just going to repeat what I</p> <p>19 just said, that it is true that during the leakage</p> <p>20 period, as part of the calculation of the</p> <p>21 quantification of leakage, actual returns are</p> <p>22 replaced by predicted returns. And the difference</p> <p>23 between actual returns and predicted returns</p> <p>24 residuals are input into the calculation of the</p> <p>25 quantification of leakage.</p>	81	<p>1 quantification is unrelated in any way to the actual</p> <p>2 misstatements found by the jury; isn't that correct?</p> <p>3 MR. BURKHOLZ: Objection. Vague.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I'm sorry. I didn't understand that</p> <p>6 question.</p> <p>7 BY MR. FARINA:</p> <p>8 Q. Sure. The model that you're offering to</p> <p>9 calculate damages, the leakage model, calculates</p> <p>10 inflation by reference to the residuals during every</p> <p>11 day in your leakage period, that's what we've just</p> <p>12 been discussing.</p> <p>13 So what doesn't factor into that</p> <p>14 analysis are the jury's findings of particular</p> <p>15 misstatements on particular days, correct?</p> <p>16 A. I'm not sure I understood what you mean</p> <p>17 by it doesn't factor into the analysis because the</p> <p>18 quantification of leakage is a quantification of the</p> <p>19 leakage of information following the fraudulent</p> <p>20 disclosures by Household and its executives. So to</p> <p>21 say it doesn't relate I think really does not</p> <p>22 capture the reality of the exercise or why the</p> <p>23 quantification of leakage is being performed.</p> <p>24 Q. Well, when we started this deposition,</p> <p>25 you were not even aware of the 17 misstatements that</p>

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1 go up or down on days when there are no identifiable
 2 false and misleading statements. That's why it's
 3 called "leakage" as opposed to a quantification of
 4 the effect of a specific disclosure.
 5 BY MR. FARINA:
 6 **Q. This is not artificial inflation leaking**
 7 **out of the stock. Somehow artificial inflation is**
 8 **coming into the stock and causing the artificial**
 9 **inflation to nearly double, correct? That's how**
 10 **your model works.**
 11 MR. BURKHOLZ: Objection. Asked and
 12 answered a couple of times already.
 13 BY THE WITNESS:
 14 A. Again, it is my quantification of
 15 inflation using a leakage model. The leakage model,
 16 which I concluded was appropriate to use under the
 17 facts and circumstances of this case, was developed
 18 in an article by Cornell and Morgan. And the
 19 results are what the results are based on the
 20 application of that standard methodology.
 21 BY MR. FARINA:
 22 **Q. But as a methodology for calculating**
 23 **inflation and thus damages in this legal case, the**
 24 **model that you are using increases inflation**
 25 **dramatically without any misrepresentation found by**

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1 **the jury. That's just how your model works,**
 2 **correct?**
 3 MR. BURKHOLZ: Objection. It's a
 4 compound question. Now you've asked him about six
 5 times so I think it's about time to move on.
 6 BY MR. FARINA:
 7 **Q. Can you answer the question?**
 8 A. Yes, I used a model developed by Cornell
 9 and Morgan to measure the effect of leakage. I
 10 concluded that that particular methodology was
 11 appropriate to use under the facts and circumstances
 12 of this case. I applied that methodology to the
 13 stock price movements during the course of the
 14 leakage period and the results are what's reflected
 15 in this particular exhibit.
 16 **Q. And this particular exhibit reflects**
 17 **that during your leakage period, the inflation**
 18 **calculated by the model increases 91 days out of 228**
 19 **days where there is no misrepresentation by the**
 20 **jury.**
 21 MR. BURKHOLZ: I'm going to object. If
 22 you want to show him particular days. To just make
 23 that statement is a little bit unfair.
 24 MR. FARINA: Okay.
 25 BY THE WITNESS:

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1 A. In addition to that, I don't think the
 2 jury made misrepresentations.
 3 BY MR. FARINA:
 4 **Q. The jury found misrepresentations, they**
 5 **made findings of misrepresentations. And your**
 6 **model, repeatedly over the course of the leakage**
 7 **period has the inflation increasing on days where**
 8 **there was no misrepresentation found by the jury.**
 9 **Do you agree with that?**
 10 MR. BURKHOLZ: Objection. Asked and
 11 answered. Now seven times.
 12 Go ahead. This is the way they
 13 want to spend their time.
 14 BY THE WITNESS:
 15 A. It is my quantification of inflation as
 16 applied to the facts and circumstances of this case
 17 based on a model developed by Cornell and Morgan
 18 which I concluded was appropriate to use under the
 19 facts and circumstances of this case.
 20 And the results of the application
 21 of that model in my quantification including leakage
 22 are reflected in my trial testimony and in
 23 subsequent reports that I have submitted and --
 24 including an exhibit very similar to this one
 25 without your yellow highlighting.

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1 BY MR. FARINA:
 2 **Q. Well, the results are reflected in the**
 3 **exhibit, and anyone who looks at the exhibit can see**
 4 **there are many days during your leakage period where**
 5 **the artificial inflation, according to the model,**
 6 **goes up rather than down, correct?**
 7 A. I think it is literally accurate to say
 8 that during the leakage period, inflation
 9 fluctuates; sometimes it goes up, and sometimes it
 10 goes down. That's correct.
 11 (Whereupon, Exhibit 6 marked.)
 12 (Whereupon, the document was
 13 tendered.)
 14 BY MR. FARINA:
 15 **Q. Take a look at Exhibit 6.**
 16 **So there is an exhibit we recreated**
 17 **based on the information that's contained in Exhibit**
 18 **5 which is your outputs from your various models.**
 19 MR. BURKHOLZ: Take your time to review
 20 it, please.
 21 BY THE WITNESS:
 22 A. Is there a question?
 23 BY MR. FARINA:
 24 **Q. Sure. So there are 228 days in the**
 25 **leakage period, 228 trading days. Would you agree**

