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 DEFENDANTS' MOTION FOR RECONSIDERATION OF RULING REGARDING PURPORTED "FINDING OF FACT" BY THE SEVENTH CIRCUIT

Defendants respectfully submit this reply in support of their motion for reconsideration on whether the following statement by the Seventh Circuit in its opinion remanding for a new trial on loss causation shall be deemed an uncontested finding of fact at the new trial: "Professor Fischel's Leakage and Specific Disclosure Models controlled for market and industry factors—his regression analysis took care of that."

PRELIMINARY STATEMENT

In response to Defendants' motion for reconsideration, Plaintiffs concede that the Seventh Circuit made no such finding of fact, but reverse course and now contend that it was the jury that made this supposed factual finding. Pls.' Resp. at 1, 6-7. The jury did no such thing; moreover, any "findings" by the jury with respect to the loss causation element of Plaintiffs' claim were vacated in their entirety. *See* Section I, *infra*.

Plaintiffs also argue that the Seventh Circuit's statement is law of the case. Pls.' Resp. at 1, 9-10. This argument ignores that the statement at issue is not a statement of *law*, and that a careful reading of the Seventh Circuit's entire opinion shows that this isolated statement was not integral to the Seventh Circuit's holding. *See* Section II, *infra*.

Finally, Plaintiffs argue that Defendants waived any argument that Fischel's models failed to account for factors affecting the consumer finance sector of the broader financial industry in which Household operated. Pls.' Resp. at 6-7, 10-13. Plaintiffs' waiver argument is based on Plaintiffs' construction of the term "firm-specific" to mean "firm-unique"—a construction that is inconsistent with how the term "firm-specific" is used by experts in conducting event studies and with Fischel's own deposition testimony. Plaintiffs' interpretation also ignores the Supreme Court's holding in *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), the Seventh Circuit's opinion in this case, and the decisions of other courts addressing loss causation in securities fraud cases. And, in all events, Defendants' arguments on appeal show that Defendants explicitly raised the central issue of whether Fischel's models appropriately exclude the effect of all nonfraud factors on Household's stock price. *See* Section III, *infra*.

In sum, to hold—contrary to controlling authority—that the inflation calculation in this case should include prices declines caused by factors other than fraud, as long as those other factors were not "unique" to Household, would be clear error. Indeed, Plaintiffs are inviting the precise error that led to the reversal and remand in the first instance.

ARGUMENT

A motion for reconsideration of an interlocutory order is proper and should be granted where "[n]ot to reconsider . . . would condemn the parties to the unedifying prospect of continued litigation when they knew that a possibly critical ruling was in error and, unless it became moot in the course of the proceedings, would compel a reversal of the final judgment at the end of the case." *Santamarina v. Sears Roebuck & Co*, 466 F.3d 570, 572 (7th Cir. 2006). That is the case here. None of Plaintiffs' arguments supports a contrary conclusion.

I. Plaintiffs' New Assertion that the Seventh Circuit Affirmed a Finding of Fact by the Jury About Loss Causation Is Incorrect and Supports Reconsideration.

In response to Defendants' motion for reconsideration, Plaintiffs concede—contrary to the argument they advanced in their Motion *in Limine* No. 2, and which this Court accepted—that the Seventh Circuit's statement quoted above is *not* a finding of fact *by the Seventh Circuit.* Pls.' Resp. at 1. Plaintiffs now contend that the Seventh Circuit's statement "is more appropriately considered a mixed legal-factual issue." *Id.* Specifically, Plaintiffs assert that *the jury* made this finding of fact by accepting Fischel's leakage model, and the Seventh Circuit simply affirmed the jury's factual finding and applied the law to the jury's finding. *Id.* at 1, 6-7. That is not the argument that Plaintiffs advanced in their Motion *in Limine* but, in any event, Plaintiffs' new position actually supports Defendants' motion for reconsideration.

As an initial matter, no one—not the jury, the district court, or the Seventh Circuit—ever made an explicit finding of fact that Fischel's regression analysis appropriately controlled for all nonfraud factors. To the extent Plaintiffs are suggesting that the jury implicitly made this factual finding, that is pure speculation. More importantly, Plaintiffs ignore what the Seventh Circuit actually did: the Seventh Circuit *vacated* the jury's verdict as to loss causation in its entirety and held that Defendants "are entitled to a new trial [on] loss causation." *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 433 (7th Cir. 2015).

