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, v. HOUSEHOLD INTERNATIONAL, INC., *et al.*, Defendants.	)	Case No. 02-C-5893 Judge Jorge L. Alonso

REPLY IN SUPPORT OF INDIVIDUAL DEFENDANTS' MOTION IN LIMINE TO BAR EVIDENCE REGARDING THEIR FINANCIAL CONDITION

Defendants William F. Aldinger, David A. Schoenholz, and Gary Gilmer (collectively, "Individual Defendants") hereby reply in support of their motion in limine (the "Motion" or "Motion in Limine") to preclude Plaintiffs from introducing evidence, making argument, or eliciting testimony regarding Individual Defendants' personal financial information, including but not limited to their Household compensation and stock options[1] (collectively, Individual Defendants' "Personal Financial Information").

INTRODUCTION

In response (Plaintiffs' "Response") to the Individual Defendants' Motion in Limine, Plaintiffs argue that Individual Defendants' Personal Financial Information is relevant because it pertains to loss causation, damages, and proportionate liability. Plaintiffs are wrong. *See* Federal Rule of Evidence ("FRE") 401. Moreover, even if the Personal Financial Information *were*

[1] Plaintiffs do not dispute, in their Response, that other evidence relating to their personal finances is irrelevant. (*See* Resp. at 6, n.5).

marginally relevant to the limited issues on retrial, it would nevertheless be inadmissible pursuant to FRE 403, a proposition that Plaintiffs hardly attempt to refute in their Response. In short, Individual Defendants' Personal Financial Information is irrelevant and more prejudicial than probative of the narrow issues to be retried. Thus, evidence, argument, or testimony regarding such information should be excluded from retrial.

ARGUMENT

I. Individual Defendants' Personal Financial Information Is Irrelevant to the Retriable Issues.

In various pretrial documents, Plaintiffs signal their intention to seek admission of evidence[2] that includes Individual Defendants' Personal Financial Information. Plaintiffs justify their intention by arguing that such evidence is relevant to the issues set for retrial. It is not. Rather, it appears Plaintiffs' actual motive is to exhibit sensitive, prejudicial information about the Individual Defendants' personal finances in the guise of "relevant" evidence. In reality, the Individual Defendants' Personal Financial Information is not relevant to the issues identified for retrial and should therefore be excluded pursuant to FRE 402.

A. Individual Defendants' Personal Financial Information Is Not Relevant to Loss Causation

Plaintiffs first argue that certain evidence the Individual Defendants seek to exclude is relevant to loss causation because it contains "peer groups," which Household used in determining the Individual Defendants' compensation. (*See* Resp. at 1). Moreover, Plaintiffs argue, these peer groups are relevant to Professor Fischel's calculation of loss causation. (*See id.* at 1-2). Neither argument is convincing.

[2] For purposes of this Reply, the term "evidence," as it relates to Individual Defendants' Personal Financial Information, includes argument and testimony, whether delivered in court or at a prior proceeding.

Plaintiffs' first contention is tautological. It posits that certain evidence relating to Individual Defendants' compensation is relevant because Household used it to determine their compensation. (*See* Resp. at 1). Yet, the purported evidentiary link between these documents and loss causation is furnished by a single conclusory sentence: "[these documents] set forth how Household was compensating the Individual Defendants based on reaching certain financial targets which is also relevant to loss causation." (*Id*.). No further explanation is provided, nor, indeed, could be. The fact is that Individual Defendants' Personal Financial Information, including the manner in which Household determined their compensation, bears no relevance to the issue of loss causation. Plaintiffs' conclusory argument to the contrary should be dispensed with out of hand.

Second, Plaintiffs insist that certain evidence containing Individual Defendants' Personal Financial Information should be admitted because it references peer groups, which are supposedly a necessary ingredient for Professor Fischel's loss-causation analysis. This conclusion does not follow. Even assuming, for the sake of argument, that this particular information regarding peer groups is relevant to Professor Fischel's analysis, Plaintiffs fail to consider the possibility that such information could be obtained through other means or that the Personal Financial Information could be removed to minimize the risk of prejudice. [3] *See Kukurza v. General Electric Co.*, 510 F.2d 1208, 1216 n.6 (1st Cir. 1975) (upholding exclusion of evidence regarding compensation payments made to plaintiff where other, less prejudicial, evidence was available on the same issue); *Carter v. D.C.*, 795 F.2d 116, 126 (D.C. Cir. 1986) (finding abuse of discretion where lower court admitted potentially prejudicial evidence even

[3] For instance, Professor Fischel could describe the source of the company's peer-group selection without reference to Individual Defendants' Personal Financial Information, thereby avoiding the FRE 401 and 403 issues.

though "there were certainly other ways [such evidence] could have been admitted *so that the relevant aspects were retained and the prejudicial aspects minimized*.") (emphasis added). In short, Plaintiffs' argument that evidence of the Individual Defendants' Personal Financial Information must be admitted for loss-causation purposes is unavailing.

Next, Plaintiffs argue that certain evidence of Individual Defendants' Personal Financial Information is relevant because it demonstrates that Household's stock was artificially inflated. (*See* Resp. at 5). Yet, while it might be true that the evidence Plaintiffs cite demonstrates the price of Household's stock at particular points in time (*see id*. at 5-6), alternative evidence reflecting the value of such stock, from which Plaintiffs could argue inflation, abounds in the record—evidence that does not also happen to reference compensation or stock grants made to the Individual Defendants. As described above (*see* discussion, *supra*, at 3-4), Plaintiffs neither recognize that inflation evidence is available in less prejudicial form, nor suggest any way to minimize the risk of prejudice that such evidence presents. Indeed, Plaintiffs' insistence that they be allowed to introduce evidence of the Individual Defendants' Personal Financial Information in order to demonstrate inflation shows that their argument is pretextual.

Finally, Plaintiffs maintain that Individual Defendants seek to exclude certain documents that are relevant to motive, which is "inextricably intertwined" with loss-causation evidence (Resp. at 7) and without which the jury "cannot understand the case." (*Id*. at 6). However, Plaintiffs fail to connect the Individual Defendants' "motives" with loss causation in any coherent way. Instead, Plaintiffs couch their argument in nebulous terms (e.g., "inextricably intertwined" with loss causation, "part and parcel" of the fraud), which masks the disconnect between Individual Defendants' purported motive to commit fraud and any issue actually designated for retrial. In fact, there is no evidentiary link between the Individual Plaintiffs'

Personal Financial Information—or the evidence ostensibly demonstrating their motive—and loss causation. Indeed, the amount of loss flowing from the actionable statements in this case is entirely independent of Individual Defendants' motives: whether they made such statements knowingly or recklessly, the resulting loss is the same. While 15 U.S.C.A. § 78u-4 provides a framework for determining loss causation, it does not allow a jury (or, in this instance, Plaintiffs) to impose standards of morality that are unmoored from the statute's instructions on determining liability. *See id*. at (f)(2)-(3). In short, Individual Defendants' motives are irrelevant to loss causation, and Plaintiffs cannot introduce evidence thereof on that basis. *See* FRE 402.

Plaintiffs' argument that the jury will be unable to understand the issues before it on retrial without this evidence is similarly unconvincing. This argument betrays Plaintiffs' desire to inject elements of the first trial into the jury's consideration at retrial. But this is precisely what FRE 401 and FRE 402 prohibit by requiring that admissible evidence be relevant to a consequential fact in *this* particular case, which, contrary to Plaintiffs' urging, is not a retrial of the basis for the jury's findings of fraud, but rather involves a narrower issue: whether and to what extent loss was caused by the fraud (which has already been defined by a jury). In short, evidence relating to Individual Defendants' alleged motive is irrelevant and barred from retrial by FRE 402.

B. Individual Defendants' Personal Financial Information Is Irrelevant to Proportionate Liability

Plaintiffs also seek to introduce evidence of Individual Defendants' compensation because, they argue, it is relevant to their roles in the fraud and, by extension, their proportionate liability. (*See* Resp. at 2, 4). Not so: Individual Defendants' compensation has no bearing on the factors used to allocate responsibility under § 78u-4, which concern the connection between a speaker's conduct and the resulting loss. *See id*. at (f)(2)-(3). Indeed, Plaintiffs rely on

proportionate liability as a means to open the floodgates to retry *liability*, a pathway that has been foreclosed by the Seventh Circuit's opinion, which did not contemplate a retrial of liability or an unqualified reapportionment of damages. Instead, the Seventh Circuit held that the *Janus* error prejudiced the Individual Defendants[4] and that "with a proper instruction on what it means to 'make' a false statement, the jury might allocate responsibility differently" among the Defendants. *Glickenhaus*, 787 F.3d at 428. In other words, the Seventh Circuit only contemplated proportionate liability to be an issue for retrial *insofar as it might be affected by a proper Janus instruction*. *See id.*

However, during pretrial preparations, after the Individual Defendants filed partial motions for summary judgment, they reached a stipulation (the "Stipulation") with Plaintiffs regarding certain issues, i.e., which statements each Individual Defendant made and with what level of scienter.[5] (*See* Stip., attached as Ex. A). The parties further stipulated to the same state of mind—reckless or knowing—with which the first jury found them to have made any actionable statement. (*See id.*; Dkt. No. 1611). Therefore, the nature of the fraud and the Individual Defendants' role therein—the considerations relevant to assessing proportionate liability (*see* § 78u-4(f)(2)-(3))[6]—have already been determined, and, as a result, the jury will be able to assess

[4] Specifically, the Seventh Circuit held that the Individual Defendants were prejudiced by the *Janus* error because the jury could have found them to be liable for more actionable statements than it would have with an appropriate instruction. *See Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 427-29 (7th Cir. 2015), reh'g denied (July 1, 2015).

[5] Specifically, the parties' Stipulation provides that Schoenholz and Aldinger made 15 and 16, respectively, of the 17 statements at issue (one fewer than the number they were found to have made at the first trial). Gilmer was found to have made one actionable statement, down from 17 at the first trial.

[6] In particular, § 78u-4(f)(3)(C) lists the factors for consideration in determining a defendant's share of liability. They are: "**(i)** the nature of the conduct of each covered person found to have caused or contributed to the loss incurred . . . [and] **(ii)** the nature and extent of the causal

proportionate liability *without* the introduction of additional liability evidence, particularly evidence of Individual Defendants' financial motives (which is prejudicial and offers little in the way of probative value). In short, the Seventh Circuit did not give Plaintiffs carte blanche to inquire into the Individual Defendants' purported financial motives or to conduct a new trial on liability, but instead defined the issues relevant to any reassessment of proportionate liability. *See*, e.g., *Glickenhaus*, 787 F.3d at 428; (discussion, *supra*, at 6). The parties' Stipulation has effectively obviated the need for, and made irrelevant, such evidence at retrial.

This point is most aptly illustrated by Gilmer's situation. In the first trial, the jury found that Gilmer made 17 misstatements and that he did so recklessly. (*See* Dkt. No. 1611 at 15). But, on retrial, Plaintiffs and Gilmer have stipulated, when considering the *Janus* standard, that Gilmer made only a single statement, and that he did so recklessly. (*See* Ex. A; *supra* at 6-7). Yet, Plaintiffs seek to introduce evidence of Gilmer's compensation, stock acquisition and sale, and the payout he would have received upon consummation of a proposed sale of the company, all in order to provide the jury with fodder to assess Gilmer's "motive" in making that single statement. (*See*, e.g., Resp. at 4). Although not as striking, Aldinger and Schoenholz are in similar positions, and they should not be subjected to jury inflammation, particularly when the Seventh Circuit's reversal was based on an improperly liberal definition of what it means to "make" a statement. *See Glickenhaus*, 787 F.3d at 425 (noting the trial court's error in rejecting Defendants' argument that "language in the jury instruction misstated the law and had the effect of holding some of [the Defendants] liable for false statement that they did not 'make,' as the Supreme Court construed that term."). This is why it matters—and matters greatly—that the

---

relationship between the conduct of each such person and the damages incurred . . ." Motive is not listed among the factors to be considered.

evidence on retrial be confined to that which is necessary to try the relevant issues, rather than permitting a free-for-all for Plaintiffs to introduce prejudicial evidence.[7]

Tellingly, Plaintiffs themselves have previously deemed proportionate liability to be a moot issue on retrial. In the parties' pretrial joint status report, Plaintiffs noted that

> the resolution of [the percentage of proportionate liability is] *academic since Household is liable for every statement, did not appeal from the portion of the judgment holding that Household, Aldinger, and Schoenholz are jointly and severally liable for this verdict*, and promised in the appeal bond to satisfy the judgment *on behalf of all defendants*.

(*See* Dkt. No. 2035 at 13 n.4, attached as Ex. B) (emphasis added).[8] Such statements belie Plaintiffs' current argument that evidence of the Individual Defendants' Personal Financial Information should be admitted because it is relevant to proportionate liability.

There is yet another reason that proportionate liability does not justify admitting evidence of the Individual Defendants' Personal Financial Information: the allocation of responsibility is relevant *only* so far as it affects contribution *among the Defendants*. The Seventh Circuit acknowledged as much in its opinion: "even if Aldinger is jointly and severally liable for all 17 misstatements—either through §78u-4(f)(2)(A) or §20(a) or some combination thereof—he is still entitled to seek contribution from the other defendants." *Glickenhaus*, 787 F.3d at 428 n.13. This is why, according to the Seventh Circuit, "[the] share of responsibility matters." *Id*.

[7] Plaintiffs' ability to introduce such evidence to irreparably taint the Individual Defendants is not unrealistic or fantastical. In the first trial, Plaintiffs' examinations of Schoenholz, Aldinger, and Gilmer centered on their compensation and the money they stood to gain by sale of the company. (*See* Trial Tr. vol. 8, 1707:25-1708:16, attached as Ex. C; *id*. at vol. 10, 2054:12-2055:16; *id*. at 2060:2-2061:1; *id*. at vol. 15, 3061:1–3077:11; *id*. at vol. 16, 3485:19–3494:13; *id*. at vol. 22, 4432:23-4436:13; 4438:23-4439:15; 4636:22-4637:9; 4648:22-4651:22; 4653:4-8; 4668:8-11). Moreover, this testimony in no way relates to loss causation or peer-group selection, the issues for which Plaintiffs now claim its relevance.

