

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	4/29/2009
CASE TITLE	Lawrence E. Jaffe Pension Plan, et al. vs. Household International Inc., et al.		

DOCKET ENTRY TEXT

For the reasons set forth in this Order, the Court strikes the “predatory lending” option from the proposed verdict form with respect to statements 1, 3, 5, 7, 9, 12, 17, 20, 22, 32 and 38.

Docketing to mail notices.

	Courtroom Deputy Initials:	LC/LM
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Plaintiffs contend that some or all of the defendants had a duty to disclose the alleged predatory lending practices in the statements of net income and E.P.S. that they made in Household's 10-Q filings for the quarters ending June 30, and September 30, 1999, March 31, June 30, and September 30, 2000, March 31, June 30, and September 30, 2001, March 31, and June 30, 2002 (proposed verdict form statements 1, 3, 7, 9, 12, 17, 20, 22, 32 and 38) and in the 10-K filing for fiscal year 1999 (proposed verdict form statement 5). The disclosure was required, plaintiffs say, to keep other statements defendants made, in those filings and elsewhere, about the reasons for Household's growth in revenues from being misleading. (*See* Pls.' Submission Regarding Defs.' Duty Disclose Predatory Lending Practices in 10-K & 10-Q Filings.)

Section 10b and Rule 10b-5 do not, however, impose a general duty on defendants to disclose the specific practices that generated Household's income or E.P.S., even if the practices are illegal. Such a duty arises only if defendants put the cause of Household's financial results "into play" by asserting in its net income and E.P.S. statements that the figures were due to specific practices. *Shapiro v. UJB Fin. Corp.*, 964 F.2d 272, 282 (3rd Cir. 1992). *See In re Syncor Intern. Corp. Sec. Litig.*, 239 Fed. Appx. 318, 320 (9th Cir. 2007) ("By attributing Syncor's success solely to legitimate practices, defendants implicitly (and falsely) warranted that there were no illegal practices contributing to that success."); *Shapiro*, 964 F.2d at 282 ("[I]f a defendant has not commented on the nature and quality of the management practices that it has used to reach a particular statement of . . . earnings . . . , it is not a violation of the securities laws to fail to characterize these practices as inadequate, meaningless, out of control."); *In re Van der Moolen Holding N.V. Sec. Litig.*, 405 F. Supp. 2d 388, 400-01 (S.D.N.Y. 2005) (plaintiffs adequately alleged that defendant violated 10b-5 by failing to disclose in financial statements that "its revenue had been generated . . . by [improper] trading practices" based on defendant's "numerous statements during the Class Period concerning the sources" of its revenue); *Menkes v. Stolt-Nielsen S.A.*, No. 3:03CV409(DJS), 2005 WL 3050970, at *6-7 (D. Conn. Nov. 10, 2005) ("Courts that have determined that corporations had a duty to disclose uncharged illegal conduct in order to prevent other statements from misleading the public have required a connection between the illegal conduct and the statements beyond the simple fact that a criminal conviction would have an adverse impact upon the corporation's operations in general or bottom line."); *In re Providian Fin. Corp. Sec. Litig.*, 152 F. Supp. 2d 814, 824-25 (E.D. Pa. 2001) (statements that "attribute Providian's good fortunes to its 'customer focused approach' . . . put[] the topic of the cause of Providian's success in play" and require Providian "to disclose information concerning the source of its success").

The net income and E.P.S statements in the 10-Qs and 10-K identified above do not attribute the figures to any specific practice. As a result, they are, with respect to revenues derived from lending, just accurate recitations of historical information, which do not give rise to Section 10b or Rule 10b-5 liability. *See Galati v. Commerce Bancorp, Inc.*, 220 Fed. Appx. 97, 102, 2007 WL 934893, at *3 (3rd Cir. Mar. 29, 2007) ("Factual recitations of past earnings, so long as they are accurate, do not create liability under Section 10(b)."); *In re Sofomar Danek Group, Inc.*, 122 F.3d 394, 401 n.3 (6th Cir. 1997) ("It is clear that a violation of federal securities law cannot be premised upon a company's disclosure of accurate historical data."). Because defendants do not, as a matter of law, have a duty to disclose Household's alleged predatory lending practices in the statements of net income and E.P.S. set forth in proposed verdict form statements 1, 3, 5, 7, 9, 12, 17, 20, 22, 32 and 38, the Court strikes from the verdict form the "predatory lending" option with respect to those statements.