190	<p>1 Q. You were asked a hypothetical about a</p> <p>2 regulatory change that has a disproportionate impact</p> <p>3 on Household. And your answer was:</p> <p>4 "ANSWER: I was just speaking as a</p> <p>5 matter of statistics. It is possible that a</p> <p>6 regulatory change that affects the entire industry</p> <p>7 could affect one firm, whether Household or any</p> <p>8 other firm, disproportionately. So even though you</p> <p>9 have a control for an industry variable, you still</p> <p>10 have a firm-specific component to the return and the</p> <p>11 answer to that is yes."</p> <p>12 That was your testimony back then,</p> <p>13 correct?</p> <p>14 A. Yes. That's what I said in my answer to</p> <p>15 your question a minute ago.</p> <p>16 Q. The difference is your testimony back in</p> <p>17 2008, you referred to that disproportionate impact</p> <p>18 on a particular company being firm-specific.</p> <p>19 A. Exactly what are you referring to? I</p> <p>20 said "firm-specific effect." That's not the same</p> <p>21 thing as firm-specific information. I don't think</p> <p>22 there is any difference.</p> <p>23 Q. You say "you still have a firm-specific</p> <p>24 component to the return."</p> <p>25 A. Described as a firm-specific effect.</p>	192	<p>1 BY THE WITNESS:</p> <p>2 A. You're asking me to assume that the</p> <p>3 regression doesn't capture the effects of the</p> <p>4 information because it might or it might not. But</p> <p>5 if you're asking me to assume that it doesn't, I</p> <p>6 would give the same answer, that it's industrywide</p> <p>7 information that you're asking me to assume, has a</p> <p>8 disproportion effect on particular firms. So with</p> <p>9 respect to those firms, there is a firm-specific</p> <p>10 effect of industrywide information.</p> <p>11 BY MR. FARINA:</p> <p>12 Q. Okay. So information that is not</p> <p>13 firm-specific can have a firm-specific effect?</p> <p>14 A. If you're asking me hypothetically, yes,</p> <p>15 that's certainly possible.</p> <p>16 Q. Okay.</p> <p>17 (Whereupon, Exhibit 15</p> <p>18 marked.)</p> <p>19 (Whereupon, the document was</p> <p>20 tendered.)</p> <p>21 BY MR. FARINA:</p> <p>22 Q. Let me hand you what we've marked as</p> <p>23 Exhibit 15.</p> <p>24 A. Thank you.</p> <p>25 Q. You were an expert witness in the</p>
191	<p>1 Q. So the information itself is not</p> <p>2 firm-specific in your view because it might apply to</p> <p>3 more than one firm but it could have a</p> <p>4 disproportionate impact on one firm?</p> <p>5 A. Correct. Potentially.</p> <p>6 Q. And if it has a disproportionate impact</p> <p>7 on one firm, then that's not going to be captured by</p> <p>8 a regression that uses a market index and an</p> <p>9 industry index, correct?</p> <p>10 A. Well, what you said is circular. If the</p> <p>11 market in the industry index doesn't capture the</p> <p>12 disproportionate effect, yes. We're talking</p> <p>13 hypothetically so that's what I would say.</p> <p>14 Q. I'll give you another hypothetical.</p> <p>15 It's a little closer. Data is released showing</p> <p>16 rising delinquencies by subprime borrowers, and the</p> <p>17 information has a disproportionate impact on certain</p> <p>18 companies with significant subprime exposure such</p> <p>19 that a regression that simply uses the S&P 500 and</p> <p>20 the S&P financials would not capture the full impact</p> <p>21 of that information on certain companies that have</p> <p>22 this disproportion exposure.</p> <p>23 Is that firm-specific information</p> <p>24 or not?</p> <p>25 MR. BURKHOLZ: Objection to the form.</p>	193	<p>1 McKesson case?</p> <p>2 A. I was.</p> <p>3 Q. Is that one of your favorites or not?</p> <p>4 A. No. I mean, all cases that I'm involved</p> <p>5 in on some level I'm grateful to be involved in, but</p> <p>6 there are certain ones, particularly a couple of</p> <p>7 trials, the Glendale trial was historic and that's</p> <p>8 why it has particular significance to me in addition</p> <p>9 to what the Court said about me. But anyway.</p> <p>10 Q. Can you turn to Paragraph 32 in your</p> <p>11 report in that case?</p> <p>12 MR. BURKHOLZ: I would caution you to</p> <p>13 look what's around this.</p> <p>14 THE WITNESS: Yes, I agree.</p> <p>15 BY MR. FARINA:</p> <p>16 Q. In Paragraph 32, you wrote, "First,</p> <p>17 Professor Benston incorrectly assumes that his index</p> <p>18 of comparable companies and the results of his</p> <p>19 regressions fully account for industry effects on</p> <p>20 McKesson's stock price." And you go on to say,</p> <p>21 "Because changes in industry conditions affect</p> <p>22 different companies differently, no stock can be</p> <p>23 expected to perform just like an index or just like</p> <p>24 predicted returns based on an index."</p> <p>25 Do you see that?</p>

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30:25	237:2	Cornell's	62:17 63:5	146:12	259:4,5,16
contracted	copies 296:8	101:20	63:8 65:10	147:11	259:20
174:21	Cornell 37:9	102:20	65:11,13	156:13,14	260:7,12,16
contracting	37:10 66:10	105:25	66:8,23	158:1,2	260:17,20
175:3,7	67:11 68:5	106:6,12	67:3,9,18	166:6,17	261:7,12,13

EXHIBIT C

Page 1

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
 3
 4 LAWRENCE E. JAFFE PENSION
 PLAN, On Behalf of Itself and
 5 All Others Similarly
 Situated,
 6
 Plaintiffs,
 7
 vs. No. 1:02-CV-05893
 8
 HOUSEHOLD INTERNATIONAL,
 9 INC., et al.,
 10 Defendants.

11
 12
 13
 14 VIDEOTAPED DEPOSITION OF CHRISTOPHER M. JAMES
 Los Angeles, California
 15 Monday, March 14, 2016
 16
 Volume I
 17
 18
 19
 20
 21
 22
 23 Reported By:
 CHERYL R. KAMALSKI
 24 CSR No. 7113
 25 Job No.: 10022555

Page 2

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
 3
 4 LAWRENCE E. JAFFE PENSION
 PLAN, On Behalf of Itself and
 5 All Others Similarly
 Situated,
 6
 Plaintiffs,
 7
 vs. No. 1:02-CV-05893
 8
 HOUSEHOLD INTERNATIONAL,
 9 INC., et al.,
 10 Defendants.