[8] In the same status report, Plaintiffs argue that "Household is liable for the entire verdict no matter how the proportionality breaks down between the defendants under principles of respondeat superior." (*Id.*).

Therefore, proportionality cannot be used by Plaintiffs as a front for reprising liability evidence introduced at the first trial.

C. Individual Defendants' Personal Financial Information Is Not Relevant to "Damages"

In their Response, Plaintiffs make several passing references to the Individual Defendants' Personal Financial Information being relevant to "damages." (*See* Resp. at 1, 2). However, damages, broadly speaking, are not at issue on retrial; on the contrary, the Seventh Circuit carefully circumscribed the retriable issues: "the defendants are entitled to a new trial *limited to the two issues* we've identified here: loss causation . . ." (and the *Janus* issue already discussed, *supra* at 6-7). *Glickenhaus*, 787 F.3d at 433 (emphasis added); (*see also* Dkt. 2042 at 1). Therefore, it is not enough for Plaintiffs to proclaim that certain evidence is admissible because it is relevant to "damages": they must demonstrate an actual link between the proffered evidence and some consequential fact in the case. *See* FRE 401; *Baldonado v. Wyeth*, No. 04 C 4312, 2012 WL 3779100, at *7 (N.D. Ill. Aug. 31, 2012) (noting that "[r]elevancy is not an inherent characteristic of any item of evidence but exists o*nly as a relation between an item of evidence and a matter properly provable in the case*") (citation omitted) (emphasis added). Because Plaintiffs have not attempted to show how Individual Defendants' Personal Financial Information is relevant to loss causation—and because it is not relevant—their argument fails, and evidence thereof should be excluded from retrial under FRE 402.[9]

[9] Plaintiffs' reliance on *Watts v. Laurent*, 774 F.2d 168, 181 (7th Cir. 1985) to suggest that they can offer evidence related to elements not at issue on retrial is misplaced. First, in that case, the appellate court instructed the lower court to use a "strong presumption that evidence from the liability phase may be relevant in some way to damages." *Id*. The Seventh Circuit gave no such guidance on evidentiary admissibility in its opinion in *this* case. Moreover, the *Watts* court encouraged use of stipulations and summaries to streamline the case (*id*.), a route that the parties in this case have already chosen. (*See* discussion, *supra*, at 6-7).

II. Evidence of Individual Defendants' Personal Financial Information Is More Prejudicial than Probative and Should Be Barred from Retrial Under FRE 403.

Plaintiffs dedicate only a few sentences of their Response to the Individual Defendants' argument that evidence of their Personal Financial Information is inadmissible under FRE 403. In particular, Plaintiffs argue that certain exhibits relating to Individual Defendants' Personal Financial Information are "not prejudicial under FRE 403" because they were admitted into evidence by Defendants at the first trial. (*See* Resp. at 1-2).[10] This argument is baseless. First, evidentiary determinations made in the first trial do not bind the Court's hands on retrial. *See Steinlage v. Mayo Clinic Rochester*, No. 03-6067, 2007 WL 118900, at *3 (D. Minn. Jan. 11, 2007). Second, evidentiary determinations made under FRE 403 are not binary. Instead, courts employ a "sliding scale approach," by which the risk of prejudicial evidence is more likely to be tolerated as its probative value increases. *See Whitehead v. Bond*, 680 F.3d 919, 930 (7th Cir. 2012). Thus, prejudicial evidence can be admitted at one trial (by being highly probative of the pertinent issues, for example), yet be excluded from another trial of whose issues it is less probative. In other words, Plaintiffs' contention that evidence admitted at the first trial—where liability was at issue—should also be admitted on retrial, where liability is not at issue, is misguided. And the fact that some of this evidence was introduced by the Defendants—as opposed to the Plaintiffs—is inconsequential.[11]

---

[10] Plaintiffs' Response points to a single exhibit not offered at the last trial, PX1476, and incorrectly claims that it was "properly used for impeachment purposes" at trial. (Resp. at 2 n.1). In fact, the Court noted ruled that PX1476 was *improperly* used for impeachment and instructed the jury to disregard it. (*See* Ex. C at vol. 16, 3393:1-3396:14).

[11] Additionally, Defendants proffered this evidence at the first trial in the interest of completeness and to demonstrate that the Individual Defendants' compensation and stock allocations were approved by the company. Plaintiffs should not be allowed to use this consideration as a sword against the Individual Defendants on retrial.

As the Individual Defendants indicated in their Motion in Limine, courts have often excluded evidence of a party's financial condition—including net worth, compensation, and profits—under FRE 403. *See*, e.g., *Rush Univ. Med. Ctr. v. Minn. Mining and Mfg. Co.*, No. 04 C 6878, 2009 WL 3229435, at *3 (N.D. Ill. Oct. 1, 2009) (granting motion in limine to exclude evidence of party's "financial condition" and noting that such evidence "can distract the jury from the real issues in the case"); *see also Wielgus v. Ryobi Techs., Inc.*, No. 08 CV 1597, 2012 WL 1853090, at *6 (N.D. Ill. May 21, 2012) (granting motion in limine to bar evidence of defendants' financial status and noting that "the danger of [the evidence's] probative value being outweighed by its unfairly prejudicial impact is particularly high where a plaintiff references a defendant's financial status for the purpose of invoking the jury's sympathy by conjuring a David versus Goliath scenario."). Such a scenario is precisely what Plaintiffs seek to conjure on retrial. Because evidence of Individual Defendants' Personal Financial Information is highly prejudicial and not probative of the relevant issues, FRE 403 bars its admission at retrial.

CONCLUSION

Individual Defendants' Motion in Limine should be granted pursuant to FRE 402 and 403.

Dated: May 13, 2016

KATTEN MUCHIN ROSENMAN LLP

By: /s/ Gil M. Soffer

Gil M. Soffer
Dawn M. Canty
525 W. Monroe Street
Chicago, IL 60661-3693
(312) 902-5200

Attorneys for Defendant William F. Aldinger

-and-

JACKSON WALKER L.L.P.

By: /s/ Tim S. Leonard
Tim S. Leonard
1401 McKinney, Suite 1900
Houston, Texas 77010
(713) 752-4439

Attorneys for Defendant David A. Schoenholz

-and-

MCDERMOTT WILL & EMERY LLP

By: /s/ David S. Rosenbloom
David S. Rosenbloom
C. Maeve Kendall
227 West Monroe Street
Chicago, Illinois 60606
(312) 984-7759

Attorneys for Defendant Gary Gilmer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 13, 2016 he electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send a notice of electronic filing to all CM/ECF participants.

By: /s/ Gil M. Soffer

Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
(312) 902-5200

Attorney for Defendant William F. Aldinger

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,	)	Case No. 02-C-5893
Plaintiff,	)	
v.	)	Judge Jorge L. Alonso
HOUSEHOLD INTERNATIONAL, INC., *et al.*,	)	
Defendants.	)	

STIPULATION OF THE PARTIES REGARDING INDIVIDUAL DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT

Defendants David A. Schoenholz ("Schoenholz"), Gary Gilmer ("Gilmer"), and William F. Aldinger ("Aldinger") (collectively "Individual Defendants") and Plaintiffs (together the "Parties") hereby agree that the following stipulated facts be accepted for purposes of retrial in light of the first jury's verdict and the Seventh Circuit's May 21, 2015 ruling:

Schoenholz:

1. Schoenholz did not make the statements contained in the December 4, 2001 Goldman Sachs Presentation (Statement No. 23) (*see* Jury Verdict Form, Table A at 18 [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 428 (7th Cir. 2015), reh'g denied (July 1, 2015) ("*Glickenhaus*");

2. Schoenholz made the statements attributed to him in various company press releases (Statement Nos. 16, 18, 21, 24, 29, 36, and 37), and he did so recklessly (*see* Jury Verdict Form, Table A [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhaus*, 787 F.3d at 429;

Gilmer:

3. Gilmer did not make the statements contained in various SEC filings (Statement Nos. 15, 17, 20, 22, 27, 32, and 38), press releases (Statements Nos. 16, 18, 21, 24, 29, 36, and 37), or the April 9, 2002 Financial Relations Conference ("FRC") Presentation (Statement No. 28) or December 4, 2001 Goldman Sachs Presentation (Statement No. 23) (*see* Jury Verdict Form, Table A [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhaus*, 787 F.3d at 429;

Aldinger:

4. Aldinger did not make the statements contained in the April 9, 2002 FRC Presentation (Statement No. 28) (*see* Jury Verdict Form, Table A at 21 [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhaus*, 787 F.3d at 426-28;

5. Aldinger made the statements attributed to him in various company press releases (Statement Nos. 16, 18, 21, 24, 29, 36, and 37), and he did so recklessly (*see* Jury Verdict Form, Table A [Dkt. No. 1611]; Order on issues to be retried [Dkt. No. 2042]); *Glickenhaus*, 787 F.3d at 426-28; and

6. The Parties' stipulations are set forth in the following table[1]:

Statement No.	Description	Schoenholz	Gilmer	Aldinger
16	04/18/01 Press Release	X		X
18	07/18/01 Press Release	X		X
21	10/17/01 Press Release	X		X
23	12/04/01 Goldman Pres.			X
24	01/16/02 Press Release	X		X
28	04/09/02 FRC Pres.	X		
29	04/17/02 Press Release	X		X
36	07/17/02 Press Release	X		X
37	08/14/02 Press Release	X		X

[1] An "X" indicates that the Defendant made the alleged Statement, whereas the absence of an "X" indicates that the Defendant did not make that Statement. Schoenholz and Aldinger acted recklessly with respect to each Statement they made.

7. The Parties' stipulations are not intended to disturb the jury's verdict with respect to Question Nos. 6, 7, and 8 of the Jury Verdict Form.

Dated: March 16, 2016

KATTEN MUCHIN ROSENMAN LLP

By: /s/ Gil M. Soffer

Gil M. Soffer
Dawn M. Canty
525 W. Monroe Street
Chicago, IL 60661-3693
(312) 902-5200
Attorneys for Defendant William F. Aldinger

-and-

JACKSON WALKER L.L.P.

By: /s/ Tim S. Leonard

Tim S. Leonard
1401 McKinney, Suite 1900
Houston, Texas 77010
(713) 752-4439
Attorneys for Defendant David A. Schoenholz

-and-

MCDERMOTT WILL & EMERY LLP

By: /s/ David S. Rosenbloom

David S. Rosenbloom
C. Maeve Kendall
227 West Monroe Street
Chicago, Illinois 60606
(312) 984-7759
Attorneys for Defendant Gary Gilmer

-and-

ROBBINS, GELLER, RUDMAN & DOWD LLP

By: /s/ Michael J. Dowd
Michael J. Dowd
Spencer A. Burkholz
Daniel S. Drosman
Luke O. Brooks
655 West Broadway, Suite 1900
San Diego, CA 92101
Attorneys for Plaintiffs

EXHIBIT B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

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

JOINT STATUS REPORT

Pursuant to this Court's Order dated August 20, 2015, the parties respectfully submit this Joint Status Report setting forth their proposals for the conduct of this case going forward.

I. BACKGROUND

A. Procedural History and Factual Background

This matter is before the Court for retrial based on the Seventh Circuit's decision in *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015), attached hereto as Exhibit A, and the Seventh Circuit's determination that the case should be reassigned for retrial pursuant to Seventh Circuit Rule 36. The procedural history and substantive background that are salient to the retrial are set forth in the Seventh Circuit decision.

B. Phase II Issues

Following the trial, Judge Guzmán established procedures for Phase II of the case to address issues of individual reliance and damages for class members. The Seventh Circuit determined that the Phase II procedures adopted by Judge Guzmán were valid and concluded: "Because the proceedings below were neatly divided into two phases, there's no need to redo anything in Phase II, even though we are remanding for a new trial on certain issues from Phase I. Assuming the plaintiffs can adequately prove loss causation, the district court may rely on the results from Phase II." *Id.* at 433. The current status of the Phase II proceedings is as follows:

(1) Defendants have been found to have raised a triable issue of fact regarding reliance as to 133 class members with claims totaling $58,061,621. PSA763. The claims of these 133 claimants will have to be resolved at summary judgment or trial.

(2) The court held that 12,196 class members failed to comply with Phase II requirements and their claims would be rejected, and that 10,902 class members, with claims totaling $1,476,490,844 were entitled to entry of judgment. *Id.* On October 17, 2013, the court entered a

partial final judgment in favor of those class members whose claims had not been challenged by defendants in the amount of $2,462,899,616.21 (which included prejudgment interest). [1]

(3) The Special Master appointed by Judge Guzmán, Phillip Stenger, is presently addressing the claims of over 30,000 other class members with damages of approximately $700 million, as to which defendants have lodged ministerial objections. Dkt. No. 1860:2-3, Dkt. No. 1800:15, Dkt. No. 1802:51. Special Master Stenger recently issued his Report and Recommendation on Defendants' Category E and F Objections, which makes recommendations with respect to objections by defendants to claims which defendants asserted were late or excluded by the class definition. Dkt. No. 2015. Plaintiffs have objected to certain aspects of the Report and Recommendation. Dkt. No. 2023. Defendants are awaiting direction from the Court as to whether the Court would like defendants to file a response to the objection filed by plaintiffs.

