

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	Nan R. Nolan
CASE NUMBER	02 C 5893	DATE	11/20/07
CASE TITLE	Jaffe vs. Household Intl Inc, et al		

DOCKET ENTRY TEXT

Telephone conference held regarding Defendants’ Motion Pursuant to the Court’s October 17, 2007 Order and for Preclusion [Doc. 1153]. For the reasons stated in open court, the motion is granted in part and denied in part. Telephone status set for 1/16/08 is reset to 2/7/08 at 1:00 p.m. CST.

■ [For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

In the October 17, 2007 Order, the court ordered Plaintiffs to identify their proposed method of calculating damages, including a statement as to (1) whether Plaintiffs intend to use a netting or transactional approach for class members who profited from some trades but suffered losses from others; (2) Plaintiffs’ proposed method of calculating damages on behalf of class members who sold their stock during the negative inflation period identified in Professor Fischel’s report; (3) whether Plaintiffs intend to claim damages for inflation already present in the stock price on the first day of the Class Period; and (4) the estimated aggregate damages claimed by the class as a whole. (Minute Order of 10/17/07, Doc. 1144, at 5.) The court also ordered Plaintiffs to clarify which of two tables (Exhibits 53 and 56) prepared by their expert, Professor Fischel, “will be used for each type of investor (e.g., will Exhibit 56 apply only to in-and-out investors while Exhibit 53 will apply to other investors?)” (*Id.* at 4.)

In response to this Order, Plaintiffs submitted a Supplemental Statement on Damages that largely answered these questions. Defendants, however, submitted a detailed affidavit from their expert, Dr. Bajaj, identifying several perceived deficiencies. The court addressed each in turn during the hearing, and denied Defendants’ request for briefing. *See Fairley v. Andrews*, 423 F. Supp. 2d 800, 806 (N.D. Ill. 2006) (“Discovery rulings are a matter of the Court’s discretion, and the Court need not allow briefing on discovery motions.”)

A. Specific Misrepresentations

Defendants continue to object that Plaintiffs have not identified which alleged misrepresentations artificially inflated the price of Household stock. The court, however, did not order any such disclosure, and declines to do so now. Indeed, the court expressly rejected Defendants’ objection that Plaintiffs had not made a showing of a causal connection between the economic loss and the alleged misrepresentations. As the court explained,

STATEMENT

Professor Fischel identifies a variety of alleged misrepresentations or omissions made by Defendants, then specifies the amount by which Household's stock price dropped when the truth about those omissions and misrepresentations was revealed. (Report, at 6-18.) In making this assessment, Professor Fischel uses an event study regression analysis to "take out" non-fraud factors that caused Household's stock price to decline. This sufficiently explains Plaintiffs' theory of the causal connection between the decline in the price of Household's stock and the revelation of the truth that was concealed by Defendants' omissions or misrepresentations. *Dura*, 544 U.S. at 345.

(Minute Order of 10/17/07, at 2-3.) Defendants' motion for further information is denied.

B. Exhibits 53 and 56

Exhibit 53 to the Fischel report presents an estimate of the stock's true value on each day of the Class Period. Exhibit 56 to the report quantifies the amount of artificial inflation in Household's stock price including the leakage of information related to the alleged fraud. As noted, the court's October 17 Order instructed Plaintiffs to clarify which of Professor Fischel's tables will be used for each type of investor.

In their supplemental statement, Plaintiffs stated only that both exhibits will apply to both investors. At the hearing, however, Plaintiffs' counsel explained that the two Exhibits present alternative theories of recovery, and are not intended to be used simultaneously. Professor Fischel must submit a supplement to his report confirming this assertion. With that clarification, Plaintiffs will have adequately answered the question posed in the court's October 17 Order. Dr. Bajaj of course remains free to object to, or find fault with, these Exhibits in whole or in part in his own rebuttal report.

C. Information on Pre-Class Period Inflation

Defendants finally claim that their expert requires more information as to the source of the pre-Class Period inflation Professor Fischel claims is present in the price of Household stock on the first day of the Class Period. The court expects that Professor Fischel will provide a regression analysis showing the date on which there was zero inflation in the stock price, and orders the parties to meet and confer regarding this issue. Dr. Bajaj will submit his expert report on December 10, 2007 and will specify all exceptions and deficiencies in Professor Fischel's report, including those that prevent Dr. Bajaj from offering his own analysis. Professor Fischel will then respond to Dr. Bajaj's report on February 1, 2008. (*See* Minute Order of 10/25/07, Doc. 1152.) In the event Dr. Bajaj finds it necessary to submit an additional report, Defendants will file an appropriate request with the court. The court expects that Plaintiffs will have no objection to any such report, and urges that the request be filed as an agreed motion.