

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

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CLERK
U.S. DISTRICT COURT

LAWRENCE E. JAFFE, Pension Plan)
and on behalf of all others)
similarly situated,)

Plaintiff,)

v.)

No. 02 C 5893

HOUSEHOLD INTERNATIONAL, INC.)
ARTHUR ANDERSEN, L.L.P,)

Judge Ronald A. Guzman

Defendants.)

MARC ABRAMS, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

No. 02 C 5934

HOUSEHOLD INTERNATIONAL, INC.,)
et al.,)

Judge Joan H. Lefkow

Defendants.)

EISBERRY HOLDINGS, LTD., on)
behalf of itself and all others)
similarly situated,)

Plaintiff,)

v.)

No. 02 C 6130

HOUSEHOLD INTERNATIONAL, INC.,)
et al.,)

Judge George M. Marovich

Defendants.)

DOCKETED
DEC 10 2002

NOTICE OF FILING

32

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

JEFFREY P. JANNETT, on)
behalf of himself and all others)
similarly situated,)

Plaintiff,)

v.)

HOUSEHOLD INTERNATIONAL, INC.,)
et al.,)

Defendants.)

No. 02 C 6326

Judge Marvin E. Aspen

BERNARD DOLOWICH, on)
behalf of himself and all others)
similarly situated,)

Plaintiff,)

v.)

HOUSEHOLD INTERNATIONAL, INC.,)
et al.,)

Defendants.)

No. 02 C 6352

Judge Rebecca R. Pallmeyer

RONALD H. HANSCHMAN on)
behalf of himself and all others)
similarly situated,)

Plaintiff,)

v.)

HOUSEHOLD INTERNATIONAL, INC.,)
et al.,)

Defendants.)

No. 02 C 6859

Judge Charles R. Norgle

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

GERALD M. FRIEDEL, on behalf of)	
himself and all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	
)	
HOUSEHOLD INTERNATIONAL, INC.,)	
<i>et al.</i> ,)	
Defendants.)	

No. 02 C 7067


Judge John W. Darrah

To: Counsel on the Attached Service List

PLEASE TAKE NOTICE that on Friday, December 6, 2002, we filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois, the *Memorandum of Law in Further Support of the Motion of Natcan Investment Management, Inc. to Be Appointed Lead Plaintiff And For Approval of Lead Plaintiff's Selection of Lead Counsel And Liaison Counsel, And in Opposition to Competing Motion*, a copy of which is hereby served upon you.

Dated: December 6, 2002

Respectfully submitted,
Plaintiffs

By: 

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 Jennifer Winter Sprengel
 Lori A. Fanning
MILLER FAUCHER and CAFFERTY LLP
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CERTIFICATE OF SERVICE

I, Marvin A. Miller, one of the attorneys for plaintiffs, hereby certify that I caused the *Memorandum of Law in Further Support of the Motion of Natcan Investment Management, Inc. to Be Appointed Lead Plaintiff And For Approval of Lead Plaintiff's Selection of Lead Counsel And Liaison Counsel, And in Opposition to Competing Motion* to be served on all counsel on the attached service list by placing a copy of the same in the United States Mail at 30 North LaSalle Street, Chicago, Illinois this 6th day of December, 2002.



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

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CLERK
U.S. DISTRICT COURT

LAWRENCE E. JAFFE PENSION PLAN, :
on behalf of itself and all others similarly :
situated, :

Plaintiff, :

v. :

HOUSEHOLD INTERNATIONAL, INC., :
ARTHUR ANDERSEN, LLP, :
W.F. ALDINGER, and D.A. :
SCHOENHOLZ, :

Defendants. :

MARC ABRAMS, on behalf of himself :
and all others similarly situated, :

Plaintiff, :

v. :

HOUSEHOLD INTERNATIONAL, INC., :
WILLIAM F. ALDINGER, and DAVID A. :
SCHOENHOLZ, :

Defendants. :