C. The Supersedeas Bond

On November 12, 2013, defendants deposited with the Clerk of Court a supersedeas bond in the amount of $2,466,348,175.67 to stay execution of the judgment pending defendants' appeal. The parties have filed a joint motion for the release of the supersedeas bond, which has been noticed for presentment on August 26, 2015. Following entry of the order releasing the supersedeas bond posted for appeal, defendants will be able to finalize the accrual of costs with respect to the bond and determine the final amount of the premiums paid for the bond in order to file the motion for taxation of costs pursuant to Federal Rule of Appellate Procedure 39(e). Plaintiffs intend to oppose the taxation of costs and thus a briefing schedule will be warranted on the issue. The parties propose that defendants file their motion for taxation of costs within 21 days of the order releasing the

[1] Judge Guzmán awarded prejudgment interest to plaintiffs at the prime rate compounded annually. Dkt. Nos. 1887 and 1898.

supersedeas bond; the plaintiffs have 21 days thereafter to file a response to the motion; and that defendants have 14 days thereafter to file a reply.

II. THE COURT OF APPEALS' OPINION

The parties have a difference of views regarding the Seventh Circuit's opinion, and therefore set forth their respective views as follows:

A. Plaintiffs' View of the Opinion

As the Court of Appeals noted:

> The basic elements of a Rule 10b-5 claim are familiar. The plaintiffs had to prove "(1) a material misrepresentation or omission by the defendant[s]; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2407 (2014).

Opinion at 5-6.

On appeal, defendants raised issues with respect to three elements: loss causation, the court's instruction on what it means to "make" a false statement, and reliance. Ultimately, the Court of Appeals reversed the judgment and remanded the case for a new trial on two issues: (1) whether plaintiffs' loss causation expert, whom the Court described as "one of the best in the field," adequately addressed whether firm-specific, non-fraud factors contributed to the collapse in Household's stock price during the relevant time period; and (2) whether the three Individual Defendants "made" certain statements under the Supreme Court's decision in *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011), which was rendered after the trial in this case. Opinion at 2-3. The Court of Appeals rejected defendants' arguments with respect to reliance. Therefore, as noted above, reliance is not an issue at the new trial and Judge Guzmán's rulings with respect to the Phase II proceedings remain intact.

Similarly, the jury's findings that the statements at issue were material, false and misleading remain undisturbed. Likewise, the jury's finding that defendants acted with scienter, either knowingly or recklessly, remains undisturbed. However, in light of the *Janus* ruling, as set forth below, the new jury will have to reconsider the level of scienter – that defendants acted with scienter has already been determined, but the degree of scienter – whether it was knowing or reckless – must be addressed as to certain defendants for certain statements.

1. Loss Causation

On appeal, defendants "broadly attack[ed] the expert's loss-causation model." Opinion at 2. The Court of Appeals rejected virtually all of their arguments except their "more modest claim that his testimony did not adequately address whether firm-specific, nonfraud factors contributed to the collapse in Household's stock price during the relevant time period." *Id.*

In ruling, the Court of Appeals rejected the following loss causation arguments advanced on appeal by defendants:

1. that loss causation was not proven because the stock price inflation changed only slightly, or sometimes went down, after a false statement (Opinion at 12-14);

2. that the leakage model was legally insufficient because plaintiffs made no attempt to prove "how Household's stock price became inflated in the first instance" (Opinion at 14-15); and

3. that plaintiffs needed to choose between "inflation maintenance" and "inflation introduction" (Opinion at 15-17).

The Court of Appeals carefully explained why defendants were wrong as to each argument and concluded:

> In short, what the plaintiffs had to prove is that the defendants' false statements caused the stock price to remain higher than it would have been had the statements been truthful. Fischel's models calculated the effect of the truth, once it was fully revealed, and the jury found that the defendants concealed the truth through false statements. That is enough.

Opinion at 17.

The Court of Appeals also pointed out that plaintiffs proved at trial that "Household's share price declined after the truth came out, so the problem identified" in *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336 (2005) was not present in this case. Opinion at 19. The Court noted that plaintiffs also needed to "isolate the extent to which a decline in stock price is due to fraud-related corrective disclosures and not other factors." *Id*. at 20. The Court was satisfied that, "Fischel's models controlled for market and industry factors and general trends in the economy – the regression analysis took care of that." *Id*. The Court of Appeals went on to distinguish leakage cases cited by the defendants, stating that, in contrast, Fischel testified that although there were mixed disclosures during the relevant time period – disclosures that contained both fraud-related and non-fraud information – the non-fraud information was not significantly positive or negative. *Id*. at 22. The Court was concerned, however, that his testimony was too general on this point. *Id*. However, the Court also noted that "defendants haven't identified any firm-specific, nonfraud related information that could have significantly distorted the model." *Id*.

In reaching its decision on this issue, the Court summed up the dilemma inherent in addressing firm-specific non-fraud factors:

> The defendants argue that to be legally sufficient, *any* loss causation model must *itself* account for, and perfectly exclude, any firm-specific, nonfraud related factors that may have contributed to the decline in a stock price. It may be very difficult, if not impossible, for any statistical model to do this. . . . Accepting the defendants' position likely would doom the leakage theory as a method of quantifying loss causation. On the other hand, if it's enough for a loss-causation expert to offer a conclusory opinion that no firm-specific, nonfraud related information affected the stock price during the relevant time period, then it may be far too easy for plaintiffs to evade the loss-causation principles explained in *Dura*.

Opinion at 23 (emphasis in original; footnote omitted).

In response, the Court of Appeals reached a middle ground:

> 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. One possible way to address the issue is to simply exclude from the model's calculation any days identified by the defendants on which significant, firm-specific, nonfraud related information was released.

Opinion at 24 (footnote and citations omitted).

The Court remanded for a new trial consistent with the approach set forth above.

There is one other issue related to loss causation that must be resolved at the new trial. Plaintiffs' Leakage Model calculates the effect of all three of Household's fraudulent practices: predatory lending, the re-aging of delinquent loans (and other methods designed to conceal delinquency levels in Household's loan portfolio), and defendants' misrepresentation of earnings which resulted in the Company being forced to restate its financials in 2002. However, the first statement that the jury found constituted a violation of §10(b) of the Securities Exchange Act of 1934 related only to predatory lending, which, standing alone, should not have resulted in damages of $23.94 per share on that day, as found by the jury. As the Seventh Circuit noted, this "happens to have only a minor effect in this case," because "the ***second*** actionable false statement came on March 28, 2001, only three trading days later, and it covered all three bad practices." *Id.* at 25 (emphasis in original). The Court of Appeals specified the manner in which this issue should be addressed at the new trial:

> There is a simple solution to this problem: instruct the jurors that if the first actionable misrepresentation relates only to one or two of the three categories of fraud, they should find zero inflation in the stock (or some fraction of the model they've chosen) until there are actionable misrepresentations addressing all three. This option wasn't considered below because the defendants never raised this specific objection (they objected to the leakage model more generally), but the point is that the problem doesn't defeat the expert's model.

> The defendants do not challenge the jury's misrepresentation findings, so the 17 actionable false statements are fixed; we need only worry about those three trading days. If the plaintiffs can supply evidence that some fraction of their model is a reasonable estimate of the effect of predatory lending alone, then the new jury may consider that number. Otherwise, the jury should be instructed to enter zero inflation for those three days.

Opinion at 27.

In sum, as to loss causation, the new jury need only decide the impact, if any, of "non-fraud company-specific" information and the damages on March 23, 26 and 27, 2001.

2. *Janus*

The Court of Appeals held that the jury instructions, as given, with respect to making a statement were incorrect under *Janus*. Therefore, the Court had to consider whether the instructions caused any prejudice to any of the defendants as to any of the 17 false statements.

First, the Court of Appeals found that there was no prejudice to Household. Therefore, apart from the loss causation issue, Household remains liable for all 17 statements and does not get a new trial on this issue. Opinion at 32.

Second, the Court found that defendant Aldinger conceded that he "made" all the statements in Household's SEC filings (seven of the 17 actionable statements) and in his presentation to Goldman Sachs on December 4, 2001. *Id*. And the Court also held that Aldinger suffered no prejudice from the jury verdict finding him liable for defendant Gilmer's statement on March 23, 2001. *Id*. at 34. Therefore, Aldinger only gets a new trial on the *Janus* issue as to eight of the 17 statements, seven of which are set forth in Household press releases and the eighth in Schoenholz's presentation at an Investor Relations Conference in April 2002. *Id*. at 36. Aldinger remains liable for the other nine statements.

Third, the Court found that Schoenholz's situation was "almost identical" to Aldinger's. *Id*. Schoenholz remains liable for all of the statements in Household's SEC filings and in his own

presentation at the April 2002 Investor Relations Conference. *Id.* The Court found that he is entitled to a new trial, however, as to whether he "made" the seven statements in Household's press releases, as well as the statements made by Aldinger in the December 4, 2001 Goldman Sachs presentation.[2] *Id.* at 37.

Fourth, the Court held that Gilmer was entitled to a new trial with respect to whether he "made" all actionable statements with the exception of his statements on March 23, 2001. His liability for the March 23, 2001 statement remains undisturbed by the Opinion. *Id.*

B. Defendants' View of the Opinion

1. Loss Causation

Defendants disagree with Plaintiffs' assertion that the Seventh Circuit did not remand for a retrial on the required element of loss causation and with plaintiffs' attempts to confine the remanded proceeding *solely* to whether Professor Fischel can explain in "nonconclusory terms" the basis for an opinion that no firm-specific, nonfraud related information contributed to the decline in stock price during the relevant period. While this is certainly a threshold requirement specified by the Seventh Circuit for a valid loss causation model to be admissible under the governing legal standards defined by the Seventh Circuit, the remand mandated by the Seventh Circuit is not so limited. In reversing and remanding, the Seventh Circuit unambiguously stated that defendants are entitled to a new trial on two issues: "loss causation and whether the three executives 'made' certain of the false statements at issue under *Janus*'s narrow definition of that term." Opinion at 47.

The Seventh Circuit held that "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

[2] It should be noted that Aldinger and Schoenholz were also found liable for all 17 actionable statements as control persons under §20(a) of the 1934 Act. The Court's decision left this finding undisturbed, so whether they "made" certain statements is academic – either way, they remain liable for all 17 statements. *Id.* at 37-38.

disclosures and not other factors" and found that the expert opinion rendered by Professor Fischel was deficient, as a matter of law, because it "didn't account for the extent to which firm-specific nonfraud related information may have contributed to the decline in Household's share price" other than in insufficient "very general terms." *Id.* at 20. The Court unambiguously held that the opinion evidence submitted by Professor Fischel in the first trial "did not adequately account for the possibility that firm-specific nonfraud related information may have affected the decline in Household's stock price during the relevant period," *id* at 24-25, and noted that "Fischel's specific-disclosure model . . . might encounter the same problem, if indeed there was some additional negative firm-specific non-fraud related information on the same day as a specific disclosure." *Id.* at n. 7.

In sum, the expert opinion submitted by Plaintiffs in the first trial was insufficient to meet their burden of proving the required element of loss causation. Because the expert opinion presented in the first trial was insufficient as a matter of law and the element of loss causation was not proven, the Seventh Circuit expressly remanded for a new trial on "loss causation." Indeed, in discussing the Phase II proceedings, the Seventh Circuit reinforced that Plaintiffs must "prove loss causation" in the new trial. *Id.* ("Assuming the plaintiffs adequately prove loss causation, the district court may rely on the results from Phase II.").

Where, as here, the Seventh Circuit has reversed the judgment and remanded for retrial, the first jury's determination of any aspect of loss causation is not "law of the case" and is not binding on the new jury. *See, e.g., Bright v. Hill's Pet Nutrition, Inc.*, 342 Fed. App'x 208, 209 (7th Cir. 2009) (holding that district court, on remand, improperly had treated original jury's verdict as law of the case, and explaining: "Our first decision set aside the entire judgment; it did not affirm in part and reverse in part. The jury's verdict was annulled; it has no continuing force."). Here, the Seventh

Circuit's reversal on the loss causation element annulled all aspects of the first jury's determination of that issue.

Additionally, the "middle ground" prescribed by the Seventh Circuit for determining whether the Leakage Model (or any alternative model presented by plaintiffs) adequately accounts for the effect of firm-specific non-fraud information sets forth a straightforward pretrial process to determine *whether* plaintiffs' loss causation model(s) are admissible at trial and may be submitted to a jury:

Step 1: Plaintiffs' expert must set forth an explanation "in nonconclusory terms" for any opinion that "no firm-specific, non-fraud related information contributed to the decline in stock price during the relevant time period," Opinion at 24.

Step 2: If Plaintiffs' expert does so, Defendants then will have the opportunity "of identifying some significant, firm-specific, nonfraud related information that could have affected the stock price." *Id.*

Step 3: If defendants cannot meet their burden at Step Two, "*then the leakage model can go to the jury*; if they can, 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." *Id.* (emphasis supplied).

The Seventh Circuit's "middle ground" procedure plainly contemplates the opportunity for defendants to challenge the admissibility of plaintiffs' loss causation model(s) *before* the model(s) can be submitted to the jury in accordance with established pretrial expert admissibility proceedings. Indeed, in their failed petition to the Seventh Circuit for rehearing, plaintiffs themselves acknowledged that the "middle ground" approach set forth in the Seventh Circuit's opinion "would require a *Daubert* challenge as to the admissibility of the expert's opinion that non-fraud firm-specific factors did not impact the stock price, and if the opinions were admitted, cross examination

of the expert on the basis for that opinion, and introduction of contrary evidence by defendants at trial." (Case No. 13-3532, Dkt. No. 95 at 8.) The procedure plaintiffs now are proposing is directly contrary to the "middle ground" procedure prescribed by the Seventh Circuit and would eliminate a proper pre-trial screening via a *Daubert* motion to determine whether the loss causation model(s) proposed by plaintiffs meet the standards for admissibility.

