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 Judge Ronald A. Guzman Magistrate Judge Nan R. Nolan

LEAD PLAINTIFFS' REPLY IN SUPPORT OF THEIR REQUEST FOR ADDITIONAL INFORMATION RELATING TO DEFENDANTS' 23 NON-RETAINED EXPERTS

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ARGUMENT 1

A. Defendants' Amended Disclosures Are Not Adequate 2

B. The Cases Relied on by Defendants Do Not Support Their Continued Refusal to Disclose the Substance of the Non-Retained "Expert" Testimony They Intend to Elicit 7

III. CONCLUSION 9

TABLE OF AUTHORITIES

Page

CASES

Adams v. Gateway, Inc.,
Case No. 2:02 CV 106 TS,
2006 U.S. Dist. LEXIS 14413 (D. Utah Mar. 10, 2006) 8

B.H. v. Gold Fields Mining Corp.,
Case No. 04-CV-0564-CVE-PJC,
2007 U.S. Dist. LEXIS 2309 (N.D. Okla. Jan. 11, 2007)..... *passim*

Bank of China v. NBM LLC,
359 F. 3d 171 (2d Cir. 2004).....8

Bowling v. Hasbro, Inc.,
C.A. No. 05-229S,
2006 U.S. Dist. LEXIS 58910 (D.R.I. Aug. 10, 2006).....8

Crowley v. Chait,
Civ. No. 85-2441 (HAA),
2005 U.S. Dist. LEXIS 2741 (D.N.J. Feb. 18, 2005) 5

Funai Elec. Co. v. Daewoo Elecs. Corp.,
No. C 04-1830 CRB (JL),
2007 U.S. Dist. LEXIS 29782 (N.D. Cal. Apr. 11, 2007) 5

Garza v. Abbott Lab.,
No. 95 C 3560,
1996 U.S. Dist. LEXIS 12506 (N.D. Ill. Aug. 26, 1996) 8

GSI Group, Inc. v. Sukup Mfg. Co.,
No. 05-30111
2007 U.S. Dist. LEXIS 18764 (C.D. Ill. Mar. 16, 2007).....8

In re Air Crash at Charlotte, N.C. on July 2, 1994,
982 F. Supp. 1086 (D.S.C. 1997).....6

KW Plastics v. United States Can Co.,
199 F.R.D. 687 (M.D. Ala. 2000).....1, 4, 5

McCulloch v. Hartford Life and Accident Ins. Co.,
223 F.R.D. 26 (D. Conn. 2004).....5

Musser v. Gentiva Health Servs.,
356 F.3d 751 (7th Cir. 2004) 4, 6

Page

Ordon v. Karpie,
223 F.R.D. 33 (D. Conn. 2004).....1

Osterhouse v. Grover,
Case No. 3:04-cv-93-MJR,
2006 U.S. Dist. LEXIS 30904 (S.D. Ill. May 17, 2006).....4, 5

Sprague v. Liberty Mut. Ins. Co.,
177 F.R.D. 78 (D.N.H. 1998) 8

Sunstar, Inc. v. Alberto-Culver Co.,
No. 01 C 736,
2006 U.S. Dist. LEXIS 85678 (N.D. Ill. Nov. 16, 2006) 2, 5, 6

Zurba v. U.S.,
202 F.R.D. 590 (N.D. Ill. 2001).....8, 9

STATUTES, RULES AND REGULATIONS

Fed. R. Civ. P.
Rule 26.....1, 4, 8
Rule 26(a)(2).....1
Rule 26(a)(2)(B).....5, 7

Fed. R. Evid.
Rule 702.....1, 4

Lead Plaintiffs respectfully submit this Reply in Support of Their Request for Additional Information Relating to Defendants' 23 Non-Retained Experts.

I. INTRODUCTION

Defendants spend much of their brief arguing that Fed. R. Civ. P. 26 ("Rule 26") does not require each of the 23 witnesses they designated as experts to provide a formal expert report. Defs' Opp. 1-7.[1] These arguments are irrelevant because plaintiffs do not and have not requested a formal report authored by each witness. Instead, plaintiffs seek an order requiring ***defendants*** to immediately disclose (1) the specific opinions the 23 witnesses will offer and (2) the bases for those opinions. As detailed below, defendants have failed to provide this information which is necessary for plaintiffs to determine what additional steps, if any, they need to take with respect to these "experts" and for this Court to perform its gatekeeper function under *Daubert*.