11
 12
 13
 14 Videotaped deposition of CHRISTOPHER M.
 15 JAMES, Volume I, taken on behalf of Plaintiffs, at
 16 300 South Grand Avenue, 32nd Floor, Los Angeles,
 17 California, beginning at 9:07 a.m., and ending at
 18 6:03 p.m., on Monday, March 14, 2016, before
 19 Cheryl R. Kamalski, Certified Shorthand Reporter
 20 No. 7113.
 21
 22
 23
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 19
 20 Videographer:
 21
 MAX MAI
 22
 23
 24
 25

Page 13

1 **Q Okay. Did you read the trial testimony of**
 2 **any Household employees?**
 3 A I don't believe so.
 4 **Q Okay. When I --**
 5 A Um -- I've seen reference to some of their
 6 testimony and looked around various parts of that
 7 reference. But in terms of reading it all and -- in
 8 total, I did not.
 9 **Q Okay. When I say "Household employees," I**
 10 **also mean former Household employees.**
 11 A I understood that to be the case.
 12 **Q Okay. Did you review any trial exhibits?**
 13 A I did.
 14 **Q Okay. Tell me about that.**
 15 A Certainly there are some trial exhibits in
 16 the materials that are attached to the Fischel
 17 reports; I believe there were some trial exhibits
 18 associated with Fischel's trial testimony, which I
 19 reviewed. That's what comes to mind as I sit here.
 20 **Q Okay. Nothing else that you recall?**
 21 A There may be others, but that's what I recall
 22 as I sit here.
 23 **Q Okay. Did you list any trial exhibits at all**
 24 **in your materials relied on?**
 25 A I've -- I listed the trial testimony, and

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1 changes that would have a disproportionate impact on
 2 Household vis-à-vis other firms within, for example,
 3 the S&P Financials Index or the CF First Boston
 4 Specialty Finance Index.
 5 **Q Okay. So was your assignment, when you**
 6 **undertook it, to see if there was a disproportionate**
 7 **effect based on market and industry news on**
 8 **Household?**
 9 A No. The first report was to identify factors
 10 that may have a disproportionate impact. And then
 11 in the second report, I demonstrate that those
 12 factors that I've identified, in fact, did have a
 13 disproportionate impact.
 14 **Q I'd ask you to turn to your CV, which I think**
 15 **is Exhibit 1 to your report. Do you have that in**
 16 **front of you?**
 17 A I do.
 18 **Q Okay. And can you tell me -- what is a**
 19 **visiting scholar at the Federal Reserve Bank of**
 20 **San Francisco?**
 21 A It is a scholar who's charged with
 22 providing -- assisting the staff in their ongoing
 23 research, as well as providing consulting services
 24 ultimately to the president of the bank on issues
 25 pertaining to financial market developments, as well

Page 14

1 I -- my recollection is, associated with that trial
 2 testimony were the exhibits.
 3 **Q Okay. That's consistent with your answer --**
 4 **"Professor Fischel" -- I take it?**
 5 A Yes.
 6 **Q Did you think it was important to review the**
 7 **trial testimony of the witnesses in the case before**
 8 **you rendered an opinion on loss causation?**
 9 A In terms of reviewing their testimony, as I
 10 understood my -- my assignment here was to respond
 11 to certain opinions that Mr. Fischel has -- has put
 12 forth. And in -- in formulating my response, I
 13 reviewed the materials that he cites to for purposes
 14 of formulating his opinion, and -- and I thought
 15 that, at the time, was sufficient.
 16 **Q Okay. When you say your assignment as you**
 17 **understood it, what did you understand your**
 18 **assignment to be in rendering your first report?**
 19 A In rendering my first report was to utilize
 20 my expertise in financial institutions to -- and
 21 familiarize myself with the business model of
 22 Household -- to determine the extent to which there
 23 may be significant factors either in the industry or
 24 in subsets of the industry or in the market or in
 25 the economy; regulatory and -- and legislative

Page 16

1 as regulatory and examination issues that may impact
 2 the banks in the San Francisco Federal Reserve's
 3 District.
 4 **Q Okay. Is that a paid position?**
 5 A It is.
 6 **Q Okay. How do you get selected for that?**
 7 A I was asked in 2008 to -- whether I would be
 8 interested in working at the bank, given the issues
 9 that the bank was facing.
 10 **Q Okay. And you also list that you were a**
 11 **consultant for the FDIC between '88 and '91. Do you**
 12 **see that?**
 13 A Yes.
 14 **Q What were your duties and responsibilities in**
 15 **that position?**
 16 A Primarily the focus was on evaluating
 17 procedures that the FDIC followed for dealing with
 18 problem banks -- either distressed or failing
 19 institutions -- as well as working with staff on
 20 developing -- using economic analysis to address
 21 issues that may be of concern to the chairman.
 22 **Q Okay. And is that a paid position as well?**
 23 A It was.
 24 **Q And then I notice that you also list senior**
 25 **economic advisor for controller [sic] of the**

EXHIBIT D

Frank Ferrell, III

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF ILLINOIS
 3 No. 1:02-CV-05893
 4 - - - - -
 5 LAWRENCE E. JAFFE PENSION PLAN, on behalf
 6 of itself and all others similarly situated,
 7 Plaintiffs,
 8 vs.
 9 HOUSEHOLD INTERNATIONAL, INC., et al.,
 10 Defendants.
 11 - - - - -
 12 VIDEOTAPED DEPOSITION OF
 13 FRANK ALLEN FERRELL, III
 14 Saturday, February 27, 2016 9:02 a.m.
 15 Skadden Arps LLP
 16 500 Boylston Street, Boston, MA 02116
 17
 18
 19
 20
 21 Reported by:
 22 Janet Sambataro, RMR, CRR, CLR
 23 Job No. 10022056
 24
 25

Page 2

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 5 February 27, 2016
 6 9:02 a.m.
 7
 8
 9
 10 Videotaped deposition of FRANK ALLEN
 11 FERRELL, III, held at the offices of Skadden Arps
 12 LLP, 500 Boylston Street, Boston, Massachusetts,
 13 pursuant to Agreement before Janet Sambataro, a
 14 Registered Merit Reporter, Certified Realtime
 15 Reporter, Certified LiveNote Reporter, and a
 16 Notary Public within and for the Commonwealth of
 17 Massachusetts.
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Frank Ferrell, III