Finally, Plaintiffs constrained interpretation as to the remand with respect to the element of "loss causation" would also give rise to constitutional violations under the Seventh Amendment. The issue of whether Fischel's Leakage Model (or any alternative model) adequately accounts for firm-specific, non-fraud related information is integrally intertwined with, and cannot be determined separately, from other loss causation aspects. *See, e.g., Gasoline Products Co., Inc. v. Champlin Refining Co.*, 283 U.S. 494, 500 (1931) (holding that the question of damages was so interwoven with liability that the damages issue could not be submitted to the jury without liability "without confusion and uncertainty"); *In the Matter of Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1303 (7th Cir. 1995); 12 Moore's Federal Practice, § 59.14[1] at 59-91 to 59-92. As the Seventh Circuit implicitly recognized in directing a retrial of "loss causation," the entire element of loss causation must be retried, rather than the limited, piecemeal retrial suggested by plaintiffs, because all matters pertaining to the expert opinions on the element of loss causation are inextricably intertwined. For example, plaintiff's expert presented two models that purported to measure inflation during the class period by using the declines in Household's stock price during the 288-day disclosure period (after the truth began to become known to the market). The jury selected one of those models – the Leakage Model – and used that model to calculate inflation for each day during the class period. In determining whether plaintiffs' expert's models adequately account for firm-specific, non-fraud factors, the new jury will need to examine the news during the disclosure period that may have affected Household's stock price, and determine whether the information was firm-specific, non-

fraud information. In doing so, the jury necessarily will need to examine other, intertwined aspects of loss causation, such as whether the information on a particular day was in fact "news," or was stale information. The jury will then need to select a model, and use that model to calculate the amount of inflation in the stock.

2. *Janus*

In remanding the case for a new trial on the *Janus* issue, the Seventh Circuit instructed that defendants "may not relitigate whether any of the 17 statements were false or material." Opinion at 37. However, the Seventh Circuit also unambiguously held that the new trial will require that the jury determine "whether the three executives 'made' the particular statements we've identified and whether they did so knowingly or recklessly." Opinion at 38. Accordingly, it has been directed that the new jury determine both whether an executive "made" the particular statements at issue, and if so, whether the defendant acted knowingly or recklessly in making the statement.

III. THE PARTIES' ANALYSIS OF THE NEW TRIAL

A. *Janus*

The parties largely agree with respect to the *Janus* issues that need to be re-tried. The issues are as follows:

Did the Individual Defendants "make" the following statements?

William F. Aldinger[3]

Statement No. 16	04/18/01 Press Release	Ex. P504
Statement No. 18	07/18/01 Press Release	Ex. P503
Statement No. 21	10/17/01 Press Release	Ex. P978
Statement No. 24	01/16/02 Press Release	Ex. P706

[3] Plaintiffs believe that the Court of Appeals stated "[n]or does it appear" that Aldinger "actually delivered" the statements in these seven press releases, and held that "[a]bsent either attribution or actual delivery, the *Janus* inquiry turns on control." Opinion at 33. In fact, Aldinger is quoted in all seven of these press releases; his quote is actually part of the false statement in five of the seven press releases. *See* P503, P504, P227, P635, P706, P788 and P978. Therefore, plaintiffs will seek summary judgment or a directed verdict on at least five of these statements.

Statement No. 28	04/09/02 Investor Relations Conference	Ex. P135
Statement No. 29	04/17/02 Press Release	Ex. P635
Statement No. 36	07/17/02 Press Release	Ex. P788
Statement No. 37	08/14/02 Press Release	Ex. P227

David A. Schoenholz

Statement No. 16	04/18/01 Press Release	Ex. P504
Statement No. 18	07/18/01 Press Release	Ex. P503
Statement No. 21	10/17/01 Press Release	Ex. P978
Statement No. 23	12/04/01 Goldman Sachs Presentation	Ex. P1248
Statement No. 24	01/16/02 Press Release	Ex. P706
Statement No. 29	04/17/02 Press Release	Ex. P635
Statement No. 36	07/17/02 Press Release	Ex. P788
Statement No. 37	08/14/02 Press Release	Ex. P227

Gary Gilmer

Gilmer made Statement No. 14 (March 23, 2001 Origination News Article, Ex. P1307). The new jury must determine whether Gilmer made any of the other 16 false statements: Statement Nos. 15-18, 20-24, 27-29, 32, 36-38.

If the jury finds that the Individual Defendants "made" any of these statements, plaintiffs' position is that the original jury's finding that the defendant acted with scienter remains. However, the new jury must determine the degree of scienter: was it knowing or reckless. Plaintiffs' position is that each knowing or reckless determination will also be attributed to Household.

Defendants' position is that the new jury is not bound by the prior jury's determination of scienter with respect to any statements that are the subject of retrial on the *Janus* issue and, in accordance with the Seventh Circuit's directive the jury should determine "whether the three executives 'made' the particular statements . . . and whether they did so knowingly or recklessly."

The parties also agree that the new jury must determine the percentage of proportionate liability attributable to each defendant.[4]

[4] Plaintiffs' view is that the resolution of this question is also academic since Household is liable for every statement, did not appeal from the portion of the judgment holding that Household, Aldinger and Schoenholz

B. Plaintiffs' Position Regarding the Loss Causation Issues that Must be Re-Tried

The issues that must be retried are limited in scope. The new jury must make a determination regarding the following issues:

(1) Has plaintiffs' loss causation and damages expert adequately accounted for company-specific non-fraud factors?

(2) What damages, if any, can plaintiffs prove for March 23, 26 and 27, 2001? That is, what number should be filled in for those three dates in Table B of the Verdict Form?

C. Defendants' Position Regarding the Loss Causation Issues That Must be Re-Tried

The element of loss causation is subject to retrial. The jury must make a determination regarding:

(1) Have Plaintiffs proven loss causation?

(2) If so, what is the amount of inflation caused by each of the 17 misrepresentations at issue?

D. Plaintiffs' Proposed Schedule

As set forth above, the issues that must be re-tried are severely limited in number and scope. The plaintiffs have now waited 14 years for justice. On their behalf, Lead Counsel asks that the new trial be scheduled as soon as possible and propose the following schedule:

September 23, 2015 – Plaintiffs serve Fischel's supplement to prior reports and testimony concerning company specific non-fraud information.

---

are jointly and severally liable for this verdict, and promised in the appeal bond to satisfy the judgment on behalf of all defendants. Additionally, Household is liable for the entire verdict no matter how the proportionality breaks down between the defendants under principles of respondeat superior. *Makor Issues & Rights, Ltd. v. Tellabs, Inc.*, 513 F.3d 702, 708 (7th Cir. 2008) ("[T]he doctrines of respondeat superior and apparent authority remain applicable to suits for securities fraud.").

October 23, 2015 – Defendants serve Bajaj's response to Fischel's supplement.[5]

November 20, 2015 – Plaintiffs serve Fischel's rebuttal to Bajaj's response.

December 11, 2015 – Depositions of Fischel and Bajaj shall be completed.

January 8, 2016 – File pretrial motions, including any challenge to experts' supplemental reports concerning company-specific non-fraud factors.[6]

February 5, 2016 – File oppositions to pretrial motions.

February 19, 2016 – File reply briefs.

March 14, 2016 – Trial commences.

E. Defendants' Proposed Schedule

As the Seventh Circuit has directed, Defendants are entitled to a trial in which the admissibility of expert opinion testimony on the fundamental element of loss causation is handled in accordance with legal requirements and the methodology specified by the Seventh Circuit. The directive of the Seventh Circuit should be followed to determine properly the admissibility of expert testimony for this retrial so that error does not again delay the proper resolution of this long-standing case. As set forth above, the essential liability element of "loss causation" is to be retried, and Defendants ability to retry that element should not improperly be constrained by the first trial in

[5] Defendants seem to assume that they are entitled to a broad-ranging trial on issues related to loss causation, which is inconsistent with the Seventh Circuit's opinion limiting the new trial to company-specific non-fraud factors. Defendants' loss causation and damages expert at the first trial was Mukesh Bajaj. Apparently, defendants believe that they can simply start from scratch and choose a new loss causation expert. Plaintiffs believe that, depending on the scope of the new trial, defendants are not entitled to designate a new expert. *Cleveland v. Piper Aircraft Corp.*, 985 F.2d 1438, 1449-50 (10th Cir. 1993); *Steadfast Ins. Co. v. Auto Mktg. Network, Inc.*, No. 97C5696, 2003 U.S. Dist. LEXIS 22217 (N.D. Ill. Dec. 8, 2003).

[6] Because they did not appeal Judge Guzmán's order denying their *Daubert* motion seeking to exclude Fischel's testimony, defendants have waived any opportunity to challenge the admissibility of his prior opinions. Defendants' schedule proposing a motion to exclude Fischel's testimony on company-specific non-fraud information after "Step 1" is inconsistent with the Seventh Circuit's procedure which requires defendants to come forward with evidence that such inflation exists (and is significant) and allows Fischel to respond. The proposal is plainly designed to eliminate defendants' burden of identifying significant company-specific non-fraud inflation that Fischel did not account for.

which the contours of the proceedings were shaped and adversely impacted by a legally insufficient expert opinion. Accordingly, Defendants propose the following schedule:

September 23, 2015 – Plaintiffs serve Fischel's supplement to prior reports and testimony concerning company specific non-fraud information.

October 14, 2015 – To the extent Plaintiffs' supplemental report opines that "no firm-specific, nonfraud related information contributed to the decline in stock price during the relevant period," defendants may, if warranted, move the Court to preclude the report if it fails to meet the Seventh Circuit's threshold requirement to "explain[ ]in nonconclusory terms the basis for th[e] opinion."[7]

November 11, 2015 – If it is determined that plaintiffs' new and/or supplemental report provides a sufficient explanation "in nonconclusory terms" of the basis for the opinion, defendants will then serve responsive expert report(s) addressing plaintiffs' report and the issue of loss causation, which will include identifying nonfraud-related information that could have contributed to the decline in Household's stock price during the relevant period as calculated under plaintiffs' proposed model(s).

December 16, 2015 – Plaintiffs submit rebuttal reports addressing the reports of defendants' experts.[8]

---

[7] Plaintiffs' suggestion that Defendants' proposed schedule is "inconsistent with the Seventh Circuit's procedure" or with prior rulings is incorrect. The Seventh Circuit ruled that Professor Fischel's opinion was insufficient as a mat *Daubert* ter of law and required as a first step on remand for Plaintiffs' expert to "explain in nonconclusory terms the basis for []his opinion." Op. at 24. The second stage of the specified procedure arises only "[i]f" Plaintiffs' expert satisfies this threshold requirement. Id. Professor Fischel's prior opinion did not do so.

[8] Plaintiffs assertion that Defendants must use as its expert Dr. Bajaj in a remanded trial is incorrect and inconsistent with the practice in this district with respect to remanded trials.. *See, e.g., Smart Marketing Group, Inc. v. Publications Int'l, Ltd.*, 2013 WL 2384248 (N.D. Ill. 2013); *Roberts v. Sears, Roebuck & Co.*, 1988 WL 128696 (N.D. Ill. 1988). Fundamental fairness warrants that Defendants be permitted to respond appropriately and fully to the supplemental expert report required to be submitted by Plaintiffs for this retrial.

January 20, 2015 – Depositions of experts shall be completed.

February 10, 2016 – File pretrial motions.

March 2, 2016 – File oppositions to pretrial motions.

March 16, 2016 – File reply briefs.

At a time set by the Court thereafter – Trial commences.

DATED: August 25, 2014

ROBBINS GELLER RUDMAN
& DOWD LLP
MICHAEL J. DOWD (135628)
SPENCER A. BURKHOLZ (147029)
DANIEL S. DROSMAN (200643)
LUKE O. BROOKS (90785469)
LAWRENCE A. ABEL (129596)

/s/ Michael J. Dowd

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
JASON C. DAVIS (253370)
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
MAUREEN E. MUELLER
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)

Lead Counsel for Plaintiffs

MILLER LAW LLC
MARVIN A. MILLER
LORI A. FANNING
115 S. LaSalle Street, Suite 2910
Chicago, IL 60603
Telephone: 312/332-3400
312/676-2676 (fax)

Liaison Counsel

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
R. RYAN STOLL

/s/ R. Ryan Stoll

155 North Wacker Drive
Chicago, IL 60606
Telephone: 312/407-0700

Counsel for Household International, Inc.

CERTIFICATE OF SERVICE

R. Ryan Stoll, an attorney, hereby certifies that, on August 25, 2015, he served true and correct copies of the foregoing Joint Status Report on all counsel of record via the Court's ECF filing system.

/s/ R. Ryan Stoll
R. Ryan Stoll

EXHIBIT C

Jaffee v. HSBC

Trial Proceedings 4-09-09 (vol. 8)

4/9/2009

Annotation Digest - All Annotations

Issue Filter: Motion in Limine

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/9/2009] Trial Proceedings 4-09-09 (vol. 8)
Issue Filter: Motion in Limine

Pg: 141 Ln: 24 - Pg: 142 Ln: 21

Annotation:

141:24
18 your employees to peddle insurance like this? Don't you
25 think
26 19 that might cause problems when you reward them? We're
out in
27
04:14:56 20 your branches, and we see them. We see them misleading
28 your
29 21 customers.
22 Now, they ignored that in 2001 and 2002, ladies
30 and
23 gentlemen. But the one fact that's always going to ring
31 true,
24 we'll show you the articles where these guys deny it,
32 deny
04:15:10 25 their predatory lending, just like Mr. Gilmer tried to lead
142: 1 Dowd - interim summation
2 1708
3 1 you to believe that he bought 500,000 shares during the
class
4
2 period. And you know what, ladies and gentlemen? He
5 didn't.
6 3 He got handed free stock options.
7 4 And what really happened when we showed the
forms he
8
04:15:25 5 had to file with the government? He turned a $3 million
9
6 profit. He was buying shares at $11 on real old stock
10 options
11 7 and selling it for 68, $69 during the class period.
That's
12
8 what our clients were paying. That's what our clients
13 were
14 9 paying. He made 3 million. But they tried to show you
this
15
04:15:43 10 chart showing like he had bought stock. Remember, he
16 had gone
17 11 into his pocket.
18 12 He didn't go into his pocket, ladies and
gentlemen.
19
13 He got free stock options that were given to him.
20 That's what
21 14 increased his holdings, and we showed that to you
yesterday.