If defendants are unwilling or unable to provide the opinions their 23 non-retained experts will offer at trial, and the bases for those opinions, the witnesses should be removed from their expert disclosure.

II. ARGUMENT

"The stated purpose of expert disclosures under Rule 26 is to 'disclose information sufficiently in advance of trial that opposing parties have a reasonable opportunity to prepare for effective cross examination and perhaps arrange for expert testimony from other witnesses.'" *B.H. v. Gold Fields Mining Corp.*, Case No. 04-CV-0564-CVE-PJC, 2007 U.S. Dist. LEXIS 2309, at *14 (N.D. Okla. Jan. 11, 2007) (quoting commentary to Rule 26(a)(2)). The Rule 26 expert disclosure requirement seeks to "eliminate unfair surprise, avoid prejudice, and allow the opposing party to mount an appropriate response to the expert's possible testimony." *KW Plastics v. United States Can Co.*, 199 F.R.D. 687, 694 (M.D. Ala. 2000). And, "[t]he 1993 amendments to Rule 26 clearly favor disclosure of the contents of expert testimony before trial to prevent a party from being ambushed with surprise expert testimony at trial." *B.H.*, 2007 U.S. Dist. LEXIS 2309, at *8-*9 (collecting cases).[2]

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[1] "Defs' Opp." refers to Defendants' Memorandum in Opposition to Plaintiffs' Submission in Response to the Court's January 16, 2008 Order, filed on January 25, 2008.

[2] If plaintiffs were seeking full blown reports from each of the 23 witnesses, this provision authorizes the court to order them produced. The Advisory Committee Notes to the 1993 Amendment to Rule 26 specifically state that the requirement of a report may be imposed upon additional persons who will provide opinions under Fed. R. Evid. 702. Commentary to Rule 26(a)(2); s*ee also Ordon v. Karpie*, 223 F.R.D. 33, 35

A. Defendants' Amended Disclosures Are Not Adequate

Following the January 16, 2008 hearing, defendants were ordered to "provide a more detailed summary of each witness's ***potential testimony*** into areas of specialized knowledge that may fall within the purview of *Sunstar, Inc. v. Alberto-Culver Co.*, No. 01 C 736, 2006 U.S. Dist. LEXIS 85678 (N.D. Ill. Nov. 16, 2006)."[3] January 16, 2008 Order. Defendants did not comply with that Order, which could have avoided further Court proceedings. Defendants' amended disclosures do not include any specific indication of these witnesses' potential opinion testimony, and are even more opaque and vague than the ones they were directed to correct.

The first entry on defendants' disclosures illustrates the problem. Defendants initially indicated that Mr. Aldinger, a defendant, may provide expert opinion testimony "regarding Household's corporate governance and management practices." Defs' Opp., Exhibit A at 2. Now Mr. Aldinger's expert testimony may include "his knowledge, actions, interactions, judgments and/or decisions regarding Household's operations, administration and business model; strategy and development; communications with analysts, investors, rating agencies and/or government entities; review of financial statements; and other matters related thereto."[4] Defs' Opp., Ex. B at 1. In other words, Mr. Aldinger's "expert" opinion could relate to almost anything regarding Household. This does not narrow things down. The other 22 "disclosures" are equally expansive and ambiguous. *See* Defs' Opp., Ex. B.

In sum, defendants have provided no information as to what expert opinions will be elicited at trial from these witnesses or the bases for those opinions, no information useful to determine whether additional discovery is required, no information useful for cross-examination, and no information sufficient to allow the Court to assess the admissibility of the expert testimony defendants intend to elicit from these witnesses before trial. The new "disclosures" are useless.[5]

(D. Conn. 2004) (court has discretion to impose report requirement on any individual who will offer expert testimony). In this case, however, the time has come and gone for defendants to submit their expert reports.

[3] All emphasis has been added and citations and internal quotations omitted unless otherwise indicated.

[4] As to what "matters" are "related thereto" the plaintiffs have no idea.

[5] As the Court observed during the January 16, 2008 hearing: "To say best practices in a case that involves 5,000,000 pieces of paper, six years of litigation, it just – on a single plaintiff case maybe that would work. ***It just doesn't work here***." January 16, 2008 Hearing Tr. at 32:5-8 (excerpts of the January 16, 2008 hearing transcript and the William F. Aldinger deposition transcript are attached hereto as Exhibits 1 and 2, respectively).

With respect to the witnesses' qualifications, the descriptions offered do not appear to identify the requisite specialized knowledge to qualify them as "experts." Again, however, without the specific opinions neither plaintiffs nor the Court can make this determination for sure.