Contrary to Plaintiffs' argument, the Seventh Circuit did not remand only "parts of [the] element" of loss causation and affirm others (if that were even possible). 5/18/16 Hearing Tr. at 19:10-14. Rather, the Seventh Circuit vacated the verdict and remanded for a new trial on the entire element of loss causation. Any findings made by the previous jury regarding loss causation are no longer in force; the retrial jury must decide that element anew.

In its ruling on the scope of the retrial, this Court previously rejected exactly the argument that Plaintiffs are now making. Plaintiffs assert that the "only issue" on remand with respect to loss causation is whether Fischel's models account for firm-specific, nonfraud-related information. Pls.' Resp. at 5, 9. Plaintiffs made the same argument last year regarding the scope of the remand: they contended that the issue to be retried was "whether their 'loss causation and damages expert adequately accounted for company-specific non-fraud factors.'" Dkt. No. 2042 at 1. Defendants, by contrast, contended the issue to be retried was "whether plaintiffs have 'proven loss causation,'" *i.e.*, the entire element. *Id.* After setting out the parties' contentions, this Court explicitly rejected Plaintiffs' position and stated: "The Court agrees with defendants." *Id*. In so ruling, the Court explained that the Seventh Circuit "clearly said" that the flaw in Fischel's leakage model "'warranted [a new trial] on the loss-causation issue.'" *Id*. (quoting *Glickenhaus*, 787 F.3d at 423). This Court's ruling about the scope of the remand was correct.

It would be plain legal error to hold that the Seventh Circuit's statement that Fischel's loss causation models accounted for market and industry factors is a finding of fact that cannot be controverted on remand.[1]

II. The Seventh Circuit's Statement Is Not Law of the Case.

Plaintiffs further argue that the Seventh Circuit's statement, if not a finding of fact,

[1] Plaintiffs attempt to distinguish *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709 (1986), and *Amadeo v. Zant*, 486 U.S. 214, 228 (1988), in which the Supreme Court made clear that appellate courts may not make findings of fact, by pointing out that those cases involved bench trials. Pls.' Resp. at 10 (asserting that "[i]t is not surprising that the precedents [Defendants] cite frown on a reviewing court taking away a factual issue from a lower court in the aftermath of a ***bench trial***."). This "distinction" makes no difference. It would be equally—if not more—inappropriate for an appellate court to take a factual issue away from the jury and decide the issue itself.

nevertheless is law of the case and, therefore, is binding on remand. Pls.' Resp. at 1, 9-10. This, too, is incorrect.

First of all, the statement at issue is not law of the case, because it is not a legal conclusion. As both the Supreme Court and the Seventh Circuit have explained, the law of the case doctrine applies to rulings of *law*, not fact. *See Arizona v. California*, 460 U.S. 605, 618 (1983) ("Unlike the more precise requirements of res judicata, law of the case is an amorphous concept. As most commonly defined, the doctrine posits that *when a court decides upon a rule of law*, that decision should continue to govern the same issues in subsequent stages in the same case." (emphasis added)); *accord EEOC v. Sears, Roebuck & Co.*, 417 F.3d 789, 796 (7th Cir. 2005); *see also, e.g., PaineWebber, Inc. v. Farnam*, 870 F.2d 1286, 1290 (7th Cir. 1989) ("The law of the case doctrine provides that once a competent court rules *on a question of law*, that ruling is generally binding on courts of equal or inferior dignity as to that *legal issue* between the same or substantially similar parties given the same material facts." (emphasis added); *see also id.* (noting that "the law of the case doctrine is most commonly invoked upon remand from an appellate ruling *on a question of law*" (emphasis added).)

Plaintiffs do not (and cannot) contend that the statement at issue is a ruling of law. The Seventh Circuit's legal ruling, which it enunciated after reviewing the Supreme Court's decision in *Dura*, is the following: "So in order to prove loss causation, plaintiffs in securities-fraud cases need to isolate the extent to which a decline in stock price is due to fraud-related corrective disclosures *and not other factors*." *Glickenhaus*, 787 F.3d at 421 (emphasis added). The Seventh Circuit reversed for a new trial on loss causation because it concluded that Plaintiffs had not proven that Fischel's loss causation models satisfied this legal standard:

> Fischel's models controlled for market and industry factors and general trends in the economy—the regression analysis took care of that. But the leakage model,

> which the jury adopted, didn't account for the extent to which firm-specific, nonfraud related information may have contributed to the decline in Household's share price.