[Captions continued on next page]

Civil Action No. 1:02cv5893
Judge Ronald A. Guzman

DOCKETED
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Civil Action No.: 1:02cv5934
Judge Humphrey Lefkow

**MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE
MOTION OF NATCAN INVESTMENT MANAGEMENT, INC.
TO BE APPOINTED LEAD PLAINTIFF AND FOR APPROVAL OF
LEAD PLAINTIFF'S SELECTION OF LEAD COUNSEL AND LIAISON COUNSEL,
AND IN OPPOSITION TO COMPETING MOTION**

32

EISBERRY HOLDINGS, LTD., on behalf :
of itself and all others similarly situated, :

Plaintiff, :

v. :

HOUSEHOLD INTERNATIONAL, INC., :
ARTHUR ANDERSEN, LLP, :
W.F. ALDINGER, and D.A. :
SCHOENHOLZ, :

Defendants. :

JEFFREY P. JANNETT, on behalf of :
himself and all others similarly situated, :

Plaintiff, :

v. :

HOUSEHOLD INTERNATIONAL, INC., :
WILLIAM F. ALDINGER, and DAVID A. :
SCHOENHOLZ, :

Defendants. :

BERNARD DOLOWICH, on behalf of :
himself and all others similarly situated, :

Plaintiff, :

v. :

HOUSEHOLD INTERNATIONAL, INC., :
ARTHUR ANDERSEN, LLP, :
W.F. ALDINGER, and D.A. :
SCHOENHOLZ, :

Defendants. :

[Captions continued on next page]

Civil Action No.: 1:02cv6130
Judge George M. Marovich

Civil Action No.: 1:02cv6326
Judge Marvin E. Aspen

Civil Action No.: 1:02cv6352
Judge Rebecca R. Pallmeyer

RONALD A. HANSCHMAN, on behalf of :
himself and all others similarly situated, :

Plaintiff, :

v. :

HOUSEHOLD INTERNATIONAL, INC., :
WILLIAM F. ALDINGER, and DAVID A. :
SCHOENHOLZ, :

Defendants. :

GERALD M. FRIEDEL, on behalf of :
himself and all others similarly situated, :

Plaintiff, :

v. :

HOUSEHOLD INTERNATIONAL, INC., :
WILLIAM F. ALDINGER, and DAVID A. :
SCHOENHOLZ, :

Defendants. :

Civil Action No.: 1:02cv6859
Judge Charles R. Norgle, Sr.

Civil Action No.: 1:02cv7067
Judge John W. Darrah

Institutional Investor Natcan Investment Management, Inc. ("Natcan") submits this memorandum of law in further support of its motion for appointment as lead plaintiff and for approval of its selection of lead counsel and liaison counsel, and in opposition to the motion for appointment as lead plaintiff submitted by Glickenhau & Co. ("Glickenhau"), PACE Industry Union-Management Pension Fund ("PACE"), and International Union of Operating Engineers Local No. 132 Pension Plan ("I.U.O.E.") (collectively the "Glickenhau Group").¹

¹ On October 25, 2002, lead plaintiff movant Stoneridge Investment Partners LLC withdrew its motion, leaving only Natcan and the Glickenhau Group as the remaining movants for lead plaintiff.

I. PRELIMINARY STATEMENT

There are two movants seeking to be appointed lead plaintiff in this litigation: the Glickenhau Group (comprised of three unrelated parties) and Natcan (a lone institutional investor). Only one member of the Glickenhau Group, Glickenhau, reports financial losses that exceed Natcan's losses. However, Glickenhau, an SEC Registered Investment Advisor which purports to have several hundred clients, purchased shares of Household International on behalf of those clients, not itself, and has offered no evidence that it had complete investment authority to make those purchases. In addition, it is also unknown whether Glickenhau's clients even authorized it to move for lead plaintiff on their behalf or as part of a group with the other apparently unrelated members of the Glickenhau Group. Without such evidence regarding its authority to invest and act on its clients' behalf, Glickenhau lacks standing to pursue this action or, at the very least, has not sufficiently demonstrated its adequacy to serve as lead plaintiff under Fed. R. Civ. P. 23.

