

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN, On)	Lead Case No. 02-C-5893
Behalf of Itself and All Others Similarly)	(Consolidated)
Situated,)	
) <u>CLASS ACTION</u>
Plaintiff,)	
) Judge Ronald A. Guzman
vs.)	Magistrate Judge Nan R. Nolan
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
_____)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION *IN LIMINE* TO
PRECLUDE AT TRIAL ANY REFERENCE TO THE UNSUBSTANTIATED POST-
CLASS PERIOD ALLEGATIONS OF VOTER FRAUD AGAINST ASSOCIATION OF
COMMUNITY ORGANIZATIONS FOR REFORM NOW ("A.C.O.R.N.")**

PLAINTIFFS' MOTION *IN LIMINE* NO. 7

I. INTRODUCTION

During the Class Period, the Association of Community Organizations for Reform Now (“ACORN”), which describes itself as the nation’s largest grassroots community organization of low and moderate income people, began alerting Household International and its management to borrower complaints by its members concerning the Company’s sales practices.¹ These practices included misrepresentations regarding interest rates and loan terms, sales of single-premium-credit insurance, prepayment penalties, and making loans to borrowers without regard to the borrowers’ ability to repay such loans and other deceptive and predatory practices. ACORN actively pressed Household, as a major lender in the sub-prime market, to change its misleading sales practices.

Long after the end of the Class Period, allegations aimed at ACORN regarding “voter fraud” began surfacing, including during the recent Presidential election. These unsubstantiated allegations are irrelevant to the claims and defenses in this action and would prejudice plaintiffs and create confusion if heard by the jury. The allegations also are inadmissible pursuant to the personal knowledge requirement of Federal Rule of Evidence (“FRE”) 602 and constitute inadmissible hearsay under FRE 801. Accordingly, plaintiffs respectfully move *in limine* to preclude reference to and evidence of alleged voter fraud by ACORN.

II. ARGUMENT

During the trial, the jury will hear that beginning in 2000, ACORN held demonstrations at various Household branches to protest the Company’s deceptive lending practices. Subsequently, Household and ACORN engaged in negotiations over the Company’s predatory lending practices.

¹ ACORN was founded in 1970 and currently has over 400,000 member families organized into more than 1,200 neighborhood chapters in 110 cities across the country. The members of ACORN take on issues of relevance to their communities, including issues relating to discrimination, affordable housing, a quality education, or better public services. See www.acorn.org.

After negotiations between the two failed, ACORN sued Household for its predatory lending practices in February 2002. ACORN's protests and the subsequent negotiations are directly relevant to notice and defendants' state of mind regarding Household's pervasive predatory lending scheme and the attendant risks.

Plaintiffs anticipate that defendants may seek to introduce evidence of unsubstantiated, post-Class Period allegations of "voter fraud" in an effort to confuse jurors and discredit ACORN.

For instance, during his January 29, 2007 deposition Defendant William F. Aldinger, the Chairman and Chief Executive Officer of Household International, twice raised the issue referring to ACORN as "the one that's accused of voting fraud recently." January 29, 2007 Aldinger, William F. Dep. Trans. at 132:8. *Id.* at 132:12 ("[t]hey've also been accused of voter fraud recently"), attached as Exhibit A. These accusations against ACORN, raised again and widely publicized during last year's Presidential election, were never substantiated. Regardless of their veracity, ACORN's alleged voter fraud has no relevance to the claims or defenses in this action and therefore should be excluded as irrelevant under Fed. R. Evid. 402 which states that "[e]vidence which is not relevant is not admissible." Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401.

The post-Class Period accusation of voter fraud against ACORN is not relevant to the claims or defenses of any party to this case. The accusation does not reference, relate to or discuss ACORN's alerting defendants to borrower complaints by its members concerning the Company's sales practices, or the allegations of Household's predatory lending practices at issue in this securities class action litigation. Indeed, the ACORN voter fraud allegations were raised *after* the Class Period, and thus could have had no bearing on defendants' or investors' evaluation of the truth and importance of ACORN's claims against Household during the relevant time frame.

Accordingly, the issue of whether ACORN did or did not engage in voter fraud is not relevant to the claims that Lead Plaintiffs and the Class suffered losses as a result of Household's false and misleading statements.

