

**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.)	
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
_____)	

**PLAINTIFFS' RESPONSE TO SPECIAL MASTER'S JULY 11, 2013
REPORT AND RECOMMENDATION**

I. INTRODUCTION

Plaintiffs are filing this Response to the Special Master's July 11, 2013 Report and Recommendation to raise issues that have arisen with respect to seven claims that currently appear on List No. 3 (Exhibit C to the Report and Recommendation, Dkt. No. 1860-3). Plaintiffs agreed that each of these seven claims was properly identified as a claim in excess of \$250,000 that failed to answer the supplemental interrogatory on or before September 12, 2011. Therefore, plaintiffs do not object to the Report and Recommendation. However, five of these seven class members recently submitted the supplemental interrogatory response. A sixth claimant recently submitted the supplemental response for a related claim. The seventh class member did not receive the supplemental interrogatory through its current custodian, as discussed below. Nevertheless, we wanted to bring these claims to the Court's attention so that the recently received responses are in the record and to ask the Court to consider giving two of these class members an opportunity to answer the supplemental interrogatory now for the reasons set forth herein.

II. ARGUMENT

On May 31, 2011, this Court authorized Gilardi & Co., LLC, the claims administrator, to prepare a customized one-page notice for each claimant with an allowed loss in excess of \$250,000 and to provide those forms to third-party filers and custodian banks for dissemination to their claimants. The third-party filers and custodian banks were instructed to send the notice to each individual and entity that had a claim with an allowed loss in excess of \$250,000 and obtain an answer to the supplemental interrogatory.¹ The third-party filers and custodian banks were given 90

¹ The question states:

Question: If you had known at the time of your purchase of Household stock that defendants' false and misleading statements had the effect of inflating the price of Household stock and thereby caused you to

days from their receipt of the one-page notice to obtain executed forms. May 31, 2011 Order at 8 (Dkt. No. 1763). Ultimately, class members were instructed to return the completed form by September 12, 2011. The overwhelming majority of these class members complied with the Order in a timely fashion.²

In December 2012, the Court ordered that the supplemental form with the interrogatory also be sent to third-party filers and custodian banks for dissemination to class members with claims that show an allowed loss of less than \$250,000. These class members were asked to return the executed forms on or before June 30, 2013. To date, we understand that over 15,000 class members have provided a response. However, in reviewing these submissions, plaintiffs' counsel has identified six class members, with allowed losses in excess of \$250,000, who recently returned the supplemental form that was originally due in September 2011.³ Thereafter, we became aware of another class member, with an allowed loss in excess of \$250,000, who never received the supplemental form from its current custodian bank.

The seven claims at issue are as follows:⁴

pay more for Household stock than you should have paid, would you have still purchased at the inflated price that you paid?

The Proof of Claim form asks the claimant to check either the "yes" or "no" box.

² Initially, there were believed to be at least 626 class members with allowed losses in excess of \$250,000. Only 56 had not returned an executed copy of the supplemental form by December 22, 2011, the date on which the claims administrator submitted its claims report to the Court. See Plaintiffs' Opposition to Defendants' Objections to Certain Claims at 51 (Dkt. No. 1802). A handful of class members responded between September 13 and December 22, 2011. The validity of these responses is one of the issues being litigated in front of Special Master Stenger.

³ We believe that one of the custodian banks re-sent these forms as part of their dissemination of forms to the less than \$250,000 claimants.

⁴ Plaintiffs have omitted identifying information regarding the claimants. Similarly, we have redacted names and account numbers from the attached exhibits. If the Court wants un-redacted copies of these forms, plaintiffs will re-file them under seal.

1.	Claim No. 619782	\$398,486
2.	Claim No. 620361	\$448,794
3.	Claim No. 620487	\$272,624
4.	Claim No. 620530	\$475,367
5.	Claim No. 620747	\$1,124,104
6.	Claim No. 621214	\$255,969 ⁵
7.	Claim No. 631113	\$859,072

Plaintiffs respectfully ask the Court to consider the following information with respect to these seven claims:

1. Claim No. 619782: BNY Mellon Asset Servicing, the custodian for this claimant, received a supplemental form with the reliance question for this claim in June 2011. The claimant did not complete and submit the form by September 12, 2011, as required. On June 19, 2013, this claimant completed the form and answered “No” to the supplemental interrogatory. The claims administrator received the supplemental form from BNY Mellon on June 24, 2013. *See* Exhibit 1. On July 18, 2013, we advised BNY Mellon that this claim was on a list of claims that would be rejected under the Court’s orders in this case. We have not yet received a response providing additional information regarding the late response. However, we wanted to bring this recent development to the Court’s attention so that this claimant’s supplemental response is part of the record.