Considering Glickenhau's apparent inadequacies, coupled with the fact that both of the other members of the Glickenhau Group suffered fewer financial losses than Natcan, the Glickenhau Group's motion should be denied. Natcan, also a Registered Investment Advisor, but which *has* provided the Court with evidence of its authority to invest and bring this action on behalf of its clients, should be appointed lead plaintiff.

I. ARGUMENT

A. The Glickenhau Group's Lead Plaintiff Motion Should Be Denied

According to the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), the movant with the largest financial interest in the litigation and who makes a *prima facie* showing of adequacy under Fed. R. Civ. P. 23 enjoys a presumption that it is the most adequate plaintiff. 15

U.S.C. §78u-4(a)(3)(B)(iii)(I). However, this presumption is not irrefutable. Rather, if competing movants show that the presumptive lead plaintiff (1) will not fairly and adequately protect the interests of the class; or (2) is subject to unique defenses that render such plaintiff incapable of adequately representing the class, the presumption is effectively rebutted, and it falls to the movant with the next-largest financial interest in the litigation who also makes a *prima facie* showing of adequacy. 15 U.S.C. §78u-4(a)(3)(B)(iii)(II); *See also In Re: David Cavanaugh et al. v. United States District Court for the Northern District of California, Respondent, Quinn Barton, Real Party in Interest*, 2002 U.S. LEXIS 18846, *10-11 (9th Cir. 2002).

Here, at first glance, it appears that the Glickenhau Group enjoys the lead plaintiff presumption because it collectively claims a larger financial interest in the litigation than Natcan. However, this benefit is short lived because Glickenhau Group constituent member Glickenhau is subject to unique defenses that fatally compromise its ability to even participate in the litigation. Further, as an aggregation of strangers, the Glickenhau Group cannot adequately represent the Class. As a result of these deficiencies, the Glickenhau Group should be rejected as lead plaintiff. Instead, Natcan, as the institutional class member with the largest financial interest and which has demonstrated its adequacy under Rule 23, is the presumptive most adequate lead plaintiff. Accordingly, Natcan should be appointed as lead plaintiff.

1. **Glickenhau Is Inadequate To Serve As Lead Plaintiff**

Although Glickenhau reports a larger financial interest than Natcan, its (and the Glickenhau Group's) motion should be rejected because, among other things, it has not demonstrated that it enjoyed unfettered decision-making authority with respect to the purchases of Household

International securities it made on behalf of its numerous clients.² Equally lacking is any evidence that Glickenhau, as an investment advisor, is authorized to move for appointment as lead plaintiff by itself, or as part of a group.

Courts have made it abundantly clear that asset managers may legitimately serve as lead plaintiffs. See *In re Knight Trading Group, Inc. Sec. Lit.*, 2002 U.S. Dist. LEXIS 19025, *11-13 (D.N.J. October 4, 2002); *Ezra Charitable Trust v. Rent-Way, Inc.*, 136 F. Supp. 2d 435, 442 (W.D. Pa. 2001); *Alfaro v. Caprock Communications Corporation* 2000 U.S. Dist. LEXIS 21743 (N.D. Tex. Dec. 8, 2000). However, a critical factor in those courts' willingness to appoint an asset manager as lead plaintiff is the ability of the asset manager to show that it has absolute decision-making authority with respect to its clients' investments. *Ezra Charitable Trust v. Rent-Way, Inc.*, 136 F. Supp. 2d at 442, and that it is authorized to bring suit on behalf of its clients for losses incurred from investments. *Smith v. Suprema Specialties, Inc., et al.*, 206 F. Supp. 2d 627 (D.N.J. July 1, 2002).

