

SIMPSON THACHER & BARTLETT LLP

425 LEXINGTON AVENUE  
NEW YORK, NY 10017-3954  
(212) 455-2000

FACSIMILE (212) 455-2502

DIRECT DIAL NUMBER  
(212) 455-3242

E-MAIL ADDRESS  
jmclaughlin@stblaw.com

BY ECF

June 29, 2015

Re: *IBEW Local 98 Pension Fund, et al. v. Best Buy Co. Inc., et al.*, No. 14-3178;  
Response to Plaintiff's Submission of *Glickenhau & Co. v. Household, Int'l, Inc.*, No. 13-3532 (7th Cir. May 21, 2015)

Mr. Michael E. Gans  
Clerk of Court  
United States Court of Appeals for the Eighth  
Circuit  
Thomas F. Eagleton Courthouse  
111 South 10th Street, Room 24.329  
St. Louis, MO 63102

Dear Mr. Gans:

*Glickenhau & Co. v. Household International, Inc.*, 2015 WL 2408028 (7th Cir. May 21, 2015), addressed whether plaintiffs' evidence of loss causation was sufficient to support the jury's verdict. Plaintiff misapplies *Glickenhau* to argue that Defendants did not meet the modest evidentiary burden required at the class certification stage to rebut a presumption under Federal Rule of Evidence 301. The applicable evidentiary burdens are miles apart, and for that reason alone, *Glickenhau* is of limited applicability. *See generally* Def. Reply Br. at 6-12.

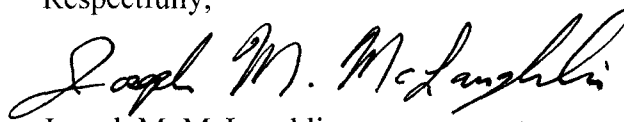
More fundamentally, as *Halliburton I* instructed, loss causation "is not price impact." *See* Def. Reply Br. at 19. Plaintiff trumpets *Glickenhau* as supporting his argument that a price drop serves as unchallengeable evidence of price impact. Defendants have never disputed that "back-end" price movements are relevant to *loss causation*, which

is not an issue on class certification. Rather, Defendants argued that the district court's error was "collapsing the distinct concepts of transaction causation and loss causation." Def. Op'g Br. at 19.

*Glickenhau*s does rebut Plaintiff's argument that he "certainly had no burden to parse the causal relationship or linkage between" the alleged misstatements and corrective disclosure. Pl. Opp'n Br. at 59. The Seventh Circuit confirmed the common-sense position that a price drop following a corrective disclosure cannot demonstrate the amount of inflation caused by a misstatement unless the misstatement and corrective disclosure address the same issues. *See* Def. Reply Br. at 19-21. *Glickenhau*s held it was error to attribute the total amount of inflation related to three different theories of fraud to a misstatement unrelated to two of the three theories. *Glickenhau*s at \*11-12. Similarly, Plaintiff's asserted "disclosures" here said nothing about the truthfulness of the original alleged misstatements.

Finally, *Glickenhau*s confirms that Plaintiff had the burden — which he did not meet — of presenting evidence that disentangled the impact of a corrective disclosure from other factors that may have caused a price decline. Def. Op'g Br. at 51 n.11; *Glickenhau*s at \*9. Any benefit Plaintiff had from a presumption vanished when Defendants presented rebuttal evidence, and Plaintiff failed to present actual evidence of price impact.

Respectfully,

  
Joseph M. McLaughlin

This letter contains 348 words in compliance with Fed. R. App. P. 28(j).

DECLARATION OF SERVICE

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 New York, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 425 Lexington Avenue, New York, NY 10007.

2. I hereby certify that on June 29, 2015, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system.

3. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

4. I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following non-CM/ECF participants:

Kevin Carroll  
Ira D. Hammerman  
Securities Industry and Financial Markets Association  
1101 New York Avenue, N.W.  
Washington, D.C. 20005

Marc Falcone  
Robin Tarnofsky  
Paul & Weiss  
1285 Avenue of the Americas  
New York, NY 10019-6064

Mr. Michael E. Gans

-4-

June 29, 2015

Steven F. Marino  
Marino & Conroy  
301 Wharton Street  
Philadelphia, PA 19147

Tyler R. Green  
Kate Comerford Todd  
U.S. Chamber of Commerce  
1615 H Street, N.W.  
Washington, D.C.

Melissa W. Wolchansky  
Halunen & Associates  
80 S. Eighth Street, Suite 1650  
Minneapolis, MN 55402

D. Semus Kaskela  
Barroway & Topaz  
280 King of Prussia Road  
Radnor, PA 19087

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2015, at New York, New York.

A handwritten signature in black ink, appearing to read "Brian Roe", is written over a horizontal line. The signature is cursive and stylized.

Brian Roe