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/9/2009] Trial Proceedings 4-09-09 (vol. 8)
Issue Filter: Motion in Limine

Pg: 141 Ln: 24 - Pg: 142 Ln: 21 **continued...**

Linked Issues: Motion in Limine

Jaffee v. HSBC

Trial Proceedings 4-14-09 (vol. 10)

4/14/2009 2:09 PM

Annotation Digest - All Annotations

Issue Filter: Motion in Limine

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/14/2009 2:09 PM] Trial Proceedings 4-14-09 (vol. 10)
Issue Filter: Motion in Limine

Pg: 2054 Ln: 12 - Pg: 2055 Ln: 16

Annotation:

2054:12 Q. Okay. Sir, I'll ask you to take a quick look, again
13 staying in Plaintiffs' Exhibit 759, and -- let's go to the
14 page that ends with the Bates range 52 if you could.
15 Sir, do you have that in front of you?
16 A. I do.
17 Q. And that reports certain information about your
18 compensation, as well as recommendations for bonuses for the
19 year 2000; is that correct?
20 A. That's what it says.
21 Q. Okay. And it's true, sir, that at the end of the year
22 2000, you were making a salary of $500,000 a year; is that
23 right?
24 A. Yes.
25 Q. Okay. And you made that same salary in the next year,
2055: 1 2001; is that correct?
2 A. Yes.
3 Q. And, sir, you got a bonus in 1999 of $1.5 million; is that
4 right?
5 A. Yes.
6 Q. And do you recall, sir, there's a recommended bonus here
7 of $2 million for the year 2000; and, in fact, that was the
8 bonus you received in 2000; is that correct?
9 A. Yes.
10 Q. Okay. And then in the next year, 2001, you received a
11 bonus of $2.5 million; is that correct, sir?
12 A. I did.
13 Q. And in addition to those, you were also granted stock
14 options in 1999, 2000 and 2001 by the company; is that
15 correct?
16 A. Yes.

Linked Issues: Motion in Limine

Pg: 2060 Ln: 2 - Pg: 2061 Ln: 1

Annotation:

2060: 2 Exhibit 1038.
3 At the top of the page, there's an entry, Highly-paid
4 U.S. employees, tier one, approximate cash distributions
5 assuming a May 31, 2002, termination.
6 Do you see that?
7 A. That's what it says.
8 Q. Okay. And there's an entry there for you, Dave
9 Schoenholz; is that right?
10 A. There is.
11 Q. And it's got, for example, your salary down there,
12 500,000; is that right?
13 A. Correct.
14 Q. And it's got your 2001 bonus, that 2.5 million; is that
15 right?

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/14/2009 2:09 PM] Trial Proceedings 4-14-09 (vol. 10)
Issue Filter: Motion in Limine

Pg: 2060 Ln: 2 - Pg: 2061 Ln: 1 **continued...**

Annotation:

2060:16 A. Correct.
17 Q. And then it lists a total number of $34,823,769 in the
18 right-hand column; is that right?
19 A. I see that.
20 Q. And did you have an understanding in May -- at the end of
21 April 2002 that there were internal calculations being done on
22 how much you would receive if you left the corporation May 31,
23 2002, as a result of a merger?
24 A. I don't remember -- I'm not surprised that there were
25 calculations being done. I don't remember specifically if I
2061: 1 knew that they were being done.

Linked Issues: Motion in Limine

Jaffee v. HSBC

Trial Proceedings 4-21-09 (vol. 15)

4/21/2009 2:16 PM

Annotation Digest - All Annotations

Issue Filter: Motion in Limine

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11

Annotation:

3060: 1 Aldinger - direct
2 3060
3 related to the Compensation Committee at Household
4 International, correct?
5 A. I'd like to look.
6 Q. Why don't you turn to the third page of the document.
7 A. Is this to members of Board Compensation Committee? Where
8 are you?
9 Q. Third page, page ending 028.
10 A. 28.
11 Q. Do you see that there's a Compensation Committee meeting
12 agenda set forth there?
13 A. Yes.
14 Q. You were on the Board of Directors, right, sir?
15 A. Yes.
16 Q. In fact, you were the Chairman of the Board of Directors;
17 is that right?
18 A. That's right.
19 Q. You've seen Compensation Committee meeting agendas before,
20 correct?
21 A. Yes, I have.
22 Q. Okay.
23 And this was one that was an agenda for January 29th,
24 2001, correct?
25 A. That's what it says.
26 MR. DROSMAN: Plaintiffs offer Exhibit 759 into
27 evidence.
3061: 1 Aldinger - direct
2 3061
3 THE COURT: It will be admitted.
4 (Plaintiffs' Exhibit No. 759 received in evidence.)
5 BY MR. DROSMAN:
6 Q. Turn with me, if you would, to page ending 056. Let me
7 know when you arrive at the page.
8 A. I'm getting there.
9 (Brief pause.)
10 BY THE WITNESS:
11 A. I'm there.
12 BY MR. DROSMAN:
13 Q. And you see that the heading at the top of this page is,
14 "Household International Top Five Executives Compensation
15 Calculations," right?
16 A. Yes, I do.
17 Q. And, then, if you look at the box below in the upper
18 left-hand corner, it says, "1999 Actual."
19 Do you see that?
20 A. Yes, I do.
21 Q. And you understood that these were the actual -- this was
22 the actual -- compensation figures that had been provided to
23 the top five executives at Household International for 1999,

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11 **continued...**

Annotation:

3061:24 right?
25 A. That's right.
26 Q. Okay.
27 Let's look at your compensation. It looks like you
3062: 1 Aldinger - direct
2 3062
3 had overall total compensation for 1999 of 12.876 million; is
4 that right?
5 A. That's right.
6 Q. And, then, the other executives are Bangs, Gilmer,
7 Schoenholz and Mehta.
8 Do you see that?
9 A. Yes, I do.
10 Q. And your compensation was nearly five -- I'm sorry, nearly
11 three -- times greater than the next highest paid executive at
12 Household; is that right?
13 A. Three times -- a little less than three. That's about
14 right.
15 Q. I'll show you what's been marked as Plaintiffs' Exhibit
16 774 for identification.
17 (Document tendered to counsel and the witness.)
18 BY THE WITNESS:
19 A. Are we done with this?
20 BY MR. DROSMAN:
21 Q. Yeah. You can just set it aside, if you'd like.
22 And this Exhibit 774 is entitled, "Compensation
23 Committee Meeting January 28th, 2002," right?
24 A. That's correct.
25 MR. DROSMAN: Plaintiffs offer Exhibit 774 into
26 evidence.
27 MR. KAVALER: I believe it's in, your Honor.
3063: 1 Aldinger - direct
2 3063
3 MR. DROSMAN: That's correct, it is in. I apologize.
4 BY MR. DROSMAN:
5 Q. Now, if you turn to page ending 113.
6 A. Yes.
7 Q. You see there's a memo on that page?
8 A. I do.
9 Q. And it was dated January 14th, 2002, correct?
10 A. That's correct.
11 Q. And it was carbon copied to you, right?
12 A. That's right.
13 Q. The subject was "2001 Executive Bonus," right?
14 A. Yes.
15 Q. And it says, "The executive bonus participants had a 2001
16 target bonus to increase HI EPS to $4.05. Actual EPS was
17 $4.08. Awards should be calculated as max points."
18 Do you see that?
19 A. I do.

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11 **continued...**

Annotation:

3063:20 Q. And you understood that you had a target for your bonus
21 based on Household International's earnings per share, right?
22 A. That was one of the targets.
23 Q. In this case, the target was $4.05, right?
24 A. That's what it says, yes.
25 Q. And you exceeded the earnings per share target, didn't
26 you?
27 A. Yes.
3064: 1 Aldinger - direct
2 3064
3 Q. You exceeded it by three cents, right?
4 A. That's what it says, yes.
5 Q. And, therefore, awards were calculated to the max, right?
6 A. Well, no, that's not right.
7 Q. Well, to max points, right?
8 A. The Board, in making compensation payments, looked at a
9 number of factors. And the way we designed our compensation
10 plan was, first, in order to create our compensation pool, we
11 had to generate at least a 12 percent return on equity for
12 shareholders. We then created a pool.
13 We had several goals that we would look at that were
14 not pass/fail. And even if we made every one of them, the
15 Board had the right and the Comp Committee had the right and
16 the authority to make a decision on how much they wanted to
17 pay out.
18 Somewhere in here, there will be what a max payment
19 would be, and it's significantly higher than we actually paid
20 out during this period.
21 So, if we go through this, it will be in here
22 somewhere. We will show that nobody got the max bonus they
23 could have got for the year because the Board looked at
24 multiple things, not just four or five goals that were
25 pass/fail. They looked at how we did compared to peer groups.
26 They looked at what compensation was for the industry. And
27 even if the bonus pool generated more money, they had the
3065: 1 Aldinger - direct
2 3065
3 ability to make the bonus lower. And that's what they did.
4 Q. This memo is entitled, "2001 Executive Bonus," correct?
5 A. Yes, it is.
6 Q. Do you see any other target on this page besides EPS?
7 A. No, I don't.
8 Q. And you received max points; is that right?
9 A. Well, max points on that, yes.
10 Q. Okay.
11 I'll show you -- actually, why don't you take a look
12 at Page 135, if you would.
13 Are you there, sir?
14 A. 135, I'm there.
15 Q. Okay.

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11 **continued...**

Annotation:

3065:16 And the heading on the top of that page is, "2000
17 Compensation Household."
18 Do you see that?
19 A. Yes.
20 Q. And, then, in the box it says, "2000 Actual," right?
21 Upper left-hand corner of the box?
22 A. Yes.
23 Q. You understood that this was the actual overall total
24 compensation that you received for the year of 2000, correct?
25 A. That's right.
26 Q. And for the year of 2000, you received overall total
27 compensation of 18.215 million, correct?
3066: 1 Aldinger - direct
2 3066
3 A. That's correct.
4 Q. And, again, that was nearly three times the next highest
5 paid executive's overall total compensation, correct?
6 A. That's correct.
7 Q. Okay.
8 I'll show you what's been marked as Plaintiffs'
9 Exhibit 772 for identification.
10 (Document tendered to counsel and the witness.)
11 BY MR. DROSMAN:
12 Q. This is -- Plaintiffs' Exhibit 772 is -- entitled,
13 "Compensation Committee Meeting."
14 Do you see that?
15 A. I do.
16 Q. And it's dated September 10th, 2002, right?
17 A. That's correct.
18 Q. And this document is also in evidence. Why don't we turn
19 to the page ending 760.
20 Once again -- just let me know when you've arrived at
21 that page, 760.
22 A. I will.
23 (Brief pause.)
24 BY THE WITNESS:
25 A. I'm there.
26 BY MR. DROSMAN:
27 Q. And, once again, this is entitled, "Household
3067: 1 Aldinger - direct
2 3067
3 International 2001 Compensation, Five Highest Paid," right?
4 A. That's correct.
5 Q. And you're the highest paid executive, correct?
6 A. Yes.
7 Q. You're the CEO, right?
8 A. Yes.
9 Q. Okay.
10 And if you'd look at the compensation for -- your
11 overall total compensation for -- 2001, that's your actual

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11 **continued...**

Annotation:

3067:12 overall total compensation, right?
13 A. That's what it says.
14 Q. You don't have any reason to --
15 A. Well, I mean --
16 Q. -- disbelieve that, do you?
17 A. Well, I don't disbelieve it, but I think it's important to
18 point out that a large part of this compensation is
19 theoretical. There's a theoretical value to options.
20 And, so, when you -- they either do perform or they
21 don't perform. It's a mathematical allocation. So, it is
22 true that's the way we put it in the proxy, but to say that I
23 made or earned or collected all that money in that year was
24 not accurate. If the options performed, it would later be
25 valuable. If they didn't perform, then it wouldn't be
26 valuable.
27 But --
3068: 1 Aldinger - direct
2 3068
3 Q. So --
4 A. -- the cash was the first part. So --
5 Q. So, that makes sense.
6 A. -- that's the only point I make.
7 Q. When they say overall total compensation of 25.179
8 million -- you see that, right?
9 A. I do.
10 Q. -- it could have been more than 25.179 million? That's
11 what you're telling me, right?
12 A. If the options perform really well and shareholders did
13 really well, theoretically it could have been more. And if
14 the price didn't go up or the price went down, it would be
15 worth zero.
16 Q. Okay.
17 A. So, it is a theoretical number that we all work with. But
18 I just don't want to suggest that everybody in this group took
19 home all that cash.
20 Q. You understand that I didn't calculate these numbers,
21 right?
22 A. No. I'm just distinguishing. I'm not disputing the way
23 the number shows up. I'm just making the point that it's not
24 all cash.
25 Q. You saw that this was calculated --
26 A. Theoret- --
27 Q. -- by the people at Household International, right?
3069: 1 Aldinger - direct
2 3069
3 A. Absolutely.
4 Q. And when you received this document, you didn't have a
5 problem with this calculation, did you?
6 A. No, I don't. I don't disagree with the calculation. I'm
7 merely making a point.