⁵ This claimant recently submitted additional data to the claims administrator, which would reduce their allowed loss to approximately \$245,000. However, in 2011, their allowed loss on the data available at that time was determined by the claims administrator to be in excess of \$250,000 and their custodian was sent a supplemental form for this claimant in July 2011, as required.

2. Claim No. 620361: BNY Mellon Asset Servicing, the custodian for this claimant, received a supplemental form with the reliance question for this claim in June 2011. The claimant did not complete and submit the form by September 12, 2011, as required. On May 17, 2013, this claimant completed the form and answered “No” to the supplemental interrogatory. The claims administrator received the supplemental form from BNY Mellon on June 3, 2013. *See Exhibit 2.* On July 11, 2013, we advised BNY Mellon that this claim was on a list of claims that would be rejected under the Court’s orders in this case. We have not yet received a response providing additional information regarding the late response. Again, we wanted to bring this recent development to the Court’s attention so that this claimant’s supplemental response is part of the record.

3. Claim No. 620487: BNY Mellon Asset Servicing, the custodian for this claimant, received a supplemental form with the reliance question for this claim in June 2011. The claimant did not complete and submit the form by September 12, 2011, as required. On June 11, 2013, this claimant completed the form and answered “No” to the supplemental interrogatory. The claims administrator received the supplemental form from BNY Mellon on June 12, 2013. *See Exhibit 3.* On June 17, 2013, we advised the class member that their claim was on a list of claims that would be rejected under the Court’s orders in this case. We have not yet received a response providing additional information regarding the late response. We wanted to bring this information to the Court’s attention so that this claimant’s supplemental response is part of the record.

4. Claim No. 620530: Again, this claim appears on List No. 3 because it is a claim valued in excess of \$250,000 for which no supplemental form was received by September 12, 2011. Unfortunately, this class member never received a supplemental form with the reliance question for this particular claim in 2011. In advance of the May 24, 2011 claim date, BNY Mellon Asset Servicing submitted data for a number of apparently related accounts, including Claim Nos. 620530

and 621850. As of June 2011, when the supplemental forms were mailed to class members with claims in excess of \$250,000 (with the return date of September 12, 2011), the claims administrator believed, based on the data available to it, that this Claim No. 620530 had an allowed loss of less than \$250,000. Therefore, the class member was not sent a supplemental form in connection with Claim No. 620530 and was not required to complete one at that time. However, during claims processing, the claims administrator subsequently determined that Claim No. 620530 contained data which was related to data submitted in connection with another claim, Claim No. 621850.⁶

In December 2011, the claims administrator submitted its report to the Court documenting the results of its claims processing. The claims administrator's view was that Claim No. 621850 should be rejected as a duplicate of Claim No. 620530. The claims administrator concluded that Claim No. 620530 was a valid claim with an allowed loss of \$475,367. Unfortunately, because the validity and associated allowed loss of these related claims was not determined until long after the September 12, 2011 deadline, the class member never received a supplemental form for Claim No. 620530. We believe that this class member should be removed from List No. 3 at this time and allowed an additional opportunity to respond to the supplemental form.⁷

5. Claim No. 620747: BNY Mellon Asset Servicing, the custodian for this claimant, received a supplemental form with the reliance question for this claim in June 2011. The claimant did not complete and submit the form by September 12, 2011, as required. On June 21, 2013, the

⁶ Claim No. 621850 was valued in excess of \$250,000 and the claims administrator sent the supplemental form to BNY Mellon in connection with that claim in June 2011. No response was received for that claim until May 16, 2013, which alerted the claims administrator to this issue. The class member provided a "No" answer to the supplemental interrogatory with respect to Claim No. 621850. *See* Exhibit 4.

⁷ Defendants also object to the calculation of this claim, arguing it has no allowed loss. The claims administrator has reviewed the claim again and would amend its calculation of the allowed loss to \$367,129.80. If the Court allows this Class Member an opportunity to submit the supplemental form, issues regarding the loss calculation will also need to be resolved by the Special Master.

class member executed the supplemental form and provided the following explanation in lieu of an answer to the question:

“Investment discretion for this fund was delegated, but we are unable to confirm the delegate investment adviser. The answer to the question is determined by the investment strategy followed by the adviser.”

See Exhibit 5.