Here, there is no evidence whatsoever that Glickenhau has the requisite discretionary authority to qualify as a purchaser and that its clients have consented to litigate this case as a lead plaintiff. Instead, it offers a pro forma certification that is silent as to Glickenhau having any investment and litigation authority on behalf of its clients. In *Suprema Specialties*, 206 F. Supp. 2d at 634, the court conceded that:

[W]here the Court appoints an asset manager as lead plaintiff, the plaintiff should provide evidence that it 'acts as attorney-in-fact for its clients and is authorized to bring suit to recover for, among other things, investment losses.' *Ezra Charitable*

² Although not entirely clear from the record, Glickenhau does not appear to make purchases for its own account in its own name; rather, it makes purchases for its many clients using money from its clients' accounts.

Trust v. Rent-Way, Inc., 136 F. Supp. 435, 441 (W.D. Pa. 2001). The clients' mere grant of authority to an investment manager to invest on its behalf does not confer authority to initiate suit on its behalf. Stoneridge Investment has not provided the Court any indication that its members have given it authority to file lawsuits on its behalf. In fact nothing before the Court even indicates that the members know that this action has been commenced. There is little precedent on which this Court could rely to support the appointment of an asset manager as sole lead plaintiff without proper authorization.

Id. (emphasis added). In light of this dearth of evidence, Glickenhau should not be considered as an appropriate lead plaintiff to run this litigation.

By contrast, the certification of Natcan, also an asset manager, plainly states that it (i) has complete authority to invest in Household securities for its clients; (ii) is the attorney-in-fact with full power and authority to bring suit on behalf of its clients; (iii) is willing to serve as lead plaintiff; and (iv) understands the responsibilities incumbent with serving as a lead plaintiff. *See* Natcan Certification attached as Exhibit A to Natcan's Motion for Appointment as Lead Plaintiff ("Natcan Certification"). Thus, only the Natcan Certification provides the Court with information necessary for the Court to appoint an asset manager as lead plaintiff.

2. The Glickenhau Group Is An Unlawful Aggregation of Unrelated Entities

The Glickenhau Group is comprised of two pension funds and an asset manager whose only connection to each other is that they are being represented by the same law firm. Such artificial groupings without even a suggestion that the group is cohesive or arranged in such a manner to promote decision-making capabilities and control within the group, have been flatly rejected by courts as contradictory to the goals of the PSLRA against lawyer-driven litigation. *See In re Cominco Securities Litigation*, 150 F. Supp 2d 943, 946 n. 5 (N.D. Ill. 2001) ("case law has generally disapproved aggregation just for the sake of aggregation" especially where no evidence is put forth

linking the parties “other than the obvious fact that each of them was a purchaser of [Household] shares”); *Singer v. Nicor, Inc.* 2002 U.S. Dist. LEXIS 19884, *4 (N.D. Ill. October 16, 2002) (“[The court can foresee a number of reasons why such an aggregated arrangement would be less beneficial: increased costs and a more cumbersome decision-making process raise the greatest concerns.”); *See also Ironstone v. McKesson*, 79 F. Supp. 2d 1146, 1152-1154 (N.D. Cal. 1999) (adopting narrow interpretation of the term “group” based on legislative intent of the PSLRA and defining group as “a small number of members that share such an identity of characteristics, distinct from those of almost all other class members, that they can almost be seen as being the same person.”); *In re Telxon Corp. Sec. Litig.*, 67 F. Supp. 2d 803, 813 (N.D. Ohio 1999) (requiring lead plaintiff groups to consist of “more than a mere assemblage of unrelated persons who share nothing in common other than the twin fortuities that (1) they suffered losses and (2) they entered into a retainer agreements with the same attorney”); *Sakhrani v. Brightpoint, Inc. et al.*, 78 F. Supp. 2d 845, 853 (S.D. Ind. 1999) (group of investors who have the largest aggregate losses but who have nothing in common with one another beyond their investment is not appropriate under the PSLRA).