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11 **continued...**

Annotation:

3069: 8 Q. You didn't send it back and tell them to recalculate the
9 numbers because they were wrong?
10 A. No, didn't do that.
11 Q. In fact, you saw that overall total compensation had been
12 calculated at 25.179 million for you, right?
13 A. That's what it says, yes.
14 Q. And that's for the year 2001, right?
15 A. That's correct.
16 Q. And, again, you were about three times higher paid than
17 the next highest executive, correct?
18 A. Yes.
19 Q. I'll show you what's been marked as Defendants' Exhibit
20 774 for identification.
21 (Document tendered to counsel and the witness.)
22 MR. DROSMAN: Plaintiffs offer Exhibit 774 -- it's a
23 defendants' exhibit -- into evidence.
24 THE COURT: It will be admitted.
25 (Defendants' Exhibit No. 774 received in evidence.)
26 BY MR. DROSMAN:
27 Q. Let's talk about some of the hard numbers that you
3070: 1 Aldinger - direct
2 3070
3 actually made.
4 You mentioned cash, right?
5 A. Right.
6 Q. And this is a Form 4, right, sir? You see that on the
7 upper left-hand corner?
8 A. I do.
9 Q. You know what a Form 4 is, right?
10 A. Yes, I do.
11 Q. And a Form 4 is filed every time that a reporting person
12 at Household bought or sold stock, correct?
13 A. That's correct.
14 Q. And you were a reporting person, right?
15 A. Yes, I was.
16 Q. So, when you bought or sold stock, you filed a Form 4,
17 right?
18 A. Yes, I did.
19 Q. And it contained your purchases and your sales, didn't it?
20 A. That's right.
21 Q. And this is an example of one of those, isn't it?
22 A. That is.
23 Q. Okay.
24 This was filed on September 5th, 2000; is that right?
25 A. Looking for the date here.
26 Q. Do you see the stamp that it was received?
27 A. Oh, got it. Yes.
3071: 1 Aldinger - direct
2 3071
3 Q. Okay.

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11 **continued...**

Annotation:

3071:
And it contained trades that you made from August 14th, 2000, to August 22nd, 2000, right?
A. That's correct.
Q. And if you look at the A or D column -- do you see that column?
A. Uh-huh.
Q. Is that a "Yes"?
A. Yes, I do.
Q. Okay.
A. Yeah.
Q. You understand that the "A" stands for "acquire," right?
A. Yes.
Q. And that's when you bought stock, you acquired it, right?
A. That's right.
Q. And the "D" stands for "disposed," right?
A. That's right.
Q. And that's when you sold the stock, right?
A. That's right.
Q. And here you were exercising stock options, weren't you?
A. That's correct.
Q. You were exercising stock options that had been valued at -- or for $12.68, correct?
A. That's right.
Q. Okay.

3072:
Aldinger - direct

3072

That wasn't what the stock was trading in the open market on that day, was it?
A. No, that's -- that's right. This was several years later.
Q. That's what you paid for it that day, correct?
A. That's correct.
Q. So, you paid $12.68 for 250 shares, right?
A. That's right.
Q. Okay.
MR. KAVALER: Objection, your Honor. I think the number is 250,000 shares.
MR. DROSMAN: That's correct.
BY MR. DROSMAN:
Q. 250,000 shares, right?
A. That's correct.
Q. Okay.
So, when you paid $12.68 for 250,000 shares, you spent about $3 million, didn't you?
A. Yeah, that's about right. Yes.
Q. And, then, you sold shares, didn't you?
A. Yes.
Q. You sold shares over the following week, correct?
A. That's correct.
Q. And you sold shares at between $48 and $46 a share, correct?

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11 **continued...**

Annotation:

3072:27 A. That's right.
3073: 1 Aldinger - direct
2 3073
3 Q. So, on each share of stock that you sold, you got between
4 34 and $36 per share, correct?
5 A. That's correct. That's the way options work.
6 Q. And you bought 250,000 shares, correct?
7 A. Yes.
8 Q. And you sold 246,000 shares, correct?
9 A. That's correct.
10 Q. Okay.
11 And when you sold your shares of stock, you sold
12 those for about $11.8 million, didn't you?
13 A. I don't remember the exact number, but it's a $36 spread,
14 whatever it is, approximately.
15 Q. Okay.
16 So, if you sold for $11.8 million and you bought for
17 $3 million, it stands to reason that you made $7.8 million in
18 cash --
19 A. That sounds right.
20 Q. -- on that date, correct?
21 A. That sounds right, yeah.
22 Q. Okay.
23 A. We should point out that the way options work --
24 Q. I don't think there's a question pending, sir.
25 A. -- shareholders made about 15 billion during that period.
26 Q. I'll show you what's been marked as Defendants' Exhibit
27 775 for identification.
3074: 1 Aldinger - direct
2 3074
3 (Document tendered to counsel and the witness.)
4 BY MR. DROSMAN:
5 Q. Let's talk more about the cash that you made during 1999
6 to 2000, okay?
7 A. Yes.
8 Q. And Plaintiffs' Exhibit 7- -- or Defendants' Exhibit 775
9 is another Form 4, right?
10 A. Yes.
11 Q. Okay.
12 MR. DROSMAN: Plaintiffs move 775 into evidence.
13 THE COURT: Admitted.
14 (Defendants' Exhibit No. 775 received in evidence.)
15 BY MR. DROSMAN:
16 Q. And if you look at the second page of Exhibit 775, you see
17 that you signed it, correct?
18 A. Yes.
19 Q. And you signed it on January 19th, 2001; is that right?
20 A. Yes.
21 Q. Okay.
22 And, once again, you were exercising stock options,

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11 **continued...**

Annotation:

3074:23 correct?
24 A. That's correct.
25 Q. And, in this case, you exercised 300,000 stock options,
26 correct?
27 A. That's right.
3075: 1 Aldinger - direct
2 3075
3 Q. And that was on January 17th, 2001?
4 A. That's right.
5 Q. And, then, you turned around and you sold options, didn't
6 you?
7 A. That's right.
8 Q. In fact, you sold 289,947, correct?
9 A. I think that's right.
10 Q. Okay.
11 And, so, when -- you were purchasing options at about
12 $12.68 on that day, correct?
13 A. That's correct.
14 Q. That wasn't the price the stock was trading for on the
15 open market?
16 A. No. That's the way options work. We value them at the
17 front end as compensation and, then, later on, if the stock
18 goes up, you can make money; and, if the stock stays the same,
19 you don't make any money; and, if the stock goes down, you
20 make nothing.
21 In this case, the fact that I made money,
22 shareholders made approximately $15 billion in incremental
23 value during this period.
24 Q. Let me just make sure I understand.
25 When shareholders purchased stock on January 17th,
26 2001, they weren't purchasing it for $12.68 a share, were
27 they?
3076: 1 Aldinger - direct
2 3076
3 A. No, they weren't.
4 Q. Let me finish my question, if you would.
5 They weren't purchasing for $12.68 a share, were
6 they?
7 A. No, they weren't.
8 Q. No.
9 In fact, they were purchasing it closer to about $56
10 a share on that day, weren't they?
11 A. That's what it looks like, yes.
12 Q. But you didn't pay $56 for your stock, did you?
13 A. No. I earned mine by working there for eight years and
14 having the stock vest, and that's the way the options are
15 supposed to work.
16 Q. You paid $12.68 for your --
17 A. Absolutely.
18 Q. -- stock on that day, correct, sir?

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/21/2009 2:16 PM] Trial Proceedings 4-21-09 (vol. 15)
Issue Filter: Motion in Limine

Pg: 3060 Ln: 1 - Pg: 3077 Ln: 11 **continued...**

Annotation:

3076:19 And, then, you turned around and you sold it for $56,
20 right?
21 A. That's correct.
22 Q. So, when you paid $12 a share for 300,000 shares -- right?
23 -- you paid about $3.8 million, right?
24 A. Right.
25 Q. And, then, you turned around and you sold it for about
26 $16.3 million, didn't you?
27 A. Approximately.
3077: 1 Aldinger - direct
2 3077
3 Q. And, so, you made about 12.5 million in your stock sales
4 on that day, right?
5 A. That's right.
6 Q. So, if you take the last stock sale that we looked at and
7 this stock sale, that's about $21.1 million in --
8 A. That's correct.
9 Q. Okay.
10 MR. DROSMAN: I have no further questions, your
11 Honor.

Linked Issues: Motion in Limine

Jaffee v. HSBC

Trial Proceedings 4-22-09 (vol. 16)

4/22/2009 2:17 PM

Annotation Digest - All Annotations

Issue Filter: Motion in Limine

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/22/2009 2:17 PM] Trial Proceedings 4-22-09 (vol. 16)
Issue Filter: Motion in Limine

Pg: 3393 Ln: 1 - Pg: 3396 Ln: 14

Annotation:

3393: 1 Q. Okay.
2 I'll show you what we'll mark as Exhibit 1476 for
3 identification.
4 MR. DROSMAN: A copy for counsel.
5 (Document tendered to counsel and the witness.)
6 BY MR. DROSMAN:
7 Q. This is a deposition transcript, right?
8 A. Yes, I believe it is.
9 Q. It's your deposition, correct?
10 A. Yes, it is.
11 Q. Taken December 18th, 2003; is that right?
12 A. Yes.
13 Q. You were represented in that case; is that right?
14 A. Yes, I was.
15 Q. You were represented by a lawyer, right?
16 A. Yes.
17 Q. In fact, Mr. Kavaler represented you, didn't he?
18 A. Yes, he did.
19 Q. Mr. Sloane represented you in this case -- in that
20 deposition -- didn't he?
21 A. Yes.
22 Q. And that was for a different case than the one we're here
23 on today, isn't it?
24 A. I'm sorry, I --
25 Q. If you'll look at the top left-hand corner, you'll see the
3394: 1 case caption.
2 A. Oh, I see that.
3 Yes.
4 Q. And you answered the questions truthfully at that
5 deposition; didn't you, sir?
6 A. I believe I did, yes.
7 Q. In fact, you were under oath to tell the truth, right?
8 A. Yes, I was.
9 Q. The same oath you're under today, correct?
10 A. Yes.
11 Q. And, then, if you turn to me -- to Page 37, just follow
12 along with me, if you would.
13 Let's look at 37, Line 25, to 38, Line 9. Okay?
14 A. I'm not there yet.
15 Page 37, what lines?
16 Q. I'm sorry, 33, Line 15, to 33, Line 25.
17 So, Page 33.
18 A. 33?
19 Q. Yes. I apologize.
20 A. It's okay.
21 Q. Do you see 33, Line 15?
22 A. I'm not there yet.
23 Q. Okay.
24 A. I'm going back.
25 Q. Just let me know when you arrive there?

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/22/2009 2:17 PM] Trial Proceedings 4-22-09 (vol. 16)
Issue Filter: Motion in Limine

Pg: 3393 Ln: 1 - Pg: 3396 Ln: 14 **continued...**

Annotation:

3395: 1 A. I will.
2 This is the HHS 33, right?
3 Q. I was using the page of the deposition.
4 A. Oh, I'm sorry.
5 Q. Yes.
6 A. Let me go to 33.
7 Q. Do you see how each of the deposition pages is numbered in
8 the top right-hand corner there?
9 A. I do.
10 Q. Okay.
11 So, I'm talking about Page 33 of the deposition --
12 A. Let me get there.
13 Q. -- Lines 15 through 25.
14 A. I'm there.
15 Q. So, just read with me, if you would.
16 Question: "When you say people were worried about
17 it, what people?"
18 Answer: "Our investors said, basically, that they
19 would like to see less re-aging over time because the
20 perception that we may be risky, as raised in the Barron's
21 article, was hurting the company and hurting the stock."
22 Question: "So, when you refer to people, is it
23 people inside the company?"
24 Answer: "No."
25 Question: "You're referring to investors?"
3396: 1 Answer: "I'm referring to investors."
2 Did I read that correctly, sir?
3 A. I think you did.
4 MR. KAVALER: Your Honor, objection. Improper
5 impeachment. No inconsistency between his testimony today and
6 his testimony then. It's the exact same testimony.
7 THE WITNESS: That's the way I read it.
8 MR. DROSMAN: Your Honor, I asked the question --
9 THE COURT: Wait just a second.
10 If you don't mind, I'll rule on the objections.
11 THE WITNESS: Sorry about that.
12 THE COURT: I agree. I don't think that was
13 impeaching.
14 The jury will disregard it.

Linked Issues: Motion in Limine

Pg: 3485 Ln: 19 - Pg: 3494 Ln: 13

Annotation:

3485:19 Sir, yesterday when you were testifying about your
20 option sales, do you remember that testimony?
21 A. Yes.
22 Q. And you talked about how you sold some options during the
23 class period. Do you remember that?

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/22/2009 2:17 PM] Trial Proceedings 4-22-09 (vol. 16)
Issue Filter: Motion in Limine

Pg: 3485 Ln: 19 - Pg: 3494 Ln: 13 **continued...**

Annotation:

3485:24 A. I do.
25 Q. And I looked at your testimony, and you said you sold a
3486: 1 couple of options, right?
2 A. I sold two options, I believe, two of my options.
3 Q. You said, sir, yesterday "I sold a couple of options,"
4 right?
5 A. Yes, I'll accept that.
6 Q. Okay. And, sir, when you sold a couple of options, you
7 made some money, right?
8 A. Yes.
9 Q. Okay. In fact, you made over 19 million during 1999
10 through 2002 by selling Household stock, right?
11 A. I thought that's what we covered yesterday, yes.
12 Q. Okay. You sold $28.1 million worth of Household stock
13 during the 1999-through-2002 period, right?
14 A. Based on options, yes.
15 Q. And you bought 8.7 million shares during the same period,
16 right?
17 A. I don't remember that, but --
18 Q. What's a million here or there?
19 A. I don't remember that. I don't -- I didn't look at that.
20 Q. That sounds familiar though, right?
21 A. It sounds right.
22 Q. Okay. So if you bought 8.7 and you sold 28.1, you netted
23 about 19 million, right? A little more?
24 A. I had to -- I think I had to pay for the ones I sold, so
25 that net may not be right, but 19 sounds fine with me. What's
3487: 1 your point?
2 Q. That sounds like about what you made in option sales --
3 A. That sounds about right.
4 Q. -- through the 1999 through 2002 time frame, right?
5 A. That sounds about right. Actually it's the '94 through
6 2002 time frame because I never sold options before or after
7 during that time frame.
8 Q. So you waited until 1999 through 2002 to sell your stock,
9 right?
10 A. Well, some have to vest.
11 Q. Right, but I'm just asking you, you waited. You didn't
12 sell before. You waited until the 1999-through-2002 period to
13 sell, right?
14 A. That's when I sold, but I also kept a whole lot that I
15 could have sold.
16 Q. Let's talk about your tenure at Household, sir. You
17 mentioned that you were CEO for eight years, right?
18 A. That's correct.
19 Q. When did you leave Household?
20 A. I left in 2005, I believe.
21 Q. 2005. And when did you begin working at Household?
22 A. '94.
23 Q. '94. That sounds like 11 years to me.

