

**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. 8**

Plaintiffs seek to preclude “evidence or argument relating to the aggregate damages suffered by the Class.” Dkt. 2140. Defendants do not intend to proffer such evidence or make any references to aggregate damages, and therefore have no objection at this time to the Motion *in Limine*. However, in the event Plaintiffs attempt to use Defendants’ silence on aggregate damages against them at trial, Defendants reserve the right to seek permission from the Court to address this issue before the jury.

Consistent with Plaintiffs’ request, the Court should also bar evidence or argument concerning the market capitalization loss that resulted from Household’s stock price decline over the period during which Professor Fischel claims the misstatements were corrected. Plaintiffs contend that “evidence of aggregate damages is irrelevant to the retrial issues,” and that if such evidence had any probative value, it would be outweighed by its prejudicial effect. Mot. at 2-3. The same rationale applies to evidence or argument concerning the market capitalization losses, and the Court should preclude such evidence for the same reasons.

*First*, evidence of the market capitalization loss caused by Household's stock price decline is irrelevant. The issues to be determined by the retrial jury are loss causation and "the amount of inflation caused by each of the 17 misrepresentations at issue." Dkt. 2042 at 1 (Order). Inflation is the measurement of the extent to which the stock price "was higher than it would have been without the false statements." *Glickenhau & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 415 (7th Cir. 2015). The jury will be asked to "isolate the extent to which [the] decline in stock price [was] due to fraud-related corrective disclosures and not other factors." *Id.* at 421. As with the possible aggregate damages figure, the market capitalization loss figures "do not make it more or less likely that a particular amount of Household's stock price was inflated due to defendants' fraud as opposed to other causes." *See* Mot. at 2. To argue otherwise would be inconsistent with Plaintiffs' Motion *in Limine* No. 8.

*Second*, even if the market capitalization loss figures had some probative value, it would be entirely outweighed by the prejudicial effect that would result from presenting those figures to the jury. For example, the total market capitalization loss as a result of Household's stock price decline during the relevant period is in excess of \$15 billion. Disclosing that figure to the jury would be misleading and create the potential for confusion. *See Pearson v. Illinois Cent. R.R.*, No. 06-CV-0822-DRH, 2008 WL 905915, at \*3 (S.D. Ill. Mar. 28, 2008) (granting motion *in limine* to "exclude any evidence, testimony or argument regarding Plaintiff's gross wage loss as a measure of damages, since Plaintiff's net wage loss is the appropriate measure of damages"); *see also Norfolk & W. Ry. Co. v. Liepelt*, 444 U.S. 490, 498 (1980) (holding that jury instruction should have been provided that would "eliminate an area of doubt or speculation that might have an improper impact on the computation of the amount of damages"). And evidence or argument concerning the market capitalization loss would, without doubt, unfairly prejudice Defendants.

Upon hearing such large numbers, the jury may be tempted to award larger damages out of sympathy for investors or anger toward Defendants, rather than based on evidence and argument concerning “the amount of inflation caused by each of the 17 misrepresentations at issue.” Dkt. 2042 at 1. This result would plainly be improper.

For these reasons, Defendants do not oppose Plaintiffs’ Motion *in Limine* No. 8, but request that the Court extend the Motion to its logical limit and bar evidence or argument concerning the market capitalization loss resulting from Household’s stock price decline between November 15, 2001 and October 11, 2002.

Dated: May 6, 2016

Respectfully submitted,

/s/ R. Ryan Stoll

Patrick J. Fitzgerald  
R. Ryan Stoll  
Donna L. McDevitt  
Andrew J. Fuchs  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM  
155 North Wacker Drive  
Chicago, IL 60606  
(312) 407-0700

Dane H. Butswinkas  
Steven M. Farina  
Amanda M. MacDonald  
Leslie C. Mahaffey  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
(202) 434-5000

Attorneys for Defendant  
Household International, Inc.

Gil M. Soffer, Esq.  
Dawn M. Canty, Esq.  
KATTEN MUCHEN ROSENMAN LLP  
525 West Monroe Street  
Chicago, IL 60661

Attorneys for Defendant  
William F. Aldinger

Tim S. Leonard, Esq.  
JACKSON WALKER LLP  
1401 McKinney Street  
Suite 1900  
Houston, TX 77010  
Attorneys for Defendant  
David A. Schoenholz

David S. Rosenbloom, Esq.  
McDERMOTT WILL & EMERY, LLP  
227 West Monroe Street  
Chicago, IL 60606  
(312) 984-7759  
Attorneys for Defendant  
Gary Gilmer

**CERTIFICATE OF SERVICE**

R. Ryan Stoll, an attorney, hereby certifies that on May 6, 2016, he caused true and correct copies of the foregoing Response to Plaintiffs' Motion *In Limine* No. 8 to be served via the Court's ECF filing system on the following counsel of record in this action:

Michael J. Dowd, Esq.  
Daniel S. Drosman, Esq.  
Spencer A. Burkholz, Esq.  
ROBBINS GELLER RUDMAN & DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101

Marvin A. Miller, Esq.  
Lori A. Fanning, Esq.  
MILLER LAW LLC  
115 South LaSalle Street, Suite 2910  
Chicago, IL 60603

/s/ R. Ryan Stoll

R. Ryan Stoll