Id.; see also id. at 423 ("As things stand, the record reflects only the expert's general statement that any such information was insignificant. That's not enough.").

The Seventh Circuit's remark that Fischel's regression analysis "took care of that" [accounting for market and industry factors] was not essential to its holding that Plaintiffs had failed to prove that Fischel's leakage model accounted for and excluded the effect of all nonfraud factors on Household's stock price and, therefore, was not part of the mandate. *See, e.g., Creek v. Vill. of Westhaven*, 144 F.3d 441, 445 (7th Cir. 1998) (explaining that "it is essential to determine what issues were actually decided in order to define what is the 'law of the case', and that "[t]his requires a careful reading of the reviewing court's opinion."). An appeals court's discussion of issues not necessary to its decision does not comprise the mandate. *See, e.g.*, *id.* at 445-46; *see also Klingman v. Levinson*, 114 F.3d 620, 627-28 (7th Cir. 1997); *Gertz v. Robert Welch, Inc.*, 680 F.2d 527, 532-33 (7th Cir. 1982). And "[w]hile a mandate is controlling as to matters within its compass, on the remand a lower court is free as to other issues." *Creek*, 144 F.3d at 445.

Under the "careful reading" required, the Seventh Circuit's comment about Fischel's treatment of market and industry factors was not part of its mandate on remand. On the contrary, the Seventh Circuit's clear mandate—as set forth in the concluding paragraph of its opinion—was for the retrial of the "issue" of "loss causation." Rather than accounting for the Seventh Circuit's *entire* opinion, Plaintiffs' argument focuses on a single sentence taken out of context. That sentence, however, was not a holding, but rather an observation within the deferential standard of review that governed the Seventh Circuit's review. Plaintiffs' reading prizes a single sentence commenting on one aspect of a failed damages model over the explicit command to retry the loss causation "issue." That is hardly the sort of "careful reading" the Seventh Circuit requires.

Plaintiffs do not cite a single case to support the position they articulated at the Pretrial Conference that, because the Seventh Circuit focused on one aspect of Plaintiffs' evidence in its opinion reversing for a new trial on loss causation, Defendants cannot "blow up [the] entire element" on remand. 5/18/16 Hearing Tr. at 19:10-14. Indeed, case law is to the contrary. For example, in *Bright v. Hill's Pet Nutrition, Inc.*, 342 Fed. App'x 208, 210 (7th Cir. 2009), the Seventh Circuit reversed and remanded for a new trial where the district court, on remand from the first appeal, had "tried to slice the plaintiff's contentions into five claims," withholding some of them from the jury. The Seventh Circuit held that "the district court's parsing of plaintiff's contentions [regarding her sex discrimination claim] into five separate claims is unwarranted." *Id.* at 209.[2]

The Seventh Circuit's legal ruling, and its remand for a retrial on the entire loss causation element, show that Defendants should be permitted to demonstrate to the jury the ways in which Plaintiffs have failed to meet their burden of proving loss causation and damages, including by demonstrating that there were "other factors"—unrelated to the fraud—that also had an effect on Household's stock price during the relevant period and that, under *Dura* and the Seventh Circuit's decision, must be taken into account in appropriately calculating inflation and damages.

[2] Notably, in attempting to restrict the scope of the Seventh Circuit's mandate, Plaintiffs rely primarily on cases involving remands for resentencing in criminal cases. Pls.' Resp. at 7-8. These cases are inapposite. Resentencing does not involve a retrial before a jury on an element of an offense. It therefore makes sense that the resentencing should focus only on the particular error identified by the appellate court. Indeed, as a leading treatise recognizes, "[c]riminal sentencing appeals have begun to generate a specialized set of mandate rules." 18 B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 4478.3, at 763 (2d ed. 2002).

That the mandate in this case allows Defendants to present the evidence Plaintiffs are attempting to exclude is especially true given that, under *Manpower, Inc. v. Insurance Co. of Pennsylvania*, 732 F.3d 796 (7th Cir. 2013), evaluation of a regression model's inputs is a factual matter to be determined by the jury.[3] Plaintiffs' misguided attempt to invoke the law-of-the-case doctrine to preclude Defendants the jury from considering this evidence should be rejected.

III. Defendants Did Not Waive Their Argument that Fischel's Regression Analysis Failed To Account for Nonfraud Factors that Adversely Affected Household's Stock Price During the Relevant Period.