Even if the unsubstantiated accusation had any relevance (which it does not) the prejudicial nature of any reference to alleged voter fraud would far outweigh any probative value of that "evidence." The only purpose of such a reference would be to deride ACORN for their community activity and prejudice the plaintiffs in light of the conflict between ACORN and defendants. Permitting any reference to this accusation to be admitted at trial will confuse the trier of fact and turn the focus away from the real issue in the case, Household and the other defendants' misconduct.

The standard for admissibility of relevant evidence under Fed. R. Evid. 403 is whether the danger of prejudice substantially outweighs its probative value. Fed. R. Evid. 403; *see Plair v. E.J. Brach & Sons, Inc.*, 864 F. Supp. 67, 71 (N.D. Ill. 1994) (excluding evidence under Fed. R. Evid. 403 which may cause the jury to make unfair conclusion); *see also Garon v. Miller Container Corp.*, No. 05-4088, 2007 WL 158726, at *4 (C.D. Ill. Jan. 18, 2007) ("Moreover, even if I were to conclude that the statements were not hearsay, I would conclude that admitting them would create prejudice that substantially outweighs any probative value and further has a very real potential to mislead the jury. Under Fed. R. Evid. 403, such evidence may be excluded even if otherwise relevant."). The possibility of an improper inference being drawn and resultant prejudice against the plaintiffs vastly outweighs the value of the reference. *See Int'l Surplus Lines Ins. Co. v. Fireman's Fund Ins. Co.*, 998 F.2d 504, 508 (7th Cir. 1993) (finding that district court did not abuse its discretion in excluding evidence at trial under Rule 403 because it was only "marginally relevant," was confusing and misleading to the jury, and would require a trial within a trial). Here, any reference to an accusation of voter fraud has no relevance to Household's wrongdoing at issue in this litigation.

Additionally, to the extent defendants seek to introduce this accusation through Aldinger (or any other witness on their list), it is barred pursuant to Fed. R. Evid. 602 for lack of personal knowledge. *See* Fed. R. Evid. 602 (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”). There is no evidence that any witness on defendants’ trial witness list has personal knowledge of voter fraud committed by ACORN.

Finally, Aldinger’s references to the accusations against ACORN and any news articles or reports referring to the subject matter are inadmissible hearsay under Fed. R. Evid. 801(c), and defendants should be precluded from offering them into evidence at trial. The Rule states: “‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Newspaper articles may not be offered into evidence to prove the truth of the matters set forth in those articles. *See, e.g., Cody v. Harris*, 409 F.3d 853, 860 (7th Cir. 2005). Here, any production of newspaper articles or reports would be offered by Household to prove the truth of the matter asserted and thus, are inadmissible hearsay.

III. CONCLUSION

For the foregoing reasons, the reference, its subject matter, and any related news articles or reports should be barred from being offered into evidence at trial.

DATED: January 30, 2009

Respectfully submitted,

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
PATRICK J. COUGHLIN (111070)
MICHAEL J. DOWD (135628)
SPENCER A. BURKHOLZ (147029)
DANIEL S. DROSMAN (200643)
MAUREEN E. MUELLER (253431)

/s/ Michael J. Dowd

MICHAEL J. DOWD

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
AZRA Z. MEHDI (90785467)
D. CAMERON BAKER (154432)
LUKE O. BROOKS (90785469)
JASON C. DAVIS (253370)
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (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

S:\CasesSD\Household Intl\Trial\Pltffs' Motions in Limine\MOT00056905_ACORN_Voter Fraud.doc

DECLARATION OF SERVICE BY ELECTRONIC 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 Diego, State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway Suite 1900, San Diego, California 92101.

2. That on January 30, 2009, declarant served by electronic mail and by U.S. Mail to the parties the **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE AT TRIAL ANY REFERENCE TO THE UNSUBSTANTIATED POST-CLASS PERIOD ALLEGATIONS OF VOTER FRAUD AGAINST ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW ("A.C.O.R.N.")**.

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, 2009, at San Diego, California.

/s/ Teresa Holindrake

TERESA HOLINDRAKE