BNY Mellon forwarded the supplemental form to the claims administrator on June 24, 2013. On June 25, 2013, we advised BNY Mellon that this claim was on a list of claims that would be rejected under the Court’s orders in this case. We have not received any additional information regarding the reasons for the late response. Again, we wanted to bring this recent development to the Court’s attention so that this claimant’s supplemental response is part of the record.

6. Claim No. 621214: In June 2011, the claims administrator sent the supplemental form for this claimant to its custodian, BNY Mellon Asset Servicing. At that time, the claims administrator calculated the claimant’s loss as \$255,969. The claimant did not submit a completed supplemental form with an answer to the interrogatory by September 12, 2011, as required. However, on June 10 and June 20, 2013, this claimant submitted additional data to the claims administrator, which reduces their allowed loss to approximately \$245,000. In addition, the claimant executed the supplemental form on June 21, 2013 and provided an explanation in lieu of an answer to the supplemental interrogatory, which states:

“These shares were purchased by an investment manager, [NAME REDACTED], acting on behalf of the [NAME REDACTED].”

See Exhibit 6.

BNY Mellon forwarded the supplemental form to the claims administrator on June 24, 2013. We reached out to this claimant through its custodian on June 25, 2013 to determine whether there was any explanation for the late submission of the supplemental form. We have not, to date,

received a response. In light of the fact that this claim's allowed loss is now less than \$250,000, plaintiffs believe it should be removed from List No. 3. If the Court removes this claim from List No. 3, the Special Master will ultimately have to decide whether the class member's response is otherwise sufficient.

7. Claim No. 631113: This claim, valued at \$859,071.50, also appears on List No. 3. Unfortunately, this class member never received the supplemental form in connection with this specific claim. Two different custodians, BNY Mellon and Bank of America, submitted separate claims for this class member. The claims administrator sent the supplemental form to BNY Mellon for its claim (Claim No. 621202). It was never returned. However, no supplemental form was sent to Bank of America in connection with Claim No. 631113, because the allowed loss associated with that claim was less than \$250,000 until the claims administrator subsequently determined that it was related to Claim No. 621202. In late September 2011, the claims administrator determined that Claim No. 621202 was a partial duplicate of Claim No. 631113. At that time, BNY Mellon withdrew Claim No. 621202. Once the relationship was established and the claims were merged in November 2011, the loss associated with Claim No. 631113 increased dramatically to \$859,071.50.

In short, because of the separate submissions from two custodians, this class member did not receive a supplemental form through its correct custodian.⁸ Therefore, we believe this class member should be given an opportunity to submit a supplemental form.

⁸ We are not aware of any other instances of this problem, which in light of the number of claims submitted and the timing of certain events, is nothing short of remarkable. The difficulty with these claims was caused by the fact that the supplemental forms were created and mailed in June/July 2011 and the claims process was not completed until December 2011. Unfortunately, we were concerned that this problem could arise and noted the possibility in June 2011. *See* Plaintiffs' Status Conference Report, at 6 n.4 (Dkt. No. 1766) ("It is important to note that these allowed losses were developed by Gilardi based on information received to date. However, the allowed loss calculations are preliminary and may change for certain class members as the claims administration process continues. . . . Similarly, if a class member identifies additional transactions

Obviously, the claims process in this case has been long and arduous. Class members, custodians and third-party claims filers have been asked to perform far more daunting tasks than occur in the typical securities class action. Clearly the Court must set deadlines, but a jury has determined that these class members were victims of a massive fraud perpetrated by defendants Household, Aldinger, Schoenholz and Gilmer. We simply ask the Court to consider allowing the submission of late supplemental forms for five of these class members and allowing the supplemental form to be sent to two others in light of the unusual circumstances.

III. CONCLUSION

Plaintiffs respectfully request that the Court remove all seven of the claims from List No. 3. We further request that the Court permit the claims administrator to send supplemental forms to the custodians for Claim Nos. 620530 and 631113. If the Court permits the claims administrator to send the supplemental forms to these two class members, we suggest that they be given 30 days to complete the form, answer the interrogatory and return their supplemental form to the claims administrator.

DATED: July 25, 2013

Respectfully submitted,

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during the Damages Period, it may affect their preliminary allowed loss as well.”). However, we did not learn that it had actually occurred until June 2013.

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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 July 25, 2013, declarant served by electronic mail and by U.S. Mail to the parties the following documents:

**PLAINTIFFS' RESPONSE TO SPECIAL MASTER'S JULY 11, 2013
REPORT AND RECOMMENDATION**

The parties' e-mail addresses are as follows:

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and by U.S. Mail to:

Lawrence G. Soicher, Esq.
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I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of July, 2013, at San Diego, California.



DEBORAH S. GRANGER