Because there is no basis for their contention that the Seventh Circuit "conclusively decided" that Fischel's regression analysis in fact accounted for all industry-related factors that affected Household's stock price, Plaintiffs fall back on a waiver argument. Plaintiffs' waiver argument is without merit.

Plaintiffs' waiver argument is based on Plaintiffs' erroneous position that the term "firm-specific" should be interpreted to mean "firm-exclusive" or firm-unique." But Plaintiffs' construction of the term "firm-specific" is inconsistent with how that term is used by experts in conducting event studies and with Fischel's own deposition testimony. It also ignores the Supreme Court's holding in *Dura*, the Seventh Circuit's opinion in this case, and the decisions of other courts addressing loss causation in securities fraud cases.

As one academic treatise explains, in the context of a regression analysis, "firm-specific" factors "might include, for example, industry-wide effects that are not picked up by a market proxy." Michael L. Hartzmark and H. Nejat Seyhyn, *The Curious Incident of the Dog that Didn't Bark and Establishing Cause-and-Effect in Class Action Securities Litigation*, 6 Va. L. & Bus.

---

[3] Plaintiffs do not dispute that, under *Manpower*, the appropriateness of an expert's selection of variables when conducting a regression analysis is for the jury to determine. Pls.' Resp. at 8-9.

Rev. 415, 439 & n.72 (2012). This is because what is "firm-specific" in any particular case (*i.e.*, the residual price movement after accounting for market and industry factors) depends on the market and industry indices that the expert selects. As Defendants' loss causation expert, Allen Ferrell, explains in his report, "firm-specific factors must be defined by reference to a model." Ferrell Report (Dkt. No. 2060-3) ¶ 27.

Here, for purposes of conducting his event study, Fischel chose the S&P 500 Index as his market index and the S&P Financials Index as his industry index. *Glickenhaus*, 787 F.3d at 416. Under Fischel's event study, therefore, "firm-specific" price movements are those that are left after accounting for price movements in the S&P 500 Index and the S&P Financials Index. As explained by Professor Ferrell:

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

Ferrell Report (Dkt. No. 2060-3) ¶ 43. If Fischel had chosen a different industry index or multiple industry indices, his regression analysis would have yielded a different result for "firm-specific" price movements. Thus, to decide whether Fischel's model adequately accounts for firm-specific factors, the jury necessarily must assess his choice of market and industry indices.

Indeed, Fischel himself has acknowledged that information that affects a narrower segment of the industry than that accounted for by an expert's chosen industry index has a "firm-specific" effect. At his 2008 deposition in this case, Fischel testified:

> If [Household was] disproportionately affected by - - hypothetically - - a regulatory change, meaning that the regulatory change has a bigger effect on its expected future profitability than for other firms, then the industry index would maybe partially pick up the effect of the change. ***But there still could be hypothetically a firm specific effect for Household.*** . . . [A]s a matter of statistics,

> is it possible that a regulatory change that affects the entire industry could affect one firm, whether Household or any other firm, disproportionately. ***So even though you have a control for an industry variable, you still have a firm-specific component to the return***, and the answer to that is yes.

Fischel Dep. Tr. (Dkt. No. 1361-5) at 200:18-201:17 (emphasis added).

As Plaintiffs acknowledge in their response, Defendants argued on appeal that Fischel's models did not isolate the effect on Household's stock price of nonfraud factors that were "'not attributable to general market or *industry-wide* forces.'" Pls.' Resp. at 4 (emphasis added, quoting Defendants' appeal brief). Thus, Defendants expressly disputed whether Fischel's regression analysis accounted for factors that were not "industry-wide," but rather affected the narrower consumer finance sector of the financial industry in which Household (and a handful of other companies) operated. The snippets from the oral argument that Plaintiffs quote in their response further show that Defendants acknowledged only that Fischel's regression analysis attempted to account for factors affecting the market generally, as represented by the S&P 500 Index, and the broad financial industry, as represented by the S&P Financials Index, and that Defendants argued that, under *Dura*, this was not sufficient to establish loss causation. Pls.' Resp. at 4 n.3. Defendants, therefore, did not fail to raise, and thus waive, their argument that Fischel's chosen industry index did not exclude the effect of industry factors that were not accounted for by the S&P Financials Index and thus had a "firm-specific" effect on Household's stock price.