Sticking with the example of Mr. Aldinger, defendants claim that, based on his history as a high-level executive "he has specialized knowledge in, *inter alia*, corporate governance practices and policies, and management practices and policies." Defs' Opp., Ex. B at 1. Plaintiffs have no basis to assess how Mr. Aldinger's allegedly "specialized knowledge" regarding "corporate governance" and "management practices" would allow him to testify about the sweeping set of subjects identified. Moreover, when asked about his management philosophy, Mr. Aldinger revealed that, contrary to defendants' disclosure, he is far from knowledgeable, let alone an "expert," on the details of Household's operations: "I delegate a lot of autonomy to those people, and they get to run their businesses very independently. And ***I don't get into the minutia of their businesses***." Aldinger Depo Tr. at 22:11-14. When questioned on a very broad subject, the internal controls at the Consumer Lending Business unit, Mr. Aldinger was unable to recall any detail although he volunteered his "impression" that the business unit had "good controls":

> Q. Okay. As you sit here today, what internal controls do you recall there being in the consumer lending business unit to prevent predatory lending?
>
> A. Well, it's been a long time since 1999, so I don't recall a whole lot. But it was always my impression that the – the consumer lending group had good controls and had a long history of being in the business and had done a good job over a long period of time. And I had no reason to believe they wouldn't have good controls.
>
> Q. What – what systemic controls do you recall there being in the consumer lending business unit at this time?
>
> A. I don't recall any at this point.

Aldinger Depo Tr. at 90:25-91:13.

Plaintiffs have no idea if defendants intend to introduce Mr. Aldinger's opinion on this subject, or any other specific opinions offered by current and former Household employees at deposition. And because defendants have not even confined the scope of their potential "expert" testimony to the depositions, plaintiffs have no idea what "expert" opinions Aldinger or any other witness will conjure up during trial. In fact, defendants have indicated they cannot disclose these witnesses' "expert" opinions at this juncture because they will be formed only after plaintiffs present their case in chief:

> The answer for each of these witnesses, what do we currently today, whatever today's date is, January whatever, intend to elicit from these people by way of opinion? Nothing. What we will do after the plaintiffs present their case we can say that we don't know.

January 16, 2008 Hearing Tr. at 21:23-22:3; *see also* Defs' Opp. at 6-7, 10.

Defendants' position runs afoul of Rule 26's goal of preventing a party from being ambushed with surprise expert testimony at trial. *Osterhouse v. Grover*, Case No. 3:04-cv-93-MJR, 2006 U.S. Dist. LEXIS 30904, at *10 (S.D. Ill. May 17, 2006) (The purpose of disclosing experts is to "avoid so-called trial by ambush."); *KW Plastics*, 199 F.R.D. at 688-690 (finding that a statement of "the basis and reasons" is required for every witness who testifies under Fed. R. Evid. 702). At this late stage, defendants can easily identify the opinions they may seek to present. Consistent with the purpose of Rule 26, they should. If they really do not know the opinions they will elicit, the 23 non-retained "experts" should be stricken from their expert list.

The case law supports the common-sense proposition that failure to disclose the specific opinion testimony defendants' witnesses will offer and the basis for that testimony will severely prejudice plaintiffs in their trial preparation. *Musser v. Gentiva Health Servs.*, 356 F.3d 751, 757-58 (7th Cir. 2004) (plaintiff's failure to disclose experts was prejudicial). As the *Musser* court explained, adequate disclosure is important "because there are countermeasures that could have been taken that are not applicable to fact witnesses, such as attempting to disqualify the expert testimony on grounds set forth in *Daubert* . . ., retaining rebuttal experts, and holding additional depositions to retrieve the information not available because of the absence of a report." *Id.*

Osterhouse also recognized these constraints and ordered disclosure of "the ***specific and complete*** opinions that these doctors will express and the ***specific*** bases for these opinions." 2006 U.S. Dist. LEXIS 30904, at *14 (emphasis in original). "It is clear that without some discovery into what these doctors may testify to, the defendants will be wholly unable to support any *Daubert* motion that they wish to file before the Trial Court." *Id.* at *12.

Similarly, in *B.H.*, the court ordered the non-retained expert to provide "a concise report containing a complete statement of his opinions, the basis and reasoning supporting them, and the data or information he reviewed when reaching his opinions." 2007 U.S. Dist. LEXIS 2309, at *16. "[W]ithout some form of pretrial disclosure of the substance of his testimony," the court's "gatekeeper function under *Daubert*" would be hampered because the parties could not meaningfully

discuss the substance of the witness's testimony. *Id.* at *14. Thus, plaintiffs' expert was ordered to provide a limited report "[f]or the benefit of defendants and the Court."[6] *Id.* at *15.