<p style="text-align: right;">Page 49</p> <p>1 Correct?</p> <p>2 A. That's correct. It also includes</p> <p>3 production from Fischel. But I don't remember</p> <p>4 whether that production included -- I'm not</p> <p>5 saying that production included transcripts.</p> <p>6 But -- but, again, it's the same answer that I</p> <p>7 gave earlier.</p> <p>8 Q. Do you know who Joe Vozar is?</p> <p>9 A. I don't have a specific recollection.</p> <p>10 I do know that Professor Fischel cites to various</p> <p>11 statements by Household officials at different</p> <p>12 times. So I did review that. But I haven't</p> <p>13 memorized the positions of everybody in</p> <p>14 Household.</p> <p>15 Q. You didn't read the deposition or trial</p> <p>16 testimony of plaintiff's expert, Harris Devor,</p> <p>17 did you?</p> <p>18 A. I don't have a specific recollection of</p> <p>19 that.</p> <p>20 Q. And you didn't read the trial testimony</p> <p>21 or deposition testimony of plaintiff's expert</p> <p>22 Catherine Ghiglieri?</p> <p>23 A. Again, I don't have a specific</p> <p>24 recollection of that, but I would incorporate my</p> <p>25 earlier answer in terms of the process by which I</p>	<p style="text-align: right;">Page 50</p> <p>1 reviewed these types of materials.</p> <p>2 Q. If a person is not mentioned in</p> <p>3 Fischel's reports, you didn't read their</p> <p>4 testimony?</p> <p>5 A. Not quite what I said. If it's not</p> <p>6 relied upon or pointed to as a basis in</p> <p>7 Professor Fischel's various reports, and it's not</p> <p>8 otherwise listed on these two Appendix Bs, then I</p> <p>9 believe it's accurate that I did not otherwise</p> <p>10 review it.</p> <p>11 Q. Did anyone on your behalf speak to any</p> <p>12 current or former Household employees about this</p> <p>13 case?</p> <p>14 MR. FITZGERALD: Object to form.</p> <p>15 A. Not that I --</p> <p>16 MR. FITZGERALD: Go ahead.</p> <p>17 THE WITNESS: Sorry.</p> <p>18 A. Not to my knowledge.</p> <p>19 BY MR. BROOKS:</p> <p>20 Q. So other than the information that's</p> <p>21 listed in Appendix B to both reports, you didn't</p> <p>22 rely on information from current or former</p> <p>23 Household employees to form your opinion. Is</p> <p>24 that fair to say?</p> <p>25 A. Yes. It's fair to say -- just to be</p>
<p style="text-align: right;">Page 51</p> <p>1 clear, it's fair to say that I'm not relying upon</p> <p>2 conversations I had or conversations that</p> <p>3 somebody on my behalf had with Household</p> <p>4 officials.</p> <p>5 Q. In fact, you're not aware of any such</p> <p>6 conversations?</p> <p>7 A. That's right. Ergo, I would not be</p> <p>8 relying on it. Yes.</p> <p>9 Q. What did you do to learn about the</p> <p>10 details of defendants' fraud, if anything?</p> <p>11 A. Well, I spent a significant amount of</p> <p>12 time reading the -- I read the Corrected Amended</p> <p>13 Consolidated Class Action Complaint for violation</p> <p>14 of the federal securities law. I read the jury</p> <p>15 verdict form, where the jury specifically found</p> <p>16 17 misrepresentations, also rejected a number of</p> <p>17 other misrepresentations. So my understanding is</p> <p>18 that's the finding that has not been vacated, at</p> <p>19 least -- I'm not providing legal opinion, but</p> <p>20 that's my understanding.</p> <p>21 And I did read some of the court orders to</p> <p>22 get an understanding of the context. And I did</p> <p>23 review a number of materials from the initial</p> <p>24 litigation, if I can call it that.</p> <p>25 Q. Did you read the District Court's most</p>	<p style="text-align: right;">Page 52</p> <p>1 recent opinion denying defendants' motion to</p> <p>2 exclude Professor Fischel?</p> <p>3 A. I did.</p> <p>4 Q. You didn't review plaintiff's trial</p> <p>5 brief. Is that correct?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Did you review the opening statements</p> <p>8 at the trial?</p> <p>9 A. I don't believe so.</p> <p>10 Q. What about the closing arguments?</p> <p>11 A. I don't believe so.</p> <p>12 Q. You didn't have all the trial exhibits,</p> <p>13 did you?</p> <p>14 A. I did receive a lot of trial exhibits,</p> <p>15 but I don't -- I'm not representing it was all</p> <p>16 the trial exhibits. And, again, I would</p> <p>17 reiterate, I did review the jury verdict form</p> <p>18 that represents the finding of the jury, as I</p> <p>19 understand it.</p> <p>20 Q. So you understand that the jury found</p> <p>21 defendants made material false and misleading</p> <p>22 statements and omissions about three categories.</p> <p>23 Right?</p> <p>24 A. Yes.</p> <p>25 Q. And what were those categories?</p>