Defendants' argument on this point, moreover, is by no means unique. Courts addressing loss causation have recognized that the particular industry index that an expert chooses to use in conducting a regression analysis may not exclude the effect of nonfraud factors affecting the company's stock price if the company operates in a subsector of the industry that is not adequately accounted for by the expert's chosen industry index.

For example, in *Hubbard v. BankAtlantic Bancorp, Inc*., 688 F.3d 713 (11th Cir. 2012), the plaintiffs' expert, like Professor Fischel in this case, performed a statistical event study "to determine how much of the decline in the price of [the defendant company's] stock . . . was attributable to factors specific to [the company], rather than to general market or industry factors." *Id.* at 721. The expert "used the S&P 500 Index to eliminate any portion of the price declines attributable to market-wide factors." *Id.* at 721-22. In addition, "[t]o remove the effect of industry-specific factors, she relied on the NASDAQ Bank Index, an index of the stock prices of hundreds of banks and bank holding companies traded on the NASDAQ." *Id.* at 722. As Professor Fischel has done in this case, the expert in *Hubbard* testified that "these were the indexes used by [the company] to compare its stock price movements to market and industry trends." *Id.* The Eleventh Circuit nevertheless affirmed the district court's judgment as a matter of law in favor of the defendants. *Id.* at 730. The Eleventh Circuit did so because the company's SEC filings showed that its assets during the relevant period "were concentrated in loans tied to Florida real estate," but the expert's broad industry index failed to account for "the effects of the collapse of the Florida real estate market." *Id.* at 729. The Eleventh Circuit explained:

> The NASDAQ Bank Index may be well suited to capture the effects of national trends in the banking industry, such as the broader national financial crisis that reached its nadir in 2008. But in 2007, Florida, having benefitted more than most states from the real estate boom of the previous years, was hit harder than most by the ensuing bust. And Florida financial institutions, as Preston admitted on cross-examination, made up only a small percentage of the NASDAQ Bank Index. That index, therefore, would be inappropriate for the task of filtering out the effects of industry-wide factors that might affect the stock price of a bank, or of the holding company of a bank, whose assets were concentrated in loans tied to Florida real estate in 2007.

Id. at 729. The Eleventh Circuit concluded that the plaintiffs had failed to present evidence that would give the jury a basis to determine "how much of the decline in [the company's] stock price resulted not from the fraud but from the general downturn in the Florida real estate market." *Id.*

As *Hubbard* illustrates, the fact that an expert performs a standard regression analysis that partitions price movements into three parts (the "market effect," the "industry effect," and the "firm-specific effect") does not necessarily mean that the regression analysis has accounted for all nonfraud factors affecting the company's stock price other than those which are "firm-unique" (*e.g.*, the effect of the resignation of the company's CEO or the company's loss of a major customer). Rather, as Fischel himself has acknowledged, and as was the case in *Hubbard*, nonfraud factors affecting a discrete segment of an industry can have a "firm-specific effect" that must be excluded in determining loss causation and damages.[4]

The Seventh Circuit was well aware of the Eleventh Circuit's decision in *Hubbard* when it reversed and remanded this case for a new trial on loss causation. Indeed, the Seventh Circuit cited *Hubbard* in support of its statement 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 disclosures and not other factors." *Glickenhaus*, 787 F.3d at 421. Thus, if anything, the Seventh Circuit's opinion indicates that Defendants *must* be able to challenge Fischel's model on the basis.

Despite the fact that the Seventh Circuit cited *Hubbard* with approval, Plaintiffs contend that information that affected Household and other companies in the consumer finance market is

---

4 Like the Eleventh Circuit in *Hubbard*, other courts also have recognized that an expert's chosen industry index may not account for nonfraud factors affecting a narrower subsector of the industry. *See, e,g, In re Exec. Telecard Sec. Litig.*, 979 F. Supp. 1021, 1027-28 & n.2 (S.D.N.Y. 1997) (concluding that expert should have used a "more precisely correlated" index for purposes of calculating damages than the Telecom Index to which the company compared its performance in its SEC filings, because the company's stock price was more volatile than those of the larger companies included in the Telecom Index); *In re Seagate Tech. II Sec. Litig.*, 843 F. Supp. 1341, 1348 (N.D. Cal. 1994) (noting that "[u]sually, industry indices need to be specially constructed because most companies do not fit neatly into a single industry category.").

