

6Order Form (01/2005)

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	3/16/2009
CASE TITLE	Lawrence E. Jaffe Pension Plan vs. Household International, Inc.		

DOCKET ENTRY TEXT

Minute entry dated 3/12/2009 [doc. 1501] is stricken and the following order is entered. For the reasons set forth in this Order, plaintiffs' motion in limine no. 6 to exclude testimony of defendants' proposed expert Dr. Robert Litan [doc. no. 1341] is granted in part and denied in part and plaintiffs' motion in limine no. 3 to exclude defendants' cumulative expert testimony [doc. 1338] is granted.

Docketing to mail notices.

	Courtroom Deputy Initials:	LC/LM
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Proposed defense expert Litan contests proposed plaintiffs' expert Ghiglieri's opinion that "Household's senior management knew the Company was engaged in a 'massive scheme of predatory lending'" because: (1) her definition of "predatory lending practices" is too broad; (2) the data she cites, *e.g.*, customer complaints, the report from the State of Washington, the litigation settlements, is flawed or does not support her opinion; (3) she ignores the fact that Household's senior managers acquired more shares of the company during the class period than they sold, which suggests there was no fraud; and (4) the practices she identifies as predatory were disclosed by Household. (*See generally* Mem. Law Supp. Pls.' Mot. Exclude Testimony Defs.' Proposed Expert Dr. Robert Litan, Ex. A, Litan Report.) Plaintiffs contend that Litan may not, in light of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, offer any of these opinions. *See* 509 U.S. 579, 592-93 (1993) (holding that expert testimony is admissible under Federal Rule of Evidence 702 only if "the reasoning or methodology underlying [it] is scientifically valid" and it "will assist the trier of fact to understand or determine a fact in issue.")

Litan, who has Ph.D in economics and has focused much of his work on the financial services industry, is qualified to give his opinion about the proper scope of the phrase "predatory lending practices" and why he thinks Ghiglieri's definition is flawed. However, he cannot tell the jury, as he purports to do in his report, what the Household's managers thought the phrase meant or what they intended to convey when they denied that Household engaged in such practices.

Litan can explain why he thinks Ghiglieri's reliance on customer complaints and the Washington report is misplaced. But he cannot testify, as he purports to do in his report, about Household's motivation for settling the lawsuits (including his avoidance-of-"headline risk" theory), the terms of those settlements or the wisdom of its decision to settle them.

Litan can explain why he believes the senior managers' acquisition of Household shares during the class period suggests there was no fraud. But, because his CV does not establish that he has a foundation for them, Litan cannot testify about the stock transactions made by managers of other companies alleged to have engaged in fraud.

Litan's opinion that Household disclosed various allegedly predatory lending practices is also problematic. He does not explain why the content and context of the cited "disclosures" are sufficient to apprise a reasonable investor of Household's alleged practices. Thus, he cannot testify that he believes the practices were adequately disclosed. Nor can he testify simply that certain language appears in certain documents because the jury does not need that testimony "to understand or determine a fact in issue." *Daubert*, 509 U.S. at 593. For the same reasons, Litan cannot testify that Household's disclosure of the allegedly improper practices renders invalid Ghiglieri's opinion about the financial impact of those practices.

Moreover, Litan's, permissible testimony is duplicative of the testimony of defense expert John Bley. Defendants may call either witness to testify, but not both.