Frank Ferrell, III

<p style="text-align: right;">Page 53</p> <p>1 A. So I'm just -- I'm utilizing, for this 2 purpose, the Consolidated Class Action Complaint 3 and Professor Fischel's characterization, and I 4 think those documents characterize it as reaging 5 the restatement or the account -- I'll leave it 6 at that. The restatement and the predatory 7 lending.</p> <p>8 Q. So describe your understanding of the 9 predatory lending fraud that defendants 10 committed.</p> <p>11 A. You're testing my memory here. I 12 would -- to give an accurate answer, I would just 13 go to the jury verdict form. So there's 17 14 misstatements that have been specifically 15 identified on the verdict -- verdict form. And I 16 really would not be able to add beyond that.</p> <p>17 Q. So you don't understand any of the 18 details underlying the false statements relating 19 to predatory lending. Is that your testimony?</p> <p>20 MR. FITZGERALD: Objection to form.</p> <p>21 A. That's not what I said.</p> <p>22 BY MR. BROOKS:</p> <p>23 Q. What are the details that you 24 understand about the predatory lending fraud that 25 the defendants committed?</p>	<p style="text-align: right;">Page 54</p> <p>1 A. Well --</p> <p>2 MR. FITZGERALD: Objection. Asked and 3 answered.</p> <p>4 A. So the predatory lending fraud, my 5 understanding is the material misstatements that 6 the jury found on the jury verdict form, which is 7 listed in my Appendix B, that relate to predatory 8 lending. And that would be the most accurate and 9 complete answer to your question, as to what 10 constitutes the fraud with respect to predatory 11 lending.</p> <p>12 BY MR. BROOKS:</p> <p>13 Q. Can you state for me any details 14 related to the widespread predatory lending that 15 Household was engaged in that you're aware of?</p> <p>16 MR. FITZGERALD: Objection to form and 17 asked and answered.</p> <p>18 A. So, again, you know, if you're asking 19 me to recall, off the top of my head, the jury 20 verdict form, I did review that very carefully, 21 and there are misstatements and 22 misrepresentations that the jury found that 23 related to predatory lending. And so the most 24 accurate and complete answer would be to look at 25 the specific misstatements the jury found to be</p>
<p style="text-align: right;">Page 55</p> <p>1 materially misleading.</p> <p>2 BY MR. BROOKS:</p> <p>3 Q. What types of predatory lending did 4 Household engage in?</p> <p>5 MR. FITZGERALD: Objection. Asked and 6 answered. You can answer.</p> <p>7 A. You know, again, I would just go to the 8 jury verdict form for the fraud that was found by 9 the jury as relates to predatory lending.</p> <p>10 BY MR. BROOKS:</p> <p>11 Q. Well, you understand that the fraud is 12 securities fraud. Right?</p> <p>13 A. Yes.</p> <p>14 Q. Defendants committed securities fraud?</p> <p>15 A. That's my understanding.</p> <p>16 Q. And those are false statements and 17 omissions. Right?</p> <p>18 A. I'm not here to provide a legal 19 opinion, but that is accurate.</p> <p>20 Q. That is your understanding?</p> <p>21 A. It is.</p> <p>22 Q. And those false statements and 23 omissions were about certain business practices. 24 Right?</p> <p>25 A. Agreed.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. So the verdict form lists the false 2 statements and omissions. You understand that, 3 right?</p> <p>4 A. Right.</p> <p>5 Q. But the verdict form doesn't list the 6 details of the fraudulent business practices.</p> <p>7 MR. FITZGERALD: Objection to --</p> <p>8 BY MR. BROOKS:</p> <p>9 Q. Do you understand that?</p> <p>10 MR. FITZGERALD: Objection to form.</p> <p>11 A. I disagree with that characterization. 12 The fraud -- the fraud that was found by the jury 13 is specifically identified by the jury on the 14 jury verdict form. My understanding, but I'm not 15 giving a legal opinion, is that that constitutes 16 the entirety of the fraud at issue in this case. 17 That is, the 17 material misrepresentations and 18 omissions, as found by the jury. I do not -- my 19 understanding, but I'm not providing a legal 20 opinion, is that there's not other fraud beyond 21 that.</p> <p>22 BY MR. BROOKS:</p> <p>23 Q. So you understand that the jury, on the 24 verdict form, checked a box for each statement as 25 to which part of the fraud applied to that</p>

Frank Ferrell, III

<p style="text-align: right;">Page 77</p> <p>1 about that.</p> <p>2 BY MR. BROOKS:</p> <p>3 Q. The Court wrote, "But the reality of</p> <p>4 Household's situation eventually caught up with</p> <p>5 its stock price. The truth came to light over a</p> <p>6 period of about a year through a series of</p> <p>7 disclosures that began when California sued</p> <p>8 Household over its predatory lending."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Do you understand what that means, sir?</p> <p>12 MR. FITZGERALD: Objection. Same</p> <p>13 objection.</p> <p>14 BY MR. BROOKS:</p> <p>15 Q. Do you agree or disagree that the --</p> <p>16 A. I follow -- I'll follow the</p> <p>17 instruction.</p> <p>18 Q. Do you agree or disagree that the truth</p> <p>19 came to light over a period of about a year</p> <p>20 through a series of disclosures that began when</p> <p>21 California sued Household over its predatory</p> <p>22 lending?</p> <p>23 MR. FITZGERALD: Same objection. Same</p> <p>24 instruction.</p> <p>25 A. I'll follow the instruction.</p>	<p style="text-align: right;">Page 78</p> <p>1 BY MR. BROOKS:</p> <p>2 Q. Independent of this document, do you</p> <p>3 agree that the truth about Household's fraud came</p> <p>4 to light over a period of about a year through a</p> <p>5 series of disclosures that began when California</p> <p>6 sued Household over its predatory lending?</p> <p>7 MR. FITZGERALD: Objection to form.</p> <p>8 A. So in my report, and I would go to my</p> <p>9 rebuttal report, I do have a specific disclosure</p> <p>10 model where I analyze Professor Fischel's</p> <p>11 14 purported specific disclosure days. And it is</p> <p>12 true that those 14 days are over a period of</p> <p>13 time, but on specific days. I believe the first</p> <p>14 of those 14 -- but I would just go to my</p> <p>15 Exhibit 3a and 3b of my rebuttal report.</p> <p>16 So looking at Exhibit 3a of my rebuttal</p> <p>17 report, the first purported corrective disclosure</p> <p>18 in Professor Fischel's specific disclosure model</p> <p>19 is November 15th. And in Professor Fischel's</p> <p>20 specific disclosure model, it ends on October 11,</p> <p>21 2002. And, of course, I also have my corrected</p> <p>22 Fischel regression with respect to these dates.</p> <p>23 MR. BROOKS: So I'll move to strike</p> <p>24 that as nonresponsive.</p> <p>25</p>
<p style="text-align: right;">Page 79</p> <p>1 BY MR. BROOKS:</p> <p>2 Q. My question is: Do you agree that the</p> <p>3 truth about Household's fraud came to light over</p> <p>4 a period of about a year through a series of</p> <p>5 disclosures that began when California sued</p> <p>6 Household over its predatory lending?</p> <p>7 MR. FITZGERALD: And same objection.</p> <p>8 If you're reading the Seventh Circuit opinion and</p> <p>9 asking whether he agrees with the fact-findings</p> <p>10 or not, same instruction. If you want to ask him</p> <p>11 questions independently of the Seventh Circuit</p> <p>12 opinion as to when the disclosure period was, I</p> <p>13 think he properly answered it. You can ask him</p> <p>14 that.</p> <p>15 BY MR. BROOKS:</p> <p>16 Q. Do you agree or not that the truth</p> <p>17 about Household's fraud came to light over a</p> <p>18 period of about a year?</p> <p>19 A. That's a very general statement. My --</p> <p>20 my specific analysis, my scientifically based</p> <p>21 rigorous methodology for analyzing the disclosure</p> <p>22 period, you know, is reflected in Exhibit 3a,</p> <p>23 among other exhibits, and discussion that I have</p> <p>24 in the report. And it is true that the first</p> <p>25 date in that model is November 15th, 2001.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Is it your opinion that the truth about</p> <p>2 Household's fraud emerged at any point and</p> <p>3 impacted Household's stock price?</p> <p>4 A. Well, yeah, I -- yes, in the sense that</p> <p>5 I specifically -- and spent a great deal of time</p> <p>6 discussing my report, the 14 purported corrected</p> <p>7 disclosure dates, the six that are actually</p> <p>8 statistically significant using a proper and</p> <p>9 scientifically rigorous methodology, and the</p> <p>10 confounding information on four of those six.</p> <p>11 That's my analysis of that question.</p> <p>12 Q. I'd like an answer to the question. Do</p> <p>13 you agree that the truth came out about</p> <p>14 Household's fraud and impacted Household's stock</p> <p>15 price?</p> <p>16 MR. FITZGERALD: I object to the</p> <p>17 statement. You had an answer. Just so we</p> <p>18 understand, when he talks about the fraud, he's</p> <p>19 accepting whatever the jury findings were. And I</p> <p>20 assume you're asking that without him stating</p> <p>21 whether it's a fraud or not. He's accepting the</p> <p>22 jury's findings. I think he just gave an answer</p> <p>23 about how information emerged during the</p> <p>24 disclosure period.</p> <p>25 A. I do want to make clear in my answer</p>