Plaintiffs should not be forced to fire at 23 moving targets, and the Court should not have to make admissibility determinations on the present record. Defendants must provide plaintiffs (and the Court) with the information necessary to determine whether additional cross-examination is necessary, or bring *Daubert* motions.[7] *Osterhouse v. Grover*, 2006 U.S. Dist. LEXIS 30904, at *10; *KW Plastics*, 199 F.R.D. at 694; *Funai Elec. Co. v. Daewoo Elecs. Corp.*, No. C 04-1830 CRB (JL), 2007 U.S. Dist. LEXIS 29782, at *15 (N.D. Cal. Apr. 11, 2007) (ordering a purported unretained expert to provide a limited expert report identifying subjects of intended expert opinion testimony.

Defendants try to distinguish the cases on the grounds that plaintiffs have deposed all but one of defendants' non-retained "experts." Defs' Opp. at 6, 7-10. That argument fails. As Judge Guzman recognized in *Sunstar*, the fact depositions are not a substitute for expert discovery:

> [Defendants] did not conduct the in-depth examination that is required to determine whether she is qualified to provide expert testimony. Defendants also did not ask Spencer whether there is an accepted methodology for evaluating brand equity and whether DGA used it on the Sunstar project, nor did they delve into the facts and rationale underlying DGA's recommendations. Had defendants known Sunstar intended to call Spencer as an expert, her deposition would have been much different.
>
> Indeed, defendants' whole discovery plan probably would have been different if they had known Spencer would be called as an expert.

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[6] Other courts have also held that employees designated as experts may not be exempt from supplying expert reports. *McCulloch v. Hartford Life and Accident Ins. Co.*, 223 F.R.D. 26, 28 (D. Conn. 2004) (rejecting the argument that Rule 26(a)(2)(B) recognizes a report "exemption based solely on the fact that [designated expert] witnesses are employees"); following *Day v. CONRAIL*, 95 Civ. 968 (PKL), 1996 U.S. Dist. LEXIS 6596, at *3-*7 (S.D.N.Y. May 14, 1996) (rejecting the argument that an employee of a party is exempt from providing an expert report by the mere fact that he is an employee), and *KW Plastics*, 199 F.R.D. at 688-90; *see also Crowley v. Chait*, Civ. No. 85-2441 (HAA), 2005 U.S. Dist. LEXIS 2741, at *5 (D.N.J. Feb. 18, 2005) (directing accountant to provide in detail the actual expert opinion to be offered and the basis for that opinion).

[7] Another concern recognized by the courts is the need for adequate disclosure of the scope of the opinions in order to determine whether these witnesses have been improperly classified as non-retained or employee experts to avoid preparing a report. In *Cicero v. Paul Revere Life Ins. Co.*, 98 C 6467, 2000 U.S. Dist. LEXIS 7165 (N.D. Ill. Mar. 22, 2000), a case cited by defendants, the court observed the common-sense axiom that "the substance of the testimony governs whether the witness will be required to tender a report and not the status of the person." *Id* at *6.

2006 U.S. Dist. LEXIS 85678, at *23. Other cases hold similarly. *See Musser*, 356 F.3d at 759 (finding that party was prejudiced where it did not have the opportunity to depose a witness in his expert capacity, notwithstanding that the party had deposed the witness in his fact witness capacity); *see also In re Air Crash at Charlotte, N.C. on July 2, 1994*, 982 F. Supp. 1086, 1089 (D.S.C. 1997) (noting that "[h]ad these witnesses been identified as experts, even after the initial [fact] depositions, this court would have required the full report and would likely have allowed further depositions").

Furthermore, as set forth in plaintiffs' January 17, 2008 submission ("Pltfs' Submission"), defendants repeatedly obstructed attempts to elicit opinion testimony during numerous depositions, including those of seven witnesses now on defendants' list. Plaintiffs' Submission shows that plaintiffs had no reason to believe the 23 purported non-retained "experts" would offer opinion testimony at trial until receiving defendants' expert disclosures on December 10, 2007. Plaintiffs' chart identifies instances where defense counsel (1) "instructed the witness not to answer a question on the grounds that the witness was not an expert" and (2) "obstructed the questioning of a witness based on the objection that the question called for opinion testimony."[8] Pltfs' Submission at 1; Ex. A, entries 1-17. Both of these categories are relevant to the analysis of whether plaintiffs could reasonably be expected to elicit opinion testimony (expert or otherwise) from ***any*** fact witness represented by defense counsel in anticipation that they would later be named as experts. They could not.

