

**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,)	
) Honorable Jorge L. Alonso
vs.)	
)
HOUSEHOLD INTERNATIONAL, INC., et)	
al.,)	
)
Defendants.)	
)

**PLAINTIFFS' MOTION *IN LIMINE* TO PRECLUDE FACT WITNESSES FROM
OFFERING IMPERMISSIBLE OPINION TESTIMONY**

PLAINTIFFS' MOTION *IN LIMINE* NO. 6

Defendants have provided the names of five individuals who they may call as fact witnesses: defendants William Aldinger, Gary Gilmer and David Schoenholz, and Household's former Treasurer Edgar Ancona and former Vice President of Corporate Relations and Communications Craig Stroom. Pretrial Order, Ex. D-3. Defendants have not designated any of these potential witnesses as experts. However, plaintiffs anticipate that defendants may seek to adduce expert or opinion testimony from these witnesses regarding trends in the market or in Household's industry. Any such testimony should be precluded for two reasons. First, if defendants intend to offer expert testimony through these witnesses, they were required to comply with Fed. R. Civ. P. 26(a)(2)(C). Defendants failed to do so. Second, the testimony should be excluded under FRE 701, which severely restricts opinion testimony by lay witnesses.

Fed. R. Civ. P. 26 sets the ground rules for expert testimony. A party is required to disclose "the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705." Fed. R. Civ. P. 26(a)(2)(A). Defendants also were required to disclose the subject matter of these witnesses' testimony and "a summary of the facts and opinions to which the witness is expected to testify." Fed. R. Civ. P. 26(a)(2)(C)(i) and (ii). By failing to comply with the requirements of Fed. R. Civ. P. 26, defendants cannot adduce expert opinion testimony through Aldinger, Schoenholz, Gilmer, Ancona and Stroom.¹

In addition, defendants should be precluded from offering impermissible opinion testimony from these witnesses under FRE 701. Rule 701 provides that:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

¹ Defendants should be precluded from calling Mr. Ancona at trial altogether. Defendants did not list Mr. Ancona as a potential witness at the first trial. *See* Dkt. No. 1545-4, at Nos. 13-18 (Defendants' Witness List). Pursuant to Local Rule 16.1.1, defendants should not be permitted to call Mr. Ancona. *See* Form LR 16.1.1 Final Pretrial Order Form, n.6 ("Any witness not listed will be precluded from testifying absent good cause shown, except that each party reserves the right to call such rebuttal witnesses (who are not presently identifiable) as may be necessary, without prior notice to the opposing party.").

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Fed. R. Evid. 701.

“Lay opinion [under Rule 701] ‘most often takes the form of a summary of firsthand sensory observations’ and may not ‘provide specialized explanations or interpretations that an untrained layman could not make if perceiving the same acts or events.’” *Tribble v. Evangelides*, 670 F.3d 753, 758 (7th Cir. 2012) (quoting *United States v. Conn*, 297 F.3d 548, 554 (7th Cir. 2002)). “Expert opinion, by contrast, need not be based on first-hand knowledge of the facts of the case. It brings to an appraisal of those facts a scientific, technological or other specialized knowledge that the lay person cannot be expected to possess.” *Conn*, 297 F.3d at 554.

The only admissible opinions from these witnesses are those that will “‘help the jury or the court to understand the facts about which the witness is testifying.’” *Id.* (citation omitted). If the opinions contain “‘specialized explanations or interpretations that an untrained layman could not make if perceiving the same acts or events,’” they are inadmissible. *Id.* (citation omitted). Defendants may not now “[evade] the reliability requirements set forth in Rule 702 [] through the simple expedient of proffering an expert in lay witness clothing.” *See id.* at 553 (quoting Fed. R. Evid. 701, 2000 advisory committee note). Under Rule 701, any opinion testimony from these witnesses requiring specialized knowledge must be excluded. *See* Fed. R. Evid. 701.

In short, Aldinger, Schoenholz, Gilmer, Ancona and Stroom should not be permitted to provide expert testimony or to offer improper opinion testimony.

DATED: April 22, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses for counsel of record denoted on the attached Service List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 22, 2016.

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