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<p style="text-align: right;">Page 137</p> <p>1 BY MR. BROOKS: 2 Q. You're correct. 3 A. Okay. 4 Q. So with that in mind and with the 5 period of November 15th to October 11th, 2002 in 6 mind, November 15, 2001 to October 11, 2002, do 7 you agree with the Court's observation there? 8 A. I'm not going to comment on the 9 Court -- what the Court is saying or not saying. 10 I guess I'm hesitant to opine on whether it 11 overstates or understates, based on my opinion, 12 because the model is fundamentally misspecified. 13 So I wouldn't work within the model. I would say 14 that the leakage model, as defined by 15 Professor Fischel, is fundamentally flawed and I 16 would use a specific disclosure model. And so in 17 that sense, it does overstate it, because I come 18 up with \$4.19, putting aside the confounding 19 information, whereas he comes up with \$23.94. 20 Q. So you can't say one way or the other 21 whether it's true that if during the relevant 22 period, there was significant negative 23 information about Household unrelated to these 24 corrective disclosures and not attributable to 25 market or industry trends, then the model would</p>	<p style="text-align: right;">Page 138</p> <p>1 overstate the effect of the disclosures and, in 2 turn, of the false statements. Correct? 3 MR. FITZGERALD: Objection to form. 4 A. Well, my understanding of the leakage 5 model is that Professor Fischel is automatically 6 attributing every residual to the fraud or 7 revelation of the fraud or fraud-related 8 information. So I guess in the sense that he's 9 attributing every negative residual to 10 fraud-related information automatically in his 11 model, it would increase the estimates of 12 inflation in his model. But again, I just 13 fundamentally reject the model, to begin with. 14 BY MR. BROOKS: 15 Q. So you can't say whether or not this 16 Court's statement is true that I just read. 17 Right? 18 MR. FITZGERALD: Objection to 19 commenting on the Court's statement. 20 MR. BROOKS: Withdrawn. 21 BY MR. BROOKS: 22 Q. You can't say whether or not the 23 sentence I just read from the Seventh Circuit's 24 opinion is something you agree with. Right? 25 MR. FITZGERALD: I'm objecting to</p>
<p style="text-align: right;">Page 139</p> <p>1 these -- he's already answered the question. If 2 you want to ask him what the effect of certain 3 things will have on the model, but he's not going 4 to opine on whether or not the Seventh Circuit is 5 right or wrong in a sentence from context -- 6 sentence removed from an opinion where he's not 7 here giving a legal opinion. I'm fine with you 8 asking him about if X or Y happens, what happens 9 to inflation. But he's not going to comment 10 on -- 11 MR. BROOKS: I think it's completely 12 inappropriate for you to interfere. 13 MR. FITZGERALD: You can ask the 14 substance of the question. But if you're going 15 to frame him as a witness to opine on what the 16 Seventh Circuit said and what they meant and 17 whether they got it right or wrong, I have a 18 problem with it. If you want to ask him the 19 effect of what alleged leakage does or doesn't 20 do, I'm fine with that. 21 A. Could you reread the -- 22 BY MR. BROOKS: 23 Q. You can't say one way or another 24 whether the sentence that we've been discussing 25 from the Seventh Circuit's opinion is something</p>	<p style="text-align: right;">Page 140</p> <p>1 you agree with. Correct? 2 A. I agree -- 3 MR. FITZGERALD: Same objection. 4 A. I agree with it in the sense of my 5 earlier question -- my earlier answer, which is 6 in the model, which I fundamentally reject as 7 inconsistent with the evidence in this case and 8 the academic literature, in the context of this 9 model, where you're automatically associating 10 every residual to the fraud or fraud-related 11 information as he defines it, then I think it's 12 mathematically true, in his -- the context of his 13 model that the more negative residuals you have, 14 that that would result in a greater inflation 15 calculation, under his model, which is 16 fundamentally flawed to begin with. 17 BY MR. BROOKS: 18 Q. Do you agree or disagree with the next 19 observation that the Seventh Circuit made in this 20 paragraph, which was, of course, this can cut 21 both ways, if, during the relevant period, there 22 was significant positive information about 23 Household, then the model would understate the 24 effect of the disclosures? 25 MR. FITZGERALD: I have the same</p>