All of the witnesses on plaintiffs' chart are relevant, because they all established that defendants' witnesses were not sitting as experts and the parties' mutual understanding regarding the scope of the depositions during fact discovery. Defendants concede that four of the 23 – Sodeika, Bangs, Mizialko, Jr. and Anderson – improperly refused to answer questions on grounds that the question called for expert opinion. Defs' Opp. at 8. With respect to the fifth, Kaufmann, defendants contend the witness' refusal to give his opinion on the reason why a banking statute was enacted was because it called for a legal conclusion. Defs' Opp. at 8. Plaintiffs were prevented from obtaining

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[8] Defendants manufacture an accusation that plaintiffs made "serious and misleading omissions" in their chart. Defs' Opp. at 8. However, the filing clearly indicates that the chart included both examples of objections on expert grounds as well as instructions not to answer questions. Pltfs' Submission at 1. The submission explicitly stated that James Connaughton and David Schoenholz fell into the former category and does not state or imply that they refused to answer questions. *Id.* The filing also carefully identified the five witnesses who were instructed not to answer questions on grounds that the witness was not an expert: Lisa Sodeika, Lawrence Bangs, Clifford Mizialko, Jr., Daniel Anderson and James Kauffman. *Id.*

Kaufmann's opinion on the question and in preparing the chart reasonably interpreted that the objection was on opinion or expert grounds.[9] Notably, the question sought Kaufmann's opinion on a ***banking regulation*** and in both their original and revised disclosures, defendants state that Kaufmann may be called to provide "expert" testimony "that is informed by his specialized knowledge of ***banking*** and consumer finance ***regulation*** and compliance." Defs' Opp., Ex. A at 3, Ex. B at 5. Defendants also do not dispute that five additional witnesses – Celeste Murphy, Ned Hennigan, Tom Schneider, Paul Makowski and Ken Walker – refused to answer questions after instructions from counsel. Pltfs' Submission, Ex. A, entries 1, 3, 6, 7 and 10. Nor do they deny their explicit representations that Mr. Schoenholz ("He's not sitting here as an expert. He's a fact witness"), Mr. Connaughton ("This witness is not sitting here as an expert") and numerous other witnesses were not sitting for deposition as experts. Pltfs' Submission, Ex. A, entries 11-17.

Given this ***and*** defendants' insistence that the depositions be limited to seven hours in the absence of a contrary Order[10] ***and*** the voluminous documentary record in this case, defendants cannot fault plaintiffs for focusing the depositions on the witness' factual knowledge and documents. *See* Defs' Opp. at 9. Plaintiffs could not know when they were taking the depositions that defendants would turn around and label 23 fact witnesses as "experts" ***after*** their depositions were completed and fact discovery closed.

B. The Cases Relied on by Defendants Do Not Support Their Continued Refusal to Disclose the Substance of the Non-Retained "Expert" Testimony They Intend to Elicit

Defendants have not cited a single case holding that plaintiffs are not entitled to the information they seek. Instead, defendants rely on cases addressing the question of whether Rule 26(a)(2)(B) requires a formal report from defendants' employees. Defs' Opp. at 2-4. As discussed,

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[9] The bolded portion on page 8 reveals that the witness answered a different question than the one he was instructed not to answer, as evidenced by Mr. Sloane's subsequent statement: "I already instructed him not to answer that question, and he's instructed not to answer it again. Move on." Defs' Opp., Ex. C at 8.

[10] Plaintiffs were forced to bring a motion on this subject when defense counsel halted the deposition of Ms. Sodeika after less than 7 hours. The Court subsequently granted plaintiffs' motion for additional hours with certain witnesses. Plaintiffs' selection of these witnesses and the amount of time was predicated in part on these being factual depositions.

plaintiffs do not seek a formal expert report from the witnesses, but instead information from defendants about the expert opinion testimony they plan to elicit at trial.[11]

