

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 5893	DATE	1/29/2007
CASE TITLE	Jaffe vs. Household Int'l Inc. et al.		

DOCKET ENTRY TEXT

For the reasons stated in this Minute Order, the Court overrules Household’s objection to Magistrate Judge Nan R. Nolan’s November 13, 2006 ruling (entered on the docket and served on defendants on November 16, 2006) that denied Household’s motion for leave to depose the named plaintiffs and their investment advisors prior to a determination of class-wide liability. The Court adopts the ruling in full.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

Under Federal Rule of Civil Procedure 72(a) a magistrate judge “to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written Order setting forth the disposition of the matter.” Fed. R. Civ. P. 72(a). Routine discovery motions are not dispositive. *Adkins v. Mid-Am. Growers, Inc.*, 143 F.R.D. 171, 175 n.3 (N.D. Ill. 1992). The Federal Rules of Civil Procedure grant magistrate judges broad discretion in resolving discovery disputes. *Heyman v. Beatrice Co.*, No. 89 C 7381, 1992 WL 245682, at *2 (N.D. Ill. Sept. 23, 1992). A magistrate judge’s ruling on a nondispositive matter may only be reversed on a finding that the ruling is “clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a); *see* 28 U.S.C. § 636(b)(1).

In general, discovery is permitted “regarding any matter, not privileged, that is relevant to the claim or defense of any party.” Fed. R. Civ. P. 26(b)(1). Defendants seek to refute plaintiffs “fraud on the market” theory with a “truth on the market” defense. However, the Court agrees with Magistrate Judge Nolan that the “truth on the market” defense is based on representations made to the marketplace as a whole, and not to any individual plaintiff. *See Lawrence E. Jaffe Pension Plan v. Household Int’l, Inc.*, No. 02 C 5893, 2006 WL 3332917, at *2 (N.D. Ill. Nov. 13, 2006) (“[I]f the market as a whole was privy to corrective information at the time of the alleged fraud, it is irrelevant whether any individual plaintiff was also aware of that information.”) Defendants concede that they may be able to obtain this information through the depositions of stock analysts and given Magistrate Judge Nolan’s superior knowledge of the proper scope of discovery in this case and vast experience with the parties during discovery, the Court holds that it was not unreasonable for Magistrate Judge Nolan to deny defendants’ motion to depose the named plaintiffs and their investment advisors prior to a determination of class-wide liability.

STATEMENT

The Court disagrees with defendants' argument that Magistrate Judge Nolan's ruling erroneously imposed standards of admissibility, undue prejudice and need. She correctly based her ruling on relevance when she ruled that it was irrelevant whether any individual plaintiff was aware of information that was available to the marketplace as a whole. The Court agrees with the class that any discussion relating to admissibility, undue prejudice and need was due to defendants' framing of the issues.

In addition, the Court overrules defendants' objection to Magistrate Judge Nolan's denying their motion to reconsider her April 18, 2005 order in which she ruled that "bifurcating discovery regarding class-wide liability issues and discovery regarding individualized reliance issues is the most orderly, efficient, and economical way to proceed." *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C 5893, 2005 WL 3801463, at *5 (N.D. Ill. Apr. 18, 2005). Defendants' sole basis for the motion to reconsider was Magistrate Judge Nolan's purported misreading of a case decided by a federal court in the Southern District of New York in 1993, and the magistrate judge properly denied the motion because the motion raised no new facts, arguments or law. It was not clear error to deny such a motion.

Finally, defendants argue that they should be allowed to depose the named plaintiffs as a matter of due process and to further the fairness goals of the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4. (Defs.' Objections 14-15; Defs.' Mem. Law Support Deposition Notices & Subpoenas to Named Pls. & Certain Investment Advisors 8.) As discussed above, Magistrate Judge Nolan correctly determined that it was irrelevant whether any individual plaintiff was aware of information that was available to the marketplace as a whole and correctly denied defendants' motion to reconsider the bifurcation of discovery in this case. Further, on October 8, 2004, defendants stipulated that the numerosity, commonality, typicality, adequacy, and predominance required for a class certification was satisfied. Defendants deposed lead plaintiff PACE regarding its investment decisions prior to stipulating to class certification. Defendants have served numerous interrogatories during the course of discovery. Defendants concede that they may obtain the information they seek relating to their truth on the market defense from stock analysts. Based on the particular facts of this case, Magistrate Judge Nolan did not commit clear error when she held that fairness and due process are not offended by the denial of defendants' motion for leave to depose named plaintiffs and their advisors during the first phase of discovery.

For the aforementioned reasons, the Court overrules Household's objection to Magistrate Judge Nolan's November 13, 2006 ruling and adopts the ruling in full.