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/22/2009 2:17 PM] Trial Proceedings 4-22-09 (vol. 16)
Issue Filter: Motion in Limine

Pg: 3485 Ln: 19 - Pg: 3494 Ln: 13 **continued...**

Annotation:

3487:24 A. Well, it wasn't Household at that point, so I was CEO for
25 eight years.
3488: 1 Q. Okay. And so you never left Household, right?
2 A. Well, I left -- I was no longer CEO after that. It became
3 a division of another company, so --
4 Q. Okay. Let's just walk through your tenure as CEO from
5 1998 on, okay?
6 A. Fine.
7 Q. Sir, you brought Mr. Gilmer back from England in 1998 to
8 run HFC, right?
9 A. That's correct.
10 Q. And then you and Mr. Schoenholz hired Andrew Kahr at the
11 end of 1999 to work with Mr. Gilmer to accelerate growth,
12 right? No dispute there.
13 A. No dispute there.
14 Q. Okay. And then in July 1999, when our clients began
15 buying Household stock, it was selling for about 42 bucks a
16 share, right, sir?
17 A. I don't remember the price at the given point; but if you
18 show me something, I'll confirm it.
19 Q. Well, sir, you told me you had a ticker going on in -- all
20 around you, you were surrounded by the stock price, right?
21 A. Absolutely.
22 Q. So 42 bucks a share in the summer of 1999 sounds about
23 right?
24 A. Well, let's see, that's nine-and-a-half years ago, and to
25 know what it was the summer of '99 or in a given month or a
3489: 1 given day, I'd have a heck of a memory.
2 Q. But it doesn't -- it doesn't sound like it's off by more
3 than $5, does it?
4 A. Probably not.
5 Q. $42 a share?
6 A. Probably not.
7 Q. Okay. Then two years later in July 2001, stock's selling
8 for about $69 a share, right?
9 A. That's right.
10 Q. So it's gone up from 42 to 69, right?
11 A. That's right.
12 Q. Okay. So it's gone up over $25 a share, right?
13 A. That's about right.
14 Q. And that's because you're adding value to the company,
15 right?
16 A. It's because the company's performing well.
17 Q. And it's because of you. You're running the ship, right?
18 A. Only as good as the people you have.
19 Q. Okay. And you're driving the growth?
20 A. Part of the team.
21 Q. Okay. And because you're adding shareholder value, it's
22 okay to sell your stock and take some of that value, right?
23 A. It was appropriate to diversify some of my holdings.

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/22/2009 2:17 PM] Trial Proceedings 4-22-09 (vol. 16)
Issue Filter: Motion in Limine

Pg: 3485 Ln: 19 - Pg: 3494 Ln: 13 **continued...**

Annotation:

3489:24 Q. Okay. So then the truth starts to come out in November
25 of 2001, and the stock begins to drop, right, sir?
3490: 1 A. Well, the stock certainly dropped --
2 Q. Okay.
3 A. -- from December on.
4 Q. The truth came out about predatory lending starting in
5 2001, didn't it?
6 A. Well, again, I don't agree with the term predatory lending
7 for Household.
8 The stock dropped. I'll agree with that.
9 Q. Okay. And the truth comes out about the restatement on
10 August 14th, 2002, right?
11 A. There was a restatement.
12 Q. Okay. And the truth begins coming out about Household's
13 re-aging practices, right?
14 A. There was more information about that.
15 Q. And the stock starts sliding, doesn't it, sir?
16 A. The stock certainly slid.
17 Q. Okay. And it drops to $22 a share in October 2002.
18 A. That sounds right.
19 Q. So it starts at 42, and you end at 22, right?
20 A. Yeah, that's true. But in the eight years I was there, it
21 virtually tripled even after that number.
22 So it was a bad last six months, but we had a pretty
23 good run for shareholders who were there.
24 Q. And then the stock drops to 22 bucks, and you sell the
25 company, don't you?
3491: 1 A. We sold the company.
2 MR. KAVALER: Objection, your Honor. Beyond the
3 relevant period.
4 MR. DROSMAN: Your Honor, there was discussion
5 yesterday about 2003, so I'm not sure what he's talking about.
6 MR. KAVALER: What I'm talking about is the question
7 seeks events that occurred after the end of the period we're
8 talking about in this lawsuit.
9 THE COURT: I'll overrule the objection to that
10 question.
11 BY MR. DROSMAN:
12 Q. You sold the company for HSBC, right?
13 A. Yes, we did.
14 Q. And you sold the company for about $28 a share, is that
15 right?
16 A. I believe it was over 30, actually.
17 Q. You believe it was over 30?
18 A. I thought it was $30 and something, yes.
19 Q. Okay. So somewhere in that range, right?
20 So you testified yesterday that you lost it all. You
21 did really poorly, right, with that stock drop?
22 A. I lost a lot of money with the stock drop, that's correct.
23 Q. Okay. But you had something called a golden parachute,

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/22/2009 2:17 PM] Trial Proceedings 4-22-09 (vol. 16)
Issue Filter: Motion in Limine

Pg: 3485 Ln: 19 - Pg: 3494 Ln: 13 **continued...**

Annotation:

3491:24 didn't you?
25 A. I did.
3492: 1 Q. And that golden parachute, it helped to cushion your
2 landing, didn't it, sir?
3 A. I'm not sure I'd characterize it that way. It was paid
4 out pursuant to my contract.
5 Q. Okay. You understand that the investors in this case,
6 they didn't have a golden parachute. You understand that,
7 right?
8 A. No. Morgan Stanley and Merrill Lynch and all those people
9 didn't. They didn't work at the company.
10 Q. Okay. And Mr. Smith and Ms. Smith who bought the stock as
11 well, they didn't have a golden parachute either, did they?
12 A. They didn't work at the company either.
13 Q. They didn't have a golden parachute, right, sir?
14 A. Hard to get one if you don't work at the company.
15 Q. Okay. You had one, though, didn't you?
16 A. I did.
17 Q. And your golden parachute entitled you to about
18 $20 million in cash when HSBC purchased Household, didn't it?
19 A. It was three times salary and bonus. About that number,
20 that's right.
21 Q. About 20 million in cash, right?
22 A. That's about right.
23 Q. And then you got an additional 10 million more in HSBC
24 stock grants, didn't you, sir?
25 A. I'm not sure I understand that. That was not part of any
3493: 1 contract.
2 Q. So you didn't get the 10 million in stock grants from
3 HSBC? Is that your testimony?
4 A. Well, you're talking about a different point. You're
5 talking about when HSBC asked me to stay on as CEO of both the
6 North American operations. And in that capacity, they put in
7 a compensation plan that would be consistent with somebody
8 running two businesses with 55,000 people and multiple
9 locations around North America.
10 So that's -- that's accurate if you put it in that
11 context.
12 Q. Sir, you talked yesterday about the proud 128-year history
13 of Household, right?
14 A. That's right.
15 Q. Okay. You understand there's not going to be a proud
16 135-year history.
17 MR. KAVALER: Objection, your Honor. This is way
18 beyond the scope of anything on the direct, cross, of the
19 class period or anything else.
20 THE COURT: I don't know if it's beyond the scope,
21 but it's argumentative. The objection will be sustained.
22 BY MR. DROSMAN:
23 Q. Okay. Sir, is there going to be a proud 135-year history

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/22/2009 2:17 PM] Trial Proceedings 4-22-09 (vol. 16)
Issue Filter: Motion in Limine

Pg: 3485 Ln: 19 - Pg: 3494 Ln: 13 **continued...**

Annotation:

3493:24 for Household International?
25 MR. KAVALER: Objection, your Honor.
3494: 1 Aldinger - recross
2 3494
3 THE COURT: I'll sustain the objection.
4 BY MR. DROSMAN:
5 Q. Okay. Sir, you understand that HSBC recently said --
6 MR. KAVALER: Objection, your Honor.
7 THE COURT: Sustained.
8 BY MR. DROSMAN:
9 Q. Sir, you took this company, and you drove it into the
10 ground, didn't you?
11 A. No, I didn't drive it into the ground.
12 Q. You destroyed this company, didn't you, sir?
13 A. I did not.

Linked Issues: Motion in Limine

Jaffee v. HSBC

Trial Proceedings 4-30-09 (vol. 22)

4/30/2009 2:22 PM

Annotation Digest - All Annotations

Issue Filter: Motion in Limine

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/30/2009 2:22 PM] Trial Proceedings 4-30-09 (vol. 22)
Issue Filter: Motion in Limine

Pg: 4432 Ln: 23 - Pg: 4436 Ln: 13

Annotation:

4432:23 MR. DOWD: Good morning, ladies and gentlemen. It's
24 been a long road. We've been here four and a half weeks, I
25 think, and I've been here longer than that. And what I'd like
26 to talk to you about today is the fact that even though it's
27 been a long road, you saw some amazing things in this trial.
4433: 1 Dowd - closing
2 4433
3 You saw and heard amazing things from that witness stand.
4 Think about William Aldinger. He was the CEO of one
5 of America's largest corporations, and he got on that witness
6 stand and he said to you, When we issued that 2001 10-K we
7 made materially false and misleading statements. He admitted
8 that to you, ladies and gentlemen.
9 Think about that. That's an amazing thing. A CEO of
10 one of America's largest companies making an admission like
11 that here in this courtroom. And yet, ladies and gentlemen,
12 as soon as he said it, he realized what he had said, didn't
13 he? He started talking in his testimony about how he relied
14 on others. There were business unit chiefs, there were other
15 people below him, there were accounting department people.
16 All these people gave him something.
17 Mr. Aldinger couldn't be bothered with the
18 nitty-gritty as he told you, the nits and gnats. He was like
19 a guy falling off a cliff, ladies and gentlemen, that reaches
20 up and just tries to drag everybody else down with him at that
21 company. But he's right. He's right. He did drag them down.
22 Because they were all responsible for these false and
23 misleading statements. They all were. They all knew they
24 were false and misleading. They knew they were material.
25 But, ladies and gentlemen, why? Why did he do this?
26 Why did he make $20 million a year and couldn't be bothered to
27 look at the nits and gnats, the nitty-gritty? Well, think
4434: 1 Dowd - closing
2 4434
3 about what he was doing with his time, ladies and gentlemen.
4 He told you that he spent 30 percent of his time talking to
5 Wall Street analysts and people on Wall Street. That's what
6 he told you. 30 percent of his time.
7 Think about it. Shouldn't this guy have been
8 spending a hundred percent of his time thinking about what was
9 going on in those branch offices, thinking about the issues
10 that affected that company? No. He was talking to Wall
11 Street.
12 Why was he talking to Wall Street 30 percent of his
13 time, ladies and gentlemen? Because he was trying to keep
14 that stock price up, wasn't he? He was trying to convince
15 those people that they had real growth. He was trying to
16 convince them that they had great loan quality. That's what
17 he was trying to do. That's why he was on that phone. That's
18 why he was at those conferences. He was trying to convince

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/30/2009 2:22 PM] Trial Proceedings 4-30-09 (vol. 22)
Issue Filter: Motion in Limine

Pg: 4432 Ln: 23 - Pg: 4436 Ln: 13 **continued...**

Annotation:

4434:19 Wall Street to keep that stock price up.
20 Why did he want that stock price up? He wanted that
21 stock price up because he had himself an exit strategy, didn't
22 he? He was going to sell that company. He was going to sell
23 Household to Wells Fargo. And yet, ladies and gentlemen, when
24 Wells Fargo got in there and they saw those aggressive
25 re-aging practices, when they saw a latent credit bubble, were
26 the words they used, guys sweeping everything under the rug
27 and making a big ol' pile underneath it, when they saw all
4435: 1 Dowd - closing
2 4435
3 that, that deal didn't go through, did it?
4 And Mr. Aldinger can tell you he walked away. You
5 saw the Wells Fargo documents, ladies and gentlemen. There's
6 no doubt he walked away from that deal. And so he tried. He
7 tried to keep that stock price propped up by talking to these
8 analysts. He hid his bad loans. He hid his loan quality. He
9 hid his credit card problem with accounting. All those
10 things, because he tried to keep that stock price up so he
11 could peddle that company, didn't he?
12 But you know what, ladies and gentlemen? He also was
13 going to personally benefit if they sold to Wells Fargo. You
14 saw some of those documents. He had a golden parachute. He
15 was going to make millions and millions of dollars if he was
16 able to sell to Wells Fargo, wasn't he?
17 But you know what? It didn't work out for him then.
18 So ladies and gentlemen, don't shed any tears for William
19 Aldinger. He made 20 million bucks a year in compensation
20 during those three years when he was at that company, didn't
21 he? And he also made over $19 million in stock sales during
22 the relevant time period. That was the profit that he turned.
23 19 million.
24 They tried to tell you these guys were buying the
25 company. They were buying stock because they believed in it.
26 But we showed you the truth on that witness stand, that
27 Aldinger sold stock during the class period. He made 19
4436: 1 Dowd - closing
2 4436
3 million.
4 And they tried to show you these stock options
5 increasing his holdings. What did he pay for those stock
6 options? Zero. That's what he paid for those. He's playing
7 with the house money on that, ain't he, ladies and gentlemen?
8 That doesn't count. When he had his stock, he sold it and he
9 made a huge profit of $19 million.
10 And, by the way, when he couldn't sell to Wells
11 Fargo, he ended up selling to HSBC. And on his way out the
12 door, he pocketed another 20 million in cash from that, didn't
13 he? So let's not cry for Mr. Aldinger.

