

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

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

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION *IN LIMINE* NO. 5 TO
PRECLUDE REFERENCES TO NON-PARTIES HSBC AND HSBC FINANCE**

Defendants argue that the Court should “preclude any reference” to HSBC Finance and HSBC – the successor company and parent company to defendant Household, respectively – because HSBC’s financial condition is irrelevant. Defendants’ argument is a *non sequitur*; plaintiffs have never sought to admit evidence of HSBC Finance’s or HSBC’s financial condition. Accordingly, there is no reason to preclude reference to HSBC Finance or HSBC.

On November 14, 2002 (one month after the end of the Class Period), HSBC Holdings plc (“HSBC”) announced that it would acquire Household. On March 28, 2003, HSBC acquired Household for approximately \$28.75 per share and Household was renamed HSBC Finance Corp. (“HSBC Finance”). In contrast, during the class period, before the extent of Household’s predatory lending, reaging and accounting fraud had leaked to the market, Wells Fargo was willing to pay “up to \$70 per share” to acquire Household – more than double the price that HSBC paid once the extent of Household’s fraud came to light. PX1369 at WF 009287. Wells Fargo ultimately walked away from the acquisition after it conducted due diligence and discovered aspects of Household’s fraud: “Unfortunately, our investigation revealed some major systemic issues in [Household’s] policies and procedures. To say the least, [Household’s] write-off, expense deferral and re-aging policies are aggressive. These issues appear to be pervasive in the businesses we reviewed.” See PX1351 at WF 00220.

Recognizing that a parent company’s identity is admissible, defendants devote their entire argument to refuting a position that plaintiffs do not take. Defendants claim that the *net worth* of a parent company is not relevant where there is no alter ego relationship between the defendant and its parent company. While defendants cite to several cases holding evidence of a parent company’s financial condition or net worth are irrelevant, defendants fail to cite a single case precluding reference to the *identity* of a parent company. To the contrary, the court in *Spellbound Dev. Group Inc. v. Pac. Handy Cutter Inc.*, No. SACV-09-0951 DOC, 2012 WL 8748801 (C.D. Cal. Feb. 24, 2012) – a case cited by defendants – allowed reference to the defendants’ parent company even where there was no evidence of an alter ego relationship between the defendant and its parent company. *Id.* at *3 (“Defendants’ argument to exclude any reference to ‘American Capital’

(Defendants' parent company) as irrelevant (FRE 401) or unfairly prejudicial (FRE 403) fails"). Likewise, the court in *Kowalski v. Anova Food, LLC*, No. 11-00795HG, 2015 WL 1119411 (D. Haw. Feb. 18, 2015) observed that "[e]vidence regarding the defendant's parent company may be limited to exclude information about the parent company's assets or size if there is no evidence that there is an alter ego relationship between the defendant and its parent company." *Id.* at *2.¹

Here, plaintiffs have never sought to put in evidence of HSBC's financial condition or net worth. Nor do they intend to do so at the retrial. Rather, HSBC's identity as Household's parent company is relevant to loss causation. For example, defendants' experts Ferrell and James insist that information relating to widening bond spreads is not related to the fraud. However, in a November 15, 2002 *Chicago Tribune* article entitled, "HSBC Adds Household to Holdings," Household's CEO, defendant Aldinger, attributed the widening bond spreads to allegations of predatory lending and told the market that "an acquisition was inevitable." *See* PX2023 at 3.² In fact, plaintiffs' expert Fischel relies on these statements to show that widening bond spreads are related to the fraud. *See* Second Rebuttal Report of Daniel R. Fischel, Ex. 1 (Dkt. No. 2067-1). On a broader level, the fact that Household was forced to sell itself to HSBC for just a fraction of its prior acquisition price demonstrates how leakage of the fraud adversely impacted Household's value. There is no reason to strip away this essential context. Thus, HSBC's identity as Household's parent company is relevant to one of the core issues at the retrial.³

¹ Whether there is an alter ego relationship between HSBC and Household is an open question, but this issue need not be resolved to dispose of the present motion.

² In their reports, Ferrell and James cite to a November 14, 2002 CBS MarketWatch article about HSBC's acquisition of Household, claiming that it demonstrates that Household's stock drops were caused by reduced access to the commercial paper market unrelated to fraud. *See* Expert Rebuttal Report of Professor Christopher M. James, ¶18 (Dkt. No. 2074-4); Expert Rebuttal Report of Professor Allen Ferrell, ¶40 n.52 (Dkt. No. 2074-3). But, this Court concluded that Household's access to the commercial market is not significant firm-specific nonfraud information. *See* 2/1/16 Order at 6-7 (Dkt. No. 2102). In any event, the relevance of HSBC and its acquisition of Household is manifest. Defendants' own experts cite to it in their reports.

³ Defendants also suggest that any evidence of HSBC is irrelevant because HSBC acquired Household shortly after the end of the class period. But the law in the Seventh Circuit is clear. Post-class period evidence is relevant when it "relate[s] back to the earlier fraudulent conduct" and is probative of an element in the case. *See SEC v. Holschuh*, 694 F.2d 130, 144 (7th Cir. 1982).

Nor would evidence of HSBC unfairly prejudice defendants. Defendants contend that “evidence of HSBC’s and HSBC Finance’s financial status would impermissibly play on juror’s prejudices and should be excluded.” Defs MIL No. 5, ¶4 (Dkt. No. 2150). Once again, defendants erect a straw man and then knock it over. Plaintiffs do not intend to tender evidence of HSBC’s “financial status.” As a result, defendants’ reliance on cases concerning the danger of prejudice stemming from evidence of a parent company’s financial status, net worth or assets is simply misplaced. Nothing about HSBC’s identity as Household’s parent company would unfairly prejudice defendants.

Not surprisingly, defendants never objected to this evidence at trial (or raised it as an issue on appeal). At trial, defendant Aldinger admitted that HSBC acquired Household. Defendants did not object to this testimony. Trial Tr. at 3491:12-13.⁴ Several other witnesses also referenced HSBC and HSBC Finance in their trial testimony. *See, e.g.*, Trial Tr. at 1932:21-1933:5 (testifying that the company filed an amended 2001 Form 10-K “in connection with the HSBC acquisition”); 1865:4-14 (testifying that HSBC Finance is the successor company to Household); 1669:12-20 (testifying that HSBC acquired Household in 2003). Defendants never once objected to these repeated references to HSBC during the trial. This evidence was relevant and admissible at the first trial. It is no less relevant at the retrial. After all, the Seventh Circuit instructs that “there shall be a strong presumption that evidence from the liability phase may be relevant in some way to damages.” *Watts v. Laurent*, 774 F.2d 168, 181 (7th Cir. 1985). Defendants have done nothing to rebut this “strong presumption.”

In sum, the Court should allow reference to HSBC as Household’s parent company and HSBC Finance as Household’s successor company. This evidence is relevant to loss causation and would not unfairly prejudice defendants.

⁴ Defendants did object when Aldinger was asked whether Household was sold, but Judge Guzmán overruled the objection. *See* Trial Tr. 3490:24-3491:10. (Relevant excerpts from the 2009 Trial Transcript are attached as Ex. 1 to the Declaration of Luke O. Brooks in Support of Plaintiffs’ Oppositions to Defendants’ Motions *in Limine*, filed herewith.)

DATED: May 6, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses for counsel of record denoted on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 6, 2016.

s/ Luke O. Brooks

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