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<p style="text-align: right;">Page 141</p> <p>1 objection about asking him to agree or disagree 2 with the Seventh Circuit. You can ask him if X 3 happens, does Y happen, I'm fine with that. But 4 he shouldn't be opining on what he thinks of a 5 legal -- of a Court opinion. 6 A. So I have two response -- two parts to 7 my answer. One is I agree that in his model, 8 which is fundamentally flawed, that if there's 9 more positive residuals, then that would decrease 10 inflation -- that would result in a decrease in 11 inflation that he would otherwise calculate in 12 that model. I disagree with the statement that 13 it would understate the effect of revelation of 14 the fraud, assuming there's revelation of the 15 fraud, because the model, itself, is 16 fundamentally flawed. 17 So I'm not agreeing that -- you know, I'm 18 not -- so what happens to the residuals does 19 affect the model, Professor Fischel's leakage 20 model calculations. But I don't -- whether it 21 goes up or down, the whole model is flawed. 22 BY MR. BROOKS: 23 Q. Go ahead and turn to Page 8. 24 (Witness complies.) 25</p>	<p style="text-align: right;">Page 142</p> <p>1 BY MR. BROOKS: 2 Q. And on Page 8, the second paragraph 3 from the bottom on the left, it starts, 4 "Fischel's models." 5 A. Mm-hmm. 6 Q. "The Court found Fischel's models 7 controlled for market and industry factors and 8 general trends in the economy. The regression 9 analysis took care of that." You disagree with 10 that finding. Correct? 11 MR. FITZGERALD: Objection. He's not 12 going to opine on whether he disagrees or -- 13 agrees or disagrees with the Seventh Circuit 14 findings. You can ask him whether the model 15 controls for X or Y, but you shouldn't be asking 16 him to opine on an opinion by the Seventh 17 Circuit. 18 BY MR. BROOKS: 19 Q. You reject this finding that Fischel's 20 models controlled for market and industry factors 21 and general trends in the economy, the regression 22 analysis took care of that -- 23 MR. FITZGERALD: Same objection. I 24 direct him not to answer whether he agrees with 25 the finding as stated. I don't know the full</p>
<p style="text-align: right;">Page 143</p> <p>1 context, but as stated language in the opinions. 2 If you want to ask him the underlying facts, does 3 he think that Fischel's model controlled for 4 something or not, I have no objection to him 5 answering that. But to frame the answer to a 6 witness, who is testifying about a damage 7 calculation, as to interpret particular sentences 8 in an opinion, I -- I direct him not to do that. 9 BY MR. BROOKS: 10 Q. Do you agree or disagree that Fischel's 11 model controlled for market and industry factors 12 and general trends in the economy because the 13 regression analysis took care of that? 14 A. I guess -- you know, putting aside -- 15 I'm not opining on what the Court meant or didn't 16 mean, whether there's a finding or non-finding. 17 I'm not opining on the meaning of the Seventh 18 Circuit opinion. Whether -- what is reflected in 19 the residual in a market model, in a regression 20 model is going -- is going to be a function of 21 how you control for market and industry. 22 And so in Professor Fischel's model, as I 23 spent a lot of time talking about in my report, 24 he has a two-factor model. And given his 25 definition of "industry," there would be industry</p>	<p style="text-align: right;">Page 144</p> <p>1 effects in the sense of affecting a subgroup of 2 firms that would show up in the residual. So, 3 for -- not to leave this at 1,000 feet, or 4 30,000 feet. So, for example, in his model, if 5 there's effects on subprime lenders -- so I have 6 five in my report, subprime consumer finance 7 companies -- then, as a general matter, that 8 would not be controlled for in his regression 9 with, because he has a two-factor model. 10 So it controls for industry in the sense of 11 he's controlled for S&P 500 financials. It would 12 not include industry effects such as the subprime 13 group. 14 Q. So with that in mind, do you agree or 15 disagree that Fischel's model controlled for 16 market and industry factors and general trends in 17 the economy because the regression analysis took 18 care of that? 19 MR. FITZGERALD: Objection to form. 20 A. You know, I agree with that in the 21 context of my answer. It would not control, and 22 I -- I understand his testimony to agree with 23 this. It would not control for effects on 24 Household's business that are -- that have a 25 disproportionate effect.</p>

EXHIBIT E

Page 1

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION
 3
 4 LAWRENCE E. JAFFE PENSION
 PLAN, On Behalf of Itself and
 5 All Others Similarly
 Situated,
 6
 Plaintiffs,
 7
 vs. No. 1:02-CV-05893
 8
 HOUSEHOLD INTERNATIONAL,
 9 INC., et al.,
 10 Defendants.

11
 12
 13
 14 VIDEOTAPED DEPOSITION OF BRADFORD CORNELL, Ph.D.
 Los Angeles, California
 15 Thursday, March 10, 2016
 16
 Volume I
 17
 18
 19
 20
 21
 22
 23 Reported By:
 CHERYL R. KAMALSKI
 24 CSR No. 7113
 25 Job No.: 10022554

Page 2

1 UNITED STATES DISTRICT COURT
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 6
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 7
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 8
 HOUSEHOLD INTERNATIONAL,
 9 INC., et al.,
 10 Defendants.

11
 12
 13
 14 Videotaped deposition of BRADFORD CORNELL,
 15 Ph.D., Volume I, taken on behalf of Plaintiffs, at
 16 300 South Grand Avenue, 34th Floor, Los Angeles,
 17 California, beginning at 9:09 a.m., and ending at
 18 2:50 p.m., on Thursday, March 10, 2016, before
 19 Cheryl R. Kamalski, Certified Shorthand Reporter
 20 No. 7113.
 21
 22
 23
 24
 25

Page 3

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 13
 Videographer:
 14
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 16 MAX MAI
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1 testified -- I asked you -- and you wrote:
 2 "Conversely, in a case such as
 3 WPPSS, in which there is a
 4 continuous leakage of information,
 5 it may be necessary to use the
 6 comparable index approach."
 7 Do you see that?
 8 MR. STOLL: I'm sorry, Counsel. What page
 9 are we on in the article?
 10 MR. DROSMAN: I'm talking about prior
 11 testimony that I elicited from him.
 12 Q And I asked you that question. And you said,
 13 "Yes." And I asked you, "You stand by that
 14 statement, don't you?" And you said, "It depends on
 15 the costs and benefits of the particular situation."
 16 Do you recall that testimony that you gave
 17 before the break?
 18 A Yes.
 19 Q Okay. What do you mean "the costs and
 20 benefits of the particular situation"?
 21 A Well, the benefit of extending an event
 22 window is that it brings everything in, but that's
 23 also the cost. It brings in sentiment effects, it
 24 brings in non-fraud-related, firm-specific
 25 information, it brings in -- and compounds the

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1 the problems.
 2 Q Any other costs?
 3 A Those are the main ones.
 4 Q And how do you determine whether the benefits
 5 outweigh the costs?
 6 A What I do is I look at the output of the
 7 model and say does this make enough sense that I can
 8 feel comfortable using it.
 9 Q That's how you make that determination?
 10 A That's the way I would do it.
 11 Q Okay. Any other way in which you'd make that
 12 determination?
 13 A There may be, but as I sit here, that's the
 14 one I'd -- I've thought of.
 15 Q Okay. Now, you also testified that one of
 16 the reasons you didn't use the leakage for your
 17 damage analysis in WPPSS is because it was --
 18 concerned bonds, correct?
 19 A That was one of the reasons, yes.
 20 Q Okay. What are the other reasons?
 21 A The other reason was that the period became
 22 so long and included so much information, I didn't
 23 think the technique could be reliably used. It's
 24 just going to throw too much in there that can't be
 25 sorted out. It's like a giant Polish sausage.