Many of the cases cited by defendants actually support plaintiffs because in those cases, the information plaintiffs seeks here had already been disclosed. In *GSI Group, Inc. v. Sukup Mfg. Co.*, No. 05-30111 2007 U.S. Dist. LEXIS 18764 (C.D. Ill. Mar. 16, 2007) in which the court denied a motion to compel privileged documents, the party seeking to offer expert testimony actually ***supplied the other side with expert reports***. *Id.* at *6 n.2. In *Cicero*, although the court allowed the witnesses to testify despite not having expert reports, the specific subject-matter of the expert opinions had already been disclosed.[12] 2000 U.S. Dist. LEXIS 7165, at *1-*3. In *Garza v. Abbott Lab.*, No. 95 C 3560, 1996 U.S. Dist. LEXIS 12506 (N.D. Ill. Aug. 26, 1996), the court had before it an affidavit setting forth the doctor's opinions. *Id.* at *3. And, in *Bank of China*, the Second Circuit had before it a trial transcript containing the specific opinion testimony at issue. 359 F.3d at 180 n.10.

In *Zurba*, also relied on by defendants, the plaintiff notified defendant by letter that his treating physician would offer testimony regarding "the nature of plaintiff's condition, its cause, the permanency of her condition, and the necessity and cost of future medical care."[13] *Id.* at 591. This

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[11] Indeed, one case relied on by defendants, *Adams v. Gateway, Inc.*, Case No. 2:02 CV 106 TS, 2006 U.S. Dist. LEXIS 14413 (D. Utah Mar. 10, 2006), explicitly holds that plaintiffs are entitled to the information sought. *Adams* holds that a formal report is not required ***due to burden on the non-retained expert***, but notes that other means of discovery remain available to elicit information regarding the expert, including interrogatories and deposition. *Id.* at *6-9. At this juncture, requiring plaintiffs to propound interrogatories requesting the information sought would elevate form over substance, and may delay expert discovery even longer.

[12] Many of the cases cited by defendants are distinguishable because they arose in the context of motions to prohibit testimony for failure to provide a formal expert report. *See, e.g.*, *Bowling v. Hasbro, Inc.*, C.A. No. 05-229S, 2006 U.S. Dist. LEXIS 58910, at *5 (D.R.I. Aug. 10, 2006) (acknowledging that "full disclosure by report for all experts may be desirable from a policy standpoint" but declining the remedy of preclusion), *Cicero* (declining to preclude testimony for failure to provide report), *Zurba v. U.S.*, 202 F.R.D. 590 (N.D. Ill. 2001) (same) and *Bank of China v. NBM LLC*, 359 F. 3d 171 (2d Cir. 2004).

[13] A treating physician's opinions can easily be elicited from their medical file. *Sprague v. Liberty Mut. Ins. Co.*, 177 F.R.D. 78, 82 (D.N.H. 1998) (noting that a report of a treating physician need not be provided because all treating physicians have patient files from which a competent trial attorney would cross-examine). Moreover, the treating physician is an independent professional. The same points do not apply to the witnesses listed by defendants. Defendants' "expert" witnesses in this case are primary and secondary actors with respect to the malfeasance alleged by plaintiffs in this action. They do not have discrete notes or files setting forth their observations of a patient they are treating, the person who is typically the party to the litigation. Indeed, "[u]nlike the example of a treating physician referenced in Rule 26, who would testify

letter was sent ***prior*** to the doctor's deposition and defendant's counsel "***elected"*** not to question him about these issues. *Id.* In stark contrast to *Zurba*, defendants did not reveal prior to any deposition that the witness would offer opinion testimony at trial and took a contrary approach at depositions, repeatedly stating that witnesses were not sitting as experts.

III. CONCLUSION

For the foregoing reasons, defendants should be ordered to disclose within seven days (1) the specific opinions their non-retained experts will offer at trial and (2) the bases of those opinions. If defendants are unable to provide this information for any witness, that witness should be removed from their expert disclosure.

DATED: January 30, 2008

Respectfully submitted,

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154452)
MONIQUE C. WINKLER (90786006)
LUKE O. BROOKS (90785469)
JASON C. DAVIS (4165197)

s/ Luke O. Brooks
LUKE O. BROOKS

100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

based on medical records, tests, and examinations available to both parties, there is no basis to determine the contents of [defendants' non-retained experts'] testimony." *B.H.*, 2007 U.S. Dist. LEXIS 2309, at *15.