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/30/2009 2:22 PM] Trial Proceedings 4-30-09 (vol. 22)
Issue Filter: Motion in Limine

Pg: 4432 Ln: 23 - Pg: 4436 Ln: 13 **continued...**

Linked Issues: Motion in Limine

Pg: 4432 Ln: 23 - Pg: 4436 Ln: 13

Annotation:

4432:23 MR. DOWD: Good morning, ladies and gentlemen. It's
24 been a long road. We've been here four and a half weeks, I
25 think, and I've been here longer than that. And what I'd like
26 to talk to you about today is the fact that even though it's
27 been a long road, you saw some amazing things in this trial.
4433: 1 Dowd - closing
2 4433
3 You saw and heard amazing things from that witness stand.
4 Think about William Aldinger. He was the CEO of one
5 of America's largest corporations, and he got on that witness
6 stand and he said to you, When we issued that 2001 10-K we
7 made materially false and misleading statements. He admitted
8 that to you, ladies and gentlemen.
9 Think about that. That's an amazing thing. A CEO of
10 one of America's largest companies making an admission like
11 that here in this courtroom. And yet, ladies and gentlemen,
12 as soon as he said it, he realized what he had said, didn't
13 he? He started talking in his testimony about how he relied
14 on others. There were business unit chiefs, there were other
15 people below him, there were accounting department people.
16 All these people gave him something.
17 Mr. Aldinger couldn't be bothered with the
18 nitty-gritty as he told you, the nits and gnats. He was like
19 a guy falling off a cliff, ladies and gentlemen, that reaches
20 up and just tries to drag everybody else down with him at that
21 company. But he's right. He's right. He did drag them down.
22 Because they were all responsible for these false and
23 misleading statements. They all were. They all knew they
24 were false and misleading. They knew they were material.
25 But, ladies and gentlemen, why? Why did he do this?
26 Why did he make $20 million a year and couldn't be bothered to
27 look at the nits and gnats, the nitty-gritty? Well, think
4434: 1 Dowd - closing
2 4434
3 about what he was doing with his time, ladies and gentlemen.
4 He told you that he spent 30 percent of his time talking to
5 Wall Street analysts and people on Wall Street. That's what
6 he told you. 30 percent of his time.
7 Think about it. Shouldn't this guy have been
8 spending a hundred percent of his time thinking about what was
9 going on in those branch offices, thinking about the issues
10 that affected that company? No. He was talking to Wall
11 Street.
12 Why was he talking to Wall Street 30 percent of his
13 time, ladies and gentlemen? Because he was trying to keep
14 that stock price up, wasn't he? He was trying to convince

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/30/2009 2:22 PM] Trial Proceedings 4-30-09 (vol. 22)
Issue Filter: Motion in Limine

Pg: 4432 Ln: 23 - Pg: 4436 Ln: 13 **continued...**

Annotation:

4434:15 those people that they had real growth. He was trying to
16 convince them that they had great loan quality. That's what
17 he was trying to do. That's why he was on that phone. That's
18 why he was at those conferences. He was trying to convince
19 Wall Street to keep that stock price up.
20 Why did he want that stock price up? He wanted that
21 stock price up because he had himself an exit strategy, didn't
22 he? He was going to sell that company. He was going to sell
23 Household to Wells Fargo. And yet, ladies and gentlemen, when
24 Wells Fargo got in there and they saw those aggressive
25 re-aging practices, when they saw a latent credit bubble, were
26 the words they used, guys sweeping everything under the rug
27 and making a big ol' pile underneath it, when they saw all
4435: 1 Dowd - closing
2 4435
3 that, that deal didn't go through, did it?
4 And Mr. Aldinger can tell you he walked away. You
5 saw the Wells Fargo documents, ladies and gentlemen. There's
6 no doubt he walked away from that deal. And so he tried. He
7 tried to keep that stock price propped up by talking to these
8 analysts. He hid his bad loans. He hid his loan quality. He
9 hid his credit card problem with accounting. All those
10 things, because he tried to keep that stock price up so he
11 could peddle that company, didn't he?
12 But you know what, ladies and gentlemen? He also was
13 going to personally benefit if they sold to Wells Fargo. You
14 saw some of those documents. He had a golden parachute. He
15 was going to make millions and millions of dollars if he was
16 able to sell to Wells Fargo, wasn't he?
17 But you know what? It didn't work out for him then.
18 So ladies and gentlemen, don't shed any tears for William
19 Aldinger. He made 20 million bucks a year in compensation
20 during those three years when he was at that company, didn't
21 he? And he also made over $19 million in stock sales during
22 the relevant time period. That was the profit that he turned.
23 19 million.
24 They tried to tell you these guys were buying the
25 company. They were buying stock because they believed in it.
26 But we showed you the truth on that witness stand, that
27 Aldinger sold stock during the class period. He made 19
4436: 1 Dowd - closing
2 4436
3 million.
4 And they tried to show you these stock options
5 increasing his holdings. What did he pay for those stock
6 options? Zero. That's what he paid for those. He's playing
7 with the house money on that, ain't he, ladies and gentlemen?
8 That doesn't count. When he had his stock, he sold it and he
9 made a huge profit of $19 million.
10 And, by the way, when he couldn't sell to Wells

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/30/2009 2:22 PM] Trial Proceedings 4-30-09 (vol. 22)
Issue Filter: Motion in Limine

Pg: 4432 Ln: 23 - Pg: 4436 Ln: 13 **continued...**

Annotation:

4436:11 Fargo, he ended up selling to HSBC. And on his way out the
12 door, he pocketed another 20 million in cash from that, didn't
13 he? So let's not cry for Mr. Aldinger.

Linked Issues: Motion in Limine

Pg: 4438 Ln: 22 - Pg: 4439 Ln: 17

Annotation:

4438:22 So when you think about Mr. Schoenholz, don't just
23 stick him in the accounting. He's in it up to his eyeballs in
24 the re-aging and predatory lending, isn't he?
25 Let's talk about Mr. Gilmer. Mr. Gilmer came into
26 this courtroom, he sat on this witness stand, and he wanted
27 you to think he was the personification of the American dream,
4439: 1 Dowd - closing
2 4439
3 didn't he? He wanted to tell you about how he started out as
4 an account executive down in South Carolina and he fought his
5 way all the way to the top until he was running a $40 billion
6 business, and he wanted you to think that. American dream.
7 But you know what, ladies and gentlemen? Then he got
8 on the witness stand and he started saying other stuff. He
9 started telling you he believed in the company and that's why
10 he bought the stock. But, ladies and gentlemen, we showed you
11 he wasn't buying stock. Those were stock options that he got
12 for free as part of his compensation.
13 What he really did during the relevant time period
14 was sell. He profited $3 million in stock sales. When he got
15 up and he told you he believed in the company and bought
16 stock, that was a lie in this courtroom, wasn't it, ladies and
17 gentlemen?

Linked Issues: Motion in Limine

Pg: 4636 Ln: 22 - Pg: 4637 Ln: 9

Annotation:

4636:22 They say to you, their salaries and their
23 compensation were fully disclosed, fully disclosed. Did I
24 ever tell you they weren't? You know why we tell you about
25 their salaries and compensation? Because for 20 million bucks
26 a year, you should expect the guy to pay attention to what's
27 going on. That's why we tell you about it. We didn't say
4637: 1 Dowd - rebuttal closing
2 4637
3 that wasn't disclosed. Of course, it was. They're trying to
4 move the ball on you. They're trying to make you think that
5 we're saying one thing when we've never said it. Never. We
6 have been consistent about what their lies and false

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/30/2009 2:22 PM] Trial Proceedings 4-30-09 (vol. 22)
Issue Filter: Motion in Limine

Pg: 4636 Ln: 22 - Pg: 4637 Ln: 9 **continued...**

Annotation:

4637: 7 statements were. Those 40 on the chart, those are the 40 we
8 started with, the 40 we ended with. So don't be fooled by
9 that.

Linked Issues: Motion in Limine

Pg: 4648 Ln: 22 - Pg: 4651 Ln: 22

Annotation:

4648:22 He admits the 2001 10-K was materially false and
23 misleading. He's present on April 9, 2002, as Mr. Schoenholz
24 spins his lies, four lies, about consistency of the policies,
25 about paying the collectors, about multiple re-age, about
26 recidivism, all these things. He sits there and watches it.
27 He knows they're lies.
4649: 1 Dowd - rebuttal closing
2 4649
3 He goes on and makes profits, $19 million in stock
4 sales during the relevant time period.
5 You know what, they told you they were going to show
6 these guys bought stock. They never did, ladies and
7 gentlemen. We showed you they sold stock. He could get up
8 there and say all he wants, just like in opening statement,
9 but we waited, we waited to see if Mr. Gilmer was really going
10 to try to claim that. Because we're looking at the documents,
11 and they're in evidence, and we're going, the guy has got to
12 be kidding me. He's a seller. He ain't a buyer. So we
13 waited. And then we asked him about it on cross because we
14 just couldn't believe the guy was actually going to try to
15 claim that.
16 And then with Mr. Schoenholz, I don't even think they
17 talked to him about it. So we didn't have to do it again.
18 And then the third time with Mr. Aldinger, we did it the first
19 time we questioned him because we were worried they would skip
20 it like they had with Schoenholz.
21 You saw what happened. These guys weren't buying.
22 They were selling stock. They were making 3 million for
23 Gilmer, $20 million for Aldinger during the class period.
24 They were cashing out. They weren't buying in.
25 And when they showed you these numbers, all they're
26 talking about is free stock options they got handed at the end
27 of the year. And you remember those stock options. Stock
4650: 1 Dowd - rebuttal closing
2 4650
3 options like the ones that Mr. Gilmer bought for $11 and $13
4 and then sold so that my clients could buy at 65 or 68 that
5 same day. Yeah. These guys were sellers, ladies and
6 gentlemen. They didn't believe. They knew what was going on.
7 They were sellers, and that's why they were sellers.
8 And then he goes on and he tries to peddle the

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/30/2009 2:22 PM] Trial Proceedings 4-30-09 (vol. 22)
Issue Filter: Motion in Limine

Pg: 4648 Ln: 22 - Pg: 4651 Ln: 22 **continued...**

Annotation:

4650: 9 company to Wells Fargo. Let's take a look at two other
10 documents. Can we pull up Plaintiffs' 1038.
11 Plaintiffs' 1038 was a document that came in. And it
12 was among Household employees. And it's one where they say,
13 here's the current version of the spreadsheets we worked on
14 for cash distributions and parachute calculations. And it's
15 right here when Wells Fargo is doing their due diligence,
16 April 26, 2002. You turn to the second page of this one --
17 it's a little tough to read, so I think we had a demonstrative
18 made up so you could see it a little bit better.
19 When they calculated what these guys were going to
20 get if Wells Fargo took over and they got terminated, yeah.
21 Aldinger was going to get 76 million. Gilmer was going to get
22 38 million. And Schoenholz was going to get 34 million. That
23 was the parachute, ladies and gentlemen. That's why they were
24 trying to sell to Wells Fargo. They saw the end coming, but
25 they still knew that they could clean up, didn't they?
26 And Wells Fargo -- Wells Fargo was doing the same
27 thing. Pull up 1371. They were saying how much are we going
4651: 1 Dowd - rebuttal closing
2 4651
3 to have to pay these yokels if we take them out. And they did
4 the same calculations. And you heard Mr. May testify in his
5 deposition that Paula Roe, the woman who wrote this e-mail,
6 she was the HR person that was on the due diligence team for
7 Wells Fargo. And what did she say? She said -- she
8 straightens out the numbers. She says, Aldinger, 54 million;
9 Gilmer, 27 million; Schoenholz, 27 million. And she goes on
10 to say, you know, these contracts are very rich. And she
11 didn't have all of the information yet. She didn't know it
12 was actually higher than that.
13 That's what these guys were trying to do. If they
14 had dumped it on Wells Fargo, they could have bailed for
15 between a hundred million and 135 million. Plus if they could
16 sell it to Wells Fargo for 66, all those options they had, all
17 those things they got for free, all those things would have
18 been in the money; and they would have cashed out millions and
19 millions on top of these. That's the kind of people that
20 we're talking about, ladies and gentlemen. And finally
21 Mr. Aldinger, you know he sold to HSBC and he pocketed another
22 20 million.

Linked Issues: Motion in Limine

Pg: 4653 Ln: 4 - 8

Annotation:

4653: 4 Then you go on. He was warned by the OCC about these
5 GM and UP contracts. So when he tries to tell you he had
6 nothing to do with the restatement, he was one of the guys

TextMap Annotation Digest Report

Case Name: Jaffee v. HSBC
Transcript: [4/30/2009 2:22 PM] Trial Proceedings 4-30-09 (vol. 22)
Issue Filter: Motion in Limine

Pg: 4653 Ln: 4 - 8 **continued...**

Annotation:

```
4653: 7  that got warned.  He pocketed the 3 million in stock sales.
      8  And then he retires in June or July of 2002.
```

Linked Issues: Motion in Limine

Pg: 4668 Ln: 8 - 11

Annotation:

```
4668: 8  So whether you're William Aldinger and Household, one of
      9  America's biggest companies and Mr. Aldinger making his $20
     10  million a year, or somebody else, you're all equal before the
     11  law, ladies and gentlemen.
```

Linked Issues: Motion in Limine