"by its very definition . . . ***not*** firm-specific." Pls.' Resp. at 12. Plaintiffs in effect contend that the Seventh Circuit drew an artificial distinction between "firm-specific information" and a "firm-specific effect." In other words, according to Plaintiffs, if a nonfraud factor is responsible for part of the decline in Household's stock price, and if it affected *only* Household's stock price, then the amount of that decline should be removed from the calculation of inflation. But if that same nonfraud factor affected one other company as well—but not the rest of the industry and market—then that nonfraud factor should be treated as fraud-related because it is not "firm-specific." Plaintiffs' position has no support in law or logic. Indeed, as discussed above, Fischel himself has conceded that there could be nonfraud factors that affected Household disproportionately and that were not reflected by the price movements in the S&P Financials Index. And the Seventh Circuit's opinion gives no indication that it intended to put such illogical blinders on the jury's consideration of Fischel's regression analysis, when it remanded for a new trial on the "issue" of "loss causation."

Continuing to impose Plaintiffs' idiosyncratic view of the issue would thus be legal error. In fact, it would contradict the clear import of the Seventh Circuit's conclusion in the last appeal because it would require the jury to base its inflation and damages findings on a model that, in contravention of *Dura* (and the Seventh Circuit's decision), does not adequately account for the effect of nonfraud factors. As the Supreme Court made clear in *Dura*, the securities statutes make private securities actions available "not to provide investors with broad insurance against market losses, but to protect them against those economic losses that misrepresentations actually cause." 544 U.S. at 345. The jury, therefore, must be permitted to consider Defendants' evidence of industry factors that had a "firm-specific" effect on Household that is not captured by

Fischel's regression analysis.[5]

CONCLUSION

For the reasons set forth herein and in Defendants' motion, the Court should grant Defendants' motion for reconsideration.

Dated: May 27, 2016

Respectfully submitted,

/s/ R. Ryan Stoll

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

[5] This is exactly the sort of evidence that Defendants intend to present to the jury. To give a concrete example, Fischel's regression analysis shows that the residual decrease in Household's stock price on July 17, 2002 (the decrease after accounting for declines in the S&P 500 Index and the S&P Financials Index) was statistically significant. Fischel opines that he reviewed "the available market evidence and did not find negative firm-specific, nonfraud related information that could reasonably explain the price decline," but that Household's stock price may have been affected on that day by an announcement that regulators had asked Capital One to increase its loan loss reserves, and that an aspect of that announcement is "consistent with leakage." Fischel Second Supplemental Report (Dkt. No. 2060-1) ¶ 26. Fischel, therefore, includes this "firm-specific" price decline in calculating fraud-induced inflation. *Id.* Professor Ferrell, however, demonstrates that Capital One's announcement impacted Household's stock and that all or some of that announcement was non-fraud related. For example, he points to a *Reuters News* article published on that date that reported that "[s]hares of credit card firms got hammered on Wednesday [July 17, 2002] after regulators asked issuer Capital One Financial Corp to increase its loan loss reserves, awakening fears of a rise in consumer loan defaults." Ferrell Report (Dkt. No. 2060-3) ¶ 78. Thus, although both experts agree that information related to Capital One may have affected Household's stock price on that day in a way that was not accounted for in Fischel's regression analysis, Plaintiffs seek to prevent Defendants from introducing this evidence (and other similar evidence) on the ground that it is not "firm-specific" in the sense of "firm-unique" and then argue to the jury that Defendants are unable to point to any evidence any portion of the decline in Household's stock price was due to nonfraud factors that, under *Dura*, may not be included in calculating fraud-related inflation.

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

Attorneys for Defendant
Household International, Inc.

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

Attorneys for Defendant
William F. Aldinger

Tim S. Leonard, Esq.
JACKSON WALKER LLP
1401 McKinney Street
Suite 1900
Houston, TX 77010

Attorneys for Defendant
David A. Schoenholz

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

Attorneys for Defendant
Gary Gilmer

CERTIFICATE OF SERVICE

R. Ryan Stoll, an attorney, hereby certifies that on May 27, 2016, he caused true and correct copies of the foregoing Reply in Support of Defendants' Motion for Partial Reconsideration of Ruling Regarding Purported "Finding of Fact" by Seventh Circuit to be served via the Court's ECF filing system on the following counsel of record in this action:

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

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

/s/ *R. Ryan Stoll*
R. Ryan Stoll