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN
SPENCER A. BURKHOLZ
JOHN J. RICE
JOHN A. LOWTHER
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (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

LAW OFFICES OF LAWRENCE G. SOICHER
LAWRENCE G. SOICHER
110 East 59th Street, 25th Floor
New York, NY 10022
Telephone: 212/883-8000
212/355-6900 (fax)

Attorneys for Plaintiff

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Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS (Chicago)

LAWRENCE E. JAFFE, etc., et al., Plaintiffs,	)	
v.	)	Docket No. 02-CV-5893
HOUSEHOLD INTERNATIONAL, INC., et al.,	)	Chicago, Illinois
Defendants.	)	January 16, 2008

9:30 am

STATUS HEARING
BEFORE THE
HONORABLE MAGISTRATE JUDGE NAN R. NOLAN

APPEARANCES:

For the Class:
SPENCER A. BURKHOLZ
COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
100 Pine Street, #2600
San Francisco, CA 94111

LORI FANNING
MILLER LAW LLC
101 North Wacker, Suite 2010
Chicago, IL 60606

For Defendants:
THOMAS J. KAVALER
PATRICIA FARREN
LANDIS BEST
DAVID R. OWEN
CAHILL, GORDON & REINDEL
80 Pine Street
New York, NY 10005

For Defendants:
ADAM B. DEUTSCH
EIMER STAHL KLEVORN & SOLBERG, LLP
224 South Michigan Avenue, Ste. 1100
Chicago, IL 60604

PLEASE PROVIDE CORRECT VOICE IDENTIFICATION

Transcribed by:
Riki Schatell
6033 North Sheridan Road, 28-K
Chicago, Illinois 60660
773/728-7281

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

We certainly don't know what plaintiffs will ask him. All we want to be sure is that under our reading of Sunstar, the most conservative reading possible, Mr. Aldinger is not precluded from giving the testimony, the very testimony he gave at the deposition or an explanation thereof, on the grounds that it's expert. We have not asked any of these people to formulate any expert opinions. We don't intend to. Our experts are these retained, designated experts.

But Mr. Aldinger is certainly going to say I'm an experienced CEO. I believe it was good governance to do this. I believe it would not have been good governance to do that. The subject of this and that are factual matters, but if you think about the second part, the fact, if he's asked by Mr. Burkholz or Mr. Coughlin at trial why didn't you do X? Why didn't you say or disclose X, Mr. Aldinger needs to be able to say because in my judgment that would not have been efficacious. That would not have been good governance.

I certainly concede Mr. Burkholz (inaudible) objection, your Honor, expert testimony. And as I read Sunstar, we're required to say for a witness like that he may have an opinion but it's not that we've asked him to formulate opinions. If your Honor directs us to answer the very question you just posed, I'll answer it now: None. The answer for each of these witnesses, what do we currently today, whatever today's date is, January whatever, intend to elicit from these

people by way of opinions? Nothing.

What we will do after the plaintiffs present their case we can say that we don't know. The plaintiffs, as you know, have spent several years successfully avoiding telling us what their case is about. But when they finally put it on, if they somehow miraculously survive summary judgment, we will respond to it. We're just being cautious lawyers in light of Sunstar. We read Sunstar presents a trap for the unwary so we're trying to be wary. We're not trying to impose a trap. We have no -- We have not asked any of these witnesses to formulate any opinions whatsoever.

MR. BURKHOLZ: So in their case when they put it on at trial they're going to try to cloak these 23 witnesses, including the CFO and the CEO, as experts?

MR. KAVALER: No, your Honor.

MR. BURKHOLZ: And they're going to ask them their opinions based on their experience? We're going to be sitting there without any discovery as to what their opinions are. And maybe it will be at that time that we'll get our discovery from Judge Guzman and we'll be in a bad position which the Sunstar case --

THE COURT: Well now, Mr. Burkholz --

MR. BURKHOLZ: -- says.

THE COURT: -- you're going the other -- I mean you --

where that is in the deposition, all you have to do is kind of attach it. I can take a look at it and we can decide whether or not that's enough notice.

(Pause.)

THE COURT: To say best practices in a case that involves 5,000,000 pieces of paper, six years of litigation, it just -- On a single plaintiff case maybe that would work. It just doesn't work here.

MS. BEST: Well, your Honor, I'm still -- I'm just trying to envision the task at hand, reviewing all these depositions and coming up with examples of where --

THE COURT: Well, the other way around you don't have to do it that way, you can just say then, you can be more specific and give a statement of what the opinion is, okay?

MS. BEST: Well, I mean I --

THE COURT: I thought you were saying, I thought what the gentleman here in the courtroom was saying is they have it already.

MS. BEST: But the general subject matters that discussed their areas of expertise but for some people, for example, who talk about re-aging or accounting, it could be the entire -- It could be the bulk of the deposition, the whole subject matter they were questioned about involved expertise that a layman might not understand.

