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

LAWRENCE E. JAFFE PENSION PLAN, on Behalf of Itself and All Others Similarly Situated,	)	Case No. 02 C 5893
Plaintiff,	)	Judge Jorge L. Alonso
v.	)	
HOUSEHOLD INTERNATIONAL, INC., et al.,	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION *IN LIMINE* NO. 6

Defendants have designated five former executives of Household as "may call" fact witnesses: the three Individual Defendants (former CEO William Aldinger, former CFO David Schoenholz, and former Vice President of Consumer Lending Gary Gilmer); Household's former Vice President of Corporate Relations and Communications Craig Streem, and Household's former Treasurer Edgar Ancona. Mot. at 1. Plaintiffs' Motion *In Limine* No. 6 seeks to bar these fact witnesses from offering "impermissible" opinion or expert testimony "regarding trends in the market or in Household's industry." *Id*. The Court should deny Plaintiffs' Motion because fact witnesses are permitted to offer lay opinion testimony, and because Plaintiffs' professed concern that Defendants' fact witnesses "may" offer expert testimony is speculative and unfounded.[1]

[1] Plaintiffs also assert that Defendants should not be permitted to call Mr. Ancona as a witness because Defendants did not list Mr. Ancona as a witness in the Pretrial Order for *the first trial* or call him as a witness in the first trial. *Id.* n.1. However, nothing in the Seventh Circuit's opinion remanding this case for a new trial or in this Court's September 8, 2015 Order addressing the scope of the proceedings on remand restricts Defendants to calling only witnesses that testified at the first trial.

ARGUMENT

To the extent that Plaintiffs are attempting to preclude Defendants' fact witnesses from offering opinion testimony, Plaintiffs' position is contrary to Rule 701 of the Federal Rules of Evidence. As Plaintiffs themselves acknowledge, Rule 701 permits fact witnesses to offer opinion testimony that is:

> (a) rationally based on the witness's perception;
>
> (b) helpful to clearly understanding the witness's testimony or determining a fact in issue; and
>
> (c) not based on scientific, technical or other specialized knowledge within the scope of Rule 702.

Id. at 1-2 (quoting Fed. R. Evid. 701).

The five former high-level Household executives that Defendants may call as fact witnesses all have personal knowledge of factors affecting Household's stock price. Indeed, four of them (Aldinger, Schoehonolz, Gilmer, and Streem) testified and were cross-examined about these matters at the first trial. Mr. Ancona, Household's Treasurer, also has personal knowledge about these matters, as Plaintiffs are well aware, since they deposed Mr. Ancona in connection with the first trial.

Thus, any opinion testimony that these five former Household executives might offer about trends in the market or industry that were affecting Household would be based on their first-hand knowledge and observations. *See, e.g.*, *Western Industries, Inc. v. Newcor Canada, Ltd.*, 739 F.2d 1198, 1203 (7th Cir. 1984) (affirming admission of lay opinion testimony where "Newcor's witnesses were experienced executives in the trade, and the existence of the alleged custom was a matter they could infer from their own observations and experience, since each had negotiated many sale contracts such as the one in issue in this case"); *Cent. States, Se. & Sw.*

Areas Pension Fund v. Transp. Serv. Co., No. 00 C 6181, 2009 WL 424145 at *5 (N.D. Ill. Feb. 17, 2009) (noting that Rule 701 "has also been applied to senior employees with particularized knowledge of an employer's business, especially where the knowledge is based on a review of records prepared and kept in the ordinary course of business, or perceptions based on industry experience").

Opinion testimony of Defendants' lay witnesses about nonfraud factors affecting Household's stock price also would be helpful to the jury in deciding a fact in issue. Indeed, what caused Household's stock price decline is the very issue the jury must decide. *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 421 (7th Cir. 2015) ("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.").

As for Plaintiffs' "anticipat[ion]" that Defendants *may* seek to adduce expert testimony from these fact witnesses, Mot. at 1, that speculation provides no basis for this Court to limit the testimony of Defendants' fact witnesses at this juncture. Defendants have no intention of eliciting expert testimony from their fact witnesses, and if such testimony were offered, Plaintiffs could lodge an appropriate objection at that time. *See, e.g.*, *Wielgus v. Ryobi Techs., Inc.*, No. 08 CV 1597, 2012 WL 1853090, *7 (N.D. Ill. May 21, 2012) ("Should lay testimony stray into the realm of specialized or technical interpretations of the technology, the defendants may raise more specific objections at trial." (denying motion *in limine* to bar lay opinion testimony as "both premature and overbroad")).

CONCLUSION

For the reasons set forth above, the Court should deny Plaintiffs' Motion *In Limine* No. 6.

Dated: May 6, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

R. Ryan Stoll, an attorney, hereby certifies that on May 6, 2016, caused true and correct copies of the foregoing Defendants' Response to Plaintiffs' Motion *In Limine* No. 6 to be served via the Court's ECF filing system on the following counsel of record in this action:

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