

Defendants respectfully submit this Memorandum of Law in Opposition to Plaintiffs' Motion to Strike References to Arthur Andersen in the Verdict Form. For the reasons stated on the record on April 28, 2009, Defendants submit that their claim for apportionment against Anderson is identical to Plaintiffs' claims against Household.

To the extent Plaintiffs' claims survive Defendants' pending Motion for Judgment as a Matter of Law Pursuant to Rule 50(a), Plaintiffs are estopped from arguing that Arthur Andersen cannot bear liability for alleged fraudulent conduct. Plaintiffs' Amended Complaint (Dkt. No. 54, which was upheld by this Court) contains 20+ pages describing how Andersen participated in the alleged fraud and made false statements with scienter in violation of Section 10(b) of the 1934 Act and Rule 10b-5, including statements in Andersen's yearly audit reports and opinions. Because of the "well-settled rule that a party is bound by what it states in its pleadings," Plaintiffs' operative Amended Complaint operates as a judicial admission by Plaintiffs that if a fraud was committed, Andersen played a part in it. As this Court has stated:

Judicial admissions are defined as 'formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them. They may not be controverted at trial or on appeal.' Judicial admissions ultimately remove a fact from being contested.

Chain v. Lake Forest Partners, LLC, No. 07 C 6317, 2008 WL 4831707, at *2 (N.D. Ill. Nov. 3, 2008) (Guzmán, J.) (citations omitted). For example, the Court of Appeals affirmed a grant of summary judgment for the defendant where the complaint stated that the plaintiff "provid[ed] the services called for in the agreement." which constituted a judicial admission, entitling the defendant to judgment on that issue:

The [plaintiff] has fallen victim to the well-settled rule that a party is bound by what it states in its pleadings. "Judicial admissions are formal concessions in the pleadings, or stipulations by a party or its counsel, that are binding upon the party making them." A plaintiff can "plead himself out of court by alleging facts which show that he has no claim, even though he was not required to allege those facts." We have applied this rule on numerous occasions in the past, and although the rule smacks of legalism, judicial efficiency demands that a party not be allowed to

controvert what it has already unequivocally told a court by the most formal and considered means possible.

Soo Line Railroad Co. v. St. Louis Southwestern Railway Co., 125 F.3d 481, 483 (7th Cir. 1997) (citations omitted). This rule has been repeatedly applied in this Circuit. *See Guise v. BWM Mortgage, LLC*, 377 F.3d 795, 800-01 (7th Cir. 2004) (statement in plaintiff's complaint that a specified fee was a benchmark for the prevailing market rate for services constituted a judicial admission withdrawing that fact from contention); *Keller v. United States*, 58 F.3d 1194, 1198 n.8 (7th Cir. 1995) (judicial admissions in the pleadings remove a fact from contention at trial or on appeal)

Plaintiffs are thus estopped from contesting the following factual statements alleged in Plaintiffs' Amended Complaint:

- Andersen "was intimately familiar with Household's business affairs," (AC 171) and "help[ed] Household perpetrate the massive accounting fraud alleged herein." (AC 172)
- Andersen "examined and opined on Household's financial statements for FY97, FY98, FY99, FY00 and FY01 and reviewed Household's interim results and releases." (AC 171)
- "Andersen falsely represented that Household's financial statements for FY97, FY98, FY99, FY00 and FY01 were presented in accordance with GAAP and that Andersen's audits of Household's financial statements had been performed in accordance with Generally Accepted Auditing Standards." (AC 173)
- "Andersen's reports were false and misleading due to its failure to conduct its audits in compliance with GAAS and because Household's financial statements were not prepared in conformity with GAAP, as alleged in detail in [paragraphs describing alleged improper accounting for lending practices, reaging and re-stated credit card agreements]"
- "Andersen knew its reports would be relied upon by potential investors in Household securities." (AC 176)
- "Andersen had direct knowledge of Household's improper accounting as alleged herein." (AC 182)
- "Andersen knew Household's disclosures were false," including "those concerning Household's illegal predatory lending practices and the impact its reaging practices had on Household's reported results." (AC 186)

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- “Andersen deliberately ignored information indicating that Household’s financial statements did not ‘present fairly’ the Company’s financial position.” (AC 190)
- Andersen issued clean audit opinions for fiscal years 1999, 2000 and 2001, which were incorporated by reference into Household’s Form 10-K reports, stating that it had audited Household’s financial statements in accordance with GAAS and opining that the financial statements “fairly state[] in all material respects the financial data required to be set forth therein in relation to the financial statements taken as a whole” (AC 249, 316) or “present fairly, in all material respects, the consolidated financial position” of Household (AC 279).

CONCLUSION

For the foregoing reasons, Plaintiffs’ Motion to Strike should be denied.

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Respectfully submitted,

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