THE COURT: Well, see, that is --

Exhibit 2

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,
Plaintiffs,

CASE NO. 02 C 5893

vs.

HOUSEHOLD INTERNATIONAL, INC.,
et al.,

Defendants.
_____/

---oOo---

VIDEOTAPED DEPOSITION OF WILLIAM F. ALDINGER
Volume I (Pages 1 - 270)
Monday, January 29, 2007
---oOo---

SHEILA CHASE & ASSOCIATES
REPORTING FOR:
LiveNote World Service
221 Main Street, Suite 1250
San Francisco, California 94105
Phone: (415) 321-2300
Fax: (415) 321-2301

Reported by:
LORRIE L. MARCHANT, CSR, RPR, CRR, CLR
CSR No. 10523

really believe that the winning company is the one that can be the low-cost producers in their industry. So I focus on being very efficient.

And then the last thing that I look at is to -- is the role that I would have out -- dealing with the outside. So investors and -- and rating agencies and things.

So those are the general criteria that I look at.

As a result of that, I tend to -- if you pick good people and they have very large roles, I delegate a lot of autonomy to those people, and they get to run their businesses very independently. And I don't get into the minutia of their businesses.

Q. In 1998, or thereabouts, Household acquired Beneficial.

Do you recall that?

A. I do recall that.

Q. Okay. And do I have that time frame right?

A. I think it's 1998, yes.

Q. Okay. And were you involved in the -- in -- or, I should say, did you make the decision to acquire Beneficial?

A. Well, I recommended that we acquire Beneficial. And obviously I had to get the approval of the board to

you?

MR. BAKER: Yeah.

THE WITNESS: I -- I had no impression that we were packing insurance by -- as you defined it or as we talked about. That -- we would never do that. Just not do it.

BY MR. BAKER: Q. If we can turn the page.

A. (Witness complies.)

Q. The third column in from the right is the elimination of the QAC.

Do you see that?

A. I do.

Q. Again, do you recall any discussion with Mr. Gilmer or members of his staff -- and this document here is apparently dated April 12th, 1999 -- in the April 12, 1999, time frame about the elimination of the QAC in the consumer lending --

A. I do not.

Q. Sorry.

-- in consumer lending business unit?

A. I do not.

Q. Okay. Did you ever have any discussions with Mr. Davis, the head of internal audit, about this issue?

A. Not that I recall.

Q. Okay. As you sit here today, what internal

controls do you recall there being in the consumer lending business unit to prevent predatory lending?

A. Well, it's been a long time since 1999, so I don't recall a whole lot. But it was always my impression that the -- the consumer lending group had good controls and had a long history of being in the business and had done a good job over a long period of time. And I had no reason to believe they wouldn't have good controls.

Q. What -- what systemic controls do you recall there being in the consumer lending business unit at this time?

A. I don't recall any at this point.

Q. Do you recall if there was ever a discussion within Household International's audit committee of the board of directors as to the elimination of the QAC in the consumer lending business unit?

A. I don't recall whether any such discussion took place or not.

Q. Did you ever inform them of that, to your knowledge?

A. I don't recall.

Q. To your knowledge, were Arthur Andersen, Household's external auditors, ever informed of that fact?

DECLARATION OF SERVICE BY E-MAIL AND BY U.S. MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Francisco, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 100 Pine Street, Suite 2600, San Francisco, California 94111.

2. That on January 30, 2008 declarant served by electronic mail and by U.S. Mail to the parties: **LEAD PLAINTIFFS' REPLY IN SUPPORT OF THEIR REQUEST FOR ADDITIONAL INFORMATION RELATING TO DEFENDANTS' 23 NON-RETAINED EXPERTS**. The parties' email addresses are as follows:

TKavaler@cahill.com PSloane@cahill.com PFarren@cahill.com LBest@cahill.com DOwen@cahill.com	NEimer@EimerStahl.com ADeutsch@EimerStahl.com MMiller@MillerLawLLC.com LFanning@MillerLawLLC.com

and by U.S. Mail to:

Lawrence G. Soicher, Esq.
Law Offices of Lawrence G. Soicher
110 East 59th Street, 25th Floor
New York, NY 10022

David R. Scott, Esq.
Scott & Scott LLC
108 Norwich Avenue
Colchester, CT 06415

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of January, 2008, at San Francisco, California.

s/ Marcy Medeiros
MARCY MEDEIROS