The PSLRA, and courts interpreting it, have determined that a class of investors are better served by the appointment of a single institutional investor rather than a group of unrelated investors. In enacting the PSLRA, Congress sought to limit lawyer-driven litigation, and to promote efficient and expeditious litigation on behalf of a class. Only Natcan satisfies this goal. The Glickenhau Group, however, seeks appointment of three distinct and unrelated members without a plan for how these members will interact in order the efficiently lead this litigation. Indeed, courts have required additional evidence regarding what initially prompted the group’s formation and how it will allocate work and coordinate decision-making among its members. As the court noted in *In re Network*

Associates Sec. Litig., quoting the Securities and Exchange Commission Amicus Brief submitted in *Parnes, et al., v. Digital Lightware, Inc.*, slip op. at 12, 15, No. 99-11293 (11th Cir. Aug. 25, 1999):

To enable the court to assess whether the proposed group is capable of performing the lead plaintiff function, it should provide appropriate information about its members, structure, and intended functioning. Such information should include descriptions of its members, including any pre-existing relationship among them; an explanation of how it was formed and how its members would function collectively; and a description of the mechanism that its members and the proposed lead counsel have established to communicate with one another about the litigation. If the proposed group fails to explain and justify its composition and structure to the court's satisfaction, its motion should be denied as the court sees fit.

In re Network Associates Sec. Litig., 76 F. Supp. 2d 1017,1026 (N.D. Cal. 1999). See also *In re Microstrategy Inc. Securities Litigation*, 110 F. Supp. 2d 427, 434-435 (E.D. Va. 2000) (citing same).

Here, the Glickenhau Group has provided no evidence that (i) its members even know one another; and (ii) how it proposes to function as a group throughout the litigation, including whether any mechanism has been created to expedite decision-making. Consequently, in the absence of such evidence and in keeping with the intent of the PSLRA, the Glickenhau Group must be considered a lawyer-driven creation that cannot adequately represent the interests of the Class.

B. Natcan Is The Most Adequate Lead Plaintiff

Having effectively rebutted the presumption in favor of Glickenhau and the Glickenhau Group, Natcan enjoys the presumption that it is the most adequate plaintiff. Natcan has the second-largest financial interest in this litigation behind only Glickenhau, which should be deemed inadequate to represent the class for failing to demonstrate it is an appropriate plaintiff.³ Further,

³ The other members of the Glickenhau Group, PACE and I.O.U.E., each have incurred less financial losses than Natcan.

Natcan has made a *prima facie* showing of adequacy, including the fact that it has complete investment authority over its trades, and is agent and attorney-in-fact with full power and authority to act in connection with its clients' investments. See Natcan Certification at ¶ 5, 6. Accordingly, Natcan should be appointed as lead plaintiff.

**C. Natcan's Selection of Lead Counsel and Liaison Counsel
Should Be Approved By The Court**

As the presumptive most adequate plaintiff, Natcan is entitled to select the lead counsel for this action, subject to the approval of the Court. See 15 U.S.C. §78u-4(a)(3)(B)(v). Here, Natcan has selected Schiffrin & Barroway, LLP to represent it and the Class. This firm has extensive experience in the area of shareholder litigation and is well-qualified to serve as lead counsel. In addition, Natcan has selected Miller Faucher and Cafferty, LLP as liaison counsel for the Class.

III. CONCLUSION

For the reasons stated herein, as well as in Natcan's opening papers, Natcan respectfully requests that this Court: (1) consolidate the above-captioned, and all subsequently-filed, related actions; (2) appoint Natcan as Lead Plaintiff in this action; (3) approve Natcan's selection of Schiffrin & Barroway, LLP as Lead Counsel to represent the Class; and (4) approve Natcan's selection of the law firm of Miller Faucher and Cafferty, LLP as Liaison Counsel for the Class.

Dated: December 6, 2002

Respectfully submitted,

By:



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Proposed Lead Counsel