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

PLAINTIFFS' MOTION TO STRIKE THE QUESTION REGARDING DISCLOSURE DATES FROM THE VERDICT FORM

I. INTRODUCTION

Question Number 17 in the Verdict Form currently asks the jury to determine whether artificial inflation was removed from Household's stock on ten different dates, which match those dates identified by Professor Daniel Fischel in his Specific Disclosure model.[1] This question is unnecessary – in Table B to the Verdict Form, the jury must already indicate whether, when, and to what extent inflation was removed from Household's stock on each trading day during the Relevant Period. Because Question Number 17 is duplicative, it "almost invites contradictory and inconsistent answers." *Turyna v. Martam Constr. Co*., 83 F.3d 178, 181 (7th Cir. 1996).

Even assuming, *arguendo*, that the 90-day bounce-back provision contained in the Private Securities Litigation Reform Act ("PSLRA") applies to partial disclosures that pre-date the end of the Relevant Period, Table B of the Verdict Form already provides the Court with all the information it needs to determine the dates on which to apply such a provision. In Table B, the jury is already required to determine the precise dollar amount of inflation per share for each trading date during the Relevant Period. If the jury determines that inflation was removed on a given date, it must decrease the amount of inflation per share in Table B. Including the same question twice in the Verdict Form will introduce a substantial – and unnecessary – risk of an inconsistent verdict or a hung jury. Accordingly, the Court should deny defendants' request to include in the Verdict Form a separate question regarding when the artificial inflation was partially removed from Household's stock price.

II. ARGUMENT

As the Seventh Circuit has explicitly recognized, providing special interrogatories as to particular issues of fact "almost invites contradictory and inconsistent answers." *Turyna*, 83 F.3d at

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[1] Question No. 17 in the Verdict Form asks the jury to answer the following question: "Was the artificial inflation in Household's stock reduced on any of the following days because of disclosures about the true condition of Household?"

181. The *Manual for Complex Litigation* concurs: "Special verdicts and interrogatories should be drafted so as to help the jury understand and decide the issues while minimizing the risk of inconsistent verdicts." *Manual for Complex Litigation (Third)* §21.63 (1995). In this case, the risk of contradictory or inconsistent answers is heightened further because Question Number 17 is entirely duplicative of findings already made by the jury. In other words, defendants want the jury to answer the same question twice, apparently in the hope that the jury hangs or reaches an inconsistent verdict ***after*** it has determined liability for the plaintiffs.

Defendants contend that if the jury selects Professor Fischel's Specific Disclosures model they must also take the additional step of specifically identifying – in a separate series of questions – each "corrective" disclosure in order to apply the PSLRA 90-day bounce-back provision. Defendants' construction of the bounce-back provision is legally flawed;[2] however, that question need not be decided for plaintiffs to prevail on their objection. This is because the information defendants claim they need – and the Court seeks to preserve – is contained in the Specific Disclosures model itself. The jury's selection of the Specific Disclosures model is a precondition to the additional set of questions defendants seek to impose. That model provides all the information defendants claim they need to apply the 90-day bounce-back provision, even under their strained interpretation of the rule. Accordingly, defendants' request for an additional series of questions regarding disclosure dates should be rejected. Adding the questions serves no purpose other than complicating the jurors' task and increasing the risk of an inconsistent verdict or hung jury.

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[2] There is no legal requirement that the jury identify each day the artificial inflation was removed from Household's stock. Instead, the 90-day bounce-back provision properly runs from the last day the stock is impacted by the fraud. Defendants' contention that the Court should use an artificially inflated stock price to calculate the damages cap is antithetical to the intent and plain language of the statute.

In his Specific Disclosures model, Professor Fischel identified 14 dates on which disclosures relating to defendants' fraud impacted Household's stock price in a statistically significant manner. To calculate the estimated artificial inflation in the stock price for the period prior to November 15, 2001, Professor Fischel aggregated the artificial inflation removed by the 10 statistically significant, fraud-related declines, and netted out the artificial inflation added back into the stock due to statistically significant, fraud-related increases. Based on this analysis, the artificial inflation in Household's stock from the first actionable false statement until November 15, 2001 is $7.97 per share. Put another way, the artificial inflation identified under Professor Fischel's Specific Disclosures model is measured by the disclosures defendants are requesting the jury specifically identify in response to a second question. That question is unnecessary, however, because adopting the Specific Disclosures model and filling in Table B with $7.97 of artificial inflation per day equates to approval of the disclosure dates identified in the Specific Disclosures model.

Additionally, the artificial inflation table itself will explicitly reflect each day the artificial inflation decreased – the same information sought by Question Number 17. If the jury adopts the Specific Disclosures model, the disclosure dates will be apparent based on reductions in artificial inflation in Table B which will reflect each date inflation was removed from the stock. For example, on November 14, 2001 the artificial inflation is $7.97. On November 15, 2001, the artificial inflation drops to $6.11, reflecting the market reaction to the disclosure of the California Department of Corporations announcement of their lawsuit. Similarly, on December 11, 2001, the artificial inflation declines from $6.05 to $3.66, reflecting the market reaction to an analyst report questioning and criticizing Household's re-aging policies. Each of the 10 statistically significant drops identified by Professor Fischel in the Specific Disclosures model will thus be identified in Table B, providing the Court and the parties more than sufficient information for any determination regarding the 90-day bounce-back rule no matter which party's interpretation of that rule ultimately is adopted.

There is no reason to ask the question a second time, and doing so will increase the risk of an inconsistent verdict or hung jury and unnecessarily complicate the jury's job.[3] Requiring additional findings ***after*** the jury has established liability and determined the amount of artificial inflation – thereby completing its job – severely prejudices plaintiffs. At that point defendants can only benefit from an inconsistent verdict or hung jury, and plaintiffs can only be harmed. Perhaps this is why defendants – who failed to even mention the 90-day bounce-back provision in their lengthy Statement of Contested Issues of Fact and Law filed with the pre-trial order – have now created this issue.

III. CONCLUSION

For the foregoing reasons, plaintiffs' motion to strike Question Number 17 from the Verdict Form as duplicative and thus likely to lead to inconsistent verdicts should be granted.

DATED: April 28, 2009

Respectfully submitted,

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[3] Including the duplicative questions creates several additional problems. The jury will not know why they are answering the additional questions and the impact their responses may or may not have on the outcome of this case. There is no jury instruction to guide the jury on determining the appropriate corrective disclosure date for application of the 90-day bounce-back calculation because it is a question for the Court, not the jury.

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Document1

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 W. Broadway, Suite 1900, San Diego, California 92101.

2. That on April 28, 2009, declarant served by electronic mail and by U.S. Mail to the parties the PLAINTIFFS' MOTION TO STRIKE THE QUESTION REGARDING DISCLOSURE DATES FROM THE VERDICT FORM.

The parties' e-mail addresses are as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of April, 2009, at Chicago, Illinois.

/s/ Deborah S. Granger
DEBORAH S. GRANGER