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1 measurement error. So extending the event window
 2 has, as I said, costs and benefits. And whether you
 3 want to use it depends upon your assessment of those
 4 costs and benefits, and whether you think it works
 5 reliably enough to serve as a basis for awarding
 6 damages.
 7 Q Okay. So tell me the benefits.
 8 A The benefit is that it -- by extending the --
 9 like, let's say, you take the limit and extend it
 10 to -- to the full period, the benefit is it's going
 11 to include everything that the regression doesn't
 12 pick up. And so, by definition, that's going to
 13 include -- if there was leakage, that's going to
 14 throw the leakage in there.
 15 Q Okay. Any other benefits?
 16 A That's -- that's the significant one that I
 17 can think of.
 18 Q What are the costs?
 19 A It's going to throw everything else in there;
 20 like I say, sentiment effects, non-fraud-related,
 21 firm-specific information, measurement error in the
 22 regressions. And the other cost is it's going to
 23 compound all those over time. Because every -- as
 24 you back-cast, every residual depends on the
 25 previous one, and that compounds the impact of all

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1 Q Any other reasons?
 2 A Those were the primary ones -- ones I recall.
 3 Q Okay. I don't think I have any further
 4 questions for this witness at this time. Thank you,
 5 Dr. Cornell.
 6 A Thank you.
 7
 8 EXAMINATION
 9 BY MR. STOLL:
 10 Q So I have just a couple of questions, to
 11 clean up a couple of issues from the prior
 12 questioning.
 13 First, Professor Cornell, what do you
 14 understand to be your scope of assignment regarding
 15 the opinions that you're to offer in this trial?
 16 A As I've stated earlier in response to some of
 17 the questioning, it was two basic things: Did
 18 Professor Fischel follow a procedure laid out by
 19 Mr. Morgan and me in an -- in an article we
 20 published; and second, does the leakage approach, as
 21 operationalized by Professor Fischel, measure
 22 inflation with enough reliability that it can be
 23 confidently -- or reasonably relied on.
 24 Q And you reviewed Professor Fischel's
 25 deposition in this upcoming trial, correct?

<p style="text-align: right;">Page 229</p> <p>1 approach, which was the point I was making. But 2 it's not identical. And I don't think I realized at 3 the time that it was not identical. I had assumed 4 that Professor Fischel had simply estimated a 5 regression equation, as we describe on 898, and then 6 applied that regression equation. 7 I don't recall being aware, until this later 8 matter, that he, in fact, had manipulated the 9 constant term, which is something we do not 10 recommend, and would not recommend. 11 Q Now, with regard to -- do you recall a series 12 of questions before the break regarding whether or 13 not the model was misspecified? 14 A Yes. 15 Q And you referenced Professor -- the reports 16 of Professor Ferrell and Professor James with regard 17 to the issue of misspecification. Do you recall 18 that? 19 A Yes. 20 Q Let me first ask you, in your opinion, is the 21 model misspecified? 22 A Yes. 23 Q Did you analyze any aspects of the 24 misspecification that you would view as separate 25 from the analysis of Professor Ferrell and</p>	<p style="text-align: right;">Page 230</p> <p>1 Professor James? 2 A Yes. 3 Q What was that? 4 A The manipulation of the constant term, which 5 is one aspect of the specification of the regression 6 equation that he ultimately applied. 7 Q In fact, the set of questions was oriented 8 around footnote 47 of your prior article in which 9 you note that misspecification errors cumulate and 10 become more important over longer periods of time; 11 is that correct? 12 MR. DROSMAN: Objection; leading. 13 THE WITNESS: Yes. 14 BY MR. STOLL: 15 Q Now, you also referenced misspecification 16 problems or errors that you identified because -- or 17 that you reference Professor Ferrell's work with 18 respect to. Do you recall that? 19 A Yes. 20 MR. DROSMAN: Objection; vague and ambiguous. 21 BY MR. STOLL: 22 Q What were you referencing with respect to the 23 misspecification error to which you were referring 24 in Professor Ferrell's opinion? 25 A Professor Ferrell had found evidence of a</p>
<p style="text-align: right;">Page 231</p> <p>1 structural -- very significant structural break in 2 the data. If you don't account for such a 3 structural break, I think that's a serious 4 specification problem. 5 Q You also referenced Professor James with 6 regard to misspecification errors. What were you 7 referencing with regard to the work of 8 Professor James referencing misspecification? 9 A A proper specification should have all the 10 necessary right-hand variables; otherwise, the 11 regression results will be biased. Professor James 12 had suggested that the -- including just the market 13 and the industry was not enough. And Professor 14 Ferrell's regressions show that James was, in fact, 15 correct, because when you put in an added industry 16 variable, it's very significant. 17 Q Based upon your analysis of the materials 18 that you viewed as necessary in order to 19 appropriately analyze whether Professor Fischel had 20 correctly applied the comparative index model 21 discussed in Cornell and Morgan, do you have an 22 opinion as to whether or not that has been correctly 23 applied? 24 A I don't believe it has. 25 Q Do you have an opinion, based upon your</p>	<p style="text-align: right;">Page 232</p> <p>1 review of the material, including the output of the 2 model, as to whether or not the model is reliable 3 and consistent with the theory of leakage that's 4 being advanced? 5 MR. DROSMAN: Objection; compound. 6 THE WITNESS: I don't believe it is. 7 MR. STOLL: I have no further questions. 8 9 FURTHER EXAMINATION 10 BY MR. DROSMAN: 11 Q Just briefly. 12 Professor Cornell, you said -- you discussed 13 about manipulation of the constant term. Do you 14 recall that? 15 A Yes. 16 Q And you said that Professor Fischel 17 "manipulated" the constant term, as you called it, 18 right? 19 A Correct. 20 Q You understand, don't you, that this 21 "manipulation," as you refer to it, has actually 22 reduced inflation? 23 A You asked me that earlier. And I understand 24 that. 25 Q It didn't increase inflation, right?</p>