

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MYLA NAUMAN,  
JANE ROLLER, and  
MICHAEL LOUGHERY,

*Plaintiffs,*

v.

ABBOTT LABORATORIES  
and HOSPIRA, INC.,

*Defendants.*

No. 04-C-7199

Judge Gettleman  
Magistrate Judge Brown

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**PLAINTIFFS' PROPOSED CONCLUSIONS OF LAW**

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**I. BACKGROUND**

1. This Court has subject matter jurisdiction over this action arising under ERISA pursuant to 29 U.S.C. § 1132(f) and 28 U.S.C. § 1331. (Stip. 16.)

2. Venue is proper, and this Court has personal jurisdiction over the defendants, pursuant to 29 U.S.C. § 1132(e)(2). The employee benefit plans that are the subject of this suit are administered in this District, the breaches related to the employee benefit plans took place in this District, and the defendants reside or may be found in this District. (Stip. 17.)

3. The plaintiffs have presented evidence at trial for four separate violations of ERISA. Plaintiffs bring Counts I, II and III under ERISA § 510, 29 U.S.C. § 1140. (Am. Compl. p. 1.)

4. In Count I, against Abbott, plaintiffs alleged that Abbott terminated the class members' employment by structuring the spin-off of HPD with the specific intent of depriving class members of retirement benefits under Abbott's benefit plans. (Am. Compl. p. 20.)

5. In Count II, also against Abbott, plaintiffs alleged that as part of the same scheme, Abbott eliminated class members' bridging rights under the Abbott plans by the adoption of a no-hire policy that included a no-bridging rule. Under the no-bridging rule, if class members were rehired, they would lose prior service credit and be treated as new employees – unlike all other Abbott employees, who had the right to bridge back into the Abbott pension and retiree medical plans if they returned within a certain period of time. Plaintiffs allege that Abbott imposed this no-bridging rule with the specific intent of depriving class members of retirement benefits under Abbott's benefit plans. (Am. Compl. p. 21.)

6. In Count III, plaintiffs alleged that as part of the same spinoff, Hospira is jointly and severally liable with Abbott to the retirement-eligible subclass for adopting a no-hire policy barring employment to anyone who chose to exercise vested retirement rights by retiring from Abbott prior to the spin date. Plaintiffs allege that Abbott and Hospira implemented this no-retiree policy with the specific intent of depriving class members of retirement benefits under Abbott's benefit plans. (Am. Compl. p. 22.) Further, at trial, the defendants admitted that they also instituted the no-retiree policy out of specific anti-retiree animus. (Tr. 38, 56, 297, 316-17, 365; Plaintiffs' Proposed Findings of Fact ("PPFF") ¶¶ 134, 158.)

7. Counts I, II and III together can also be seen as a single scheme between both defendants to deprive the class of benefits, as this Court recognized in denying summary judgment. *Nauman v. Abbott Laboratories*, No. 04 C 7199, 2008 WL 4773135, \*10 (N.D. Ill. July 10, 2008) ("the court ... finds that defendants' intent can best be ascertained by considering their conduct as a whole"). Like spokes on a wheel, the decisions made and executed by Abbott and Hospira mutually reinforced a single purpose – to deny the class its Abbott benefits as part of the spin of HPD. *See Deeming v. American Standard Inc.*, 905 F.2d 1124, 1127-29 (7th Cir. 1990) (closure of plant combined with modifications of benefits plan coalesced into single violation of ERISA § 510).

8. Plaintiffs bring Count IV against Abbott for breach of its fiduciary duties under ERISA § 404, 29 U.S.C. § 1104. Plaintiffs alleged that Abbott's executives, both those who stayed at Abbott and those who were selected to lead the new company, made the decision prior to the spin date that (a) the class members' pensions would be frozen as of December 31, 2004; (b) there would be no replacement pension plan at the new company; and (c) the new company would not offer retiree medical coverage. However, in violation of its fiduciary duties to its

then-employees, Abbott withheld this information until after the spin had taken place and materially misrepresented to the class members that no decisions on the pension plan and retiree medical benefits had been or would be made until after the spin date. (Am. Compl. p. 27.)

9. Plaintiffs have also alleged that Count IV was part of the same scheme comprised by Counts I, II and III, in that Abbott's breaches of fiduciary duty were motivated by its desire to interfere with the class members' benefits in order to save on retirement costs and to ensure that the spin would take place by withholding the information that benefits would be drastically reduced – information that would have drastically reduced the number of employees willing to join the new company. (Am. Compl. pp. 27-29.)

## **II. CLASS CERTIFICATION**

10. All four claims have been certified on behalf of classes. On December 30, 2005, the Court certified a class as to Counts I and II against Abbott and a subclass as to Count III against Hospira. *Nauman, et al. v. Abbott Laboratories and Hospira, Inc.*, No. 04 C 7199, 2005 WL 3601696 (N.D. Ill. Dec. 30, 2005). The class against Abbott numbers approximately 10,000 members and is comprised of “[a]ll [U.S.] employees of Abbott who were participants in the Abbott Benefit Plans and whose employment with Abbott terminated between August 22, 2003, and April 30, 2004, as a result of the spin-off of the HPD/creation of Hospira announced by Abbott on August 22, 2003.” *Id.* at \*4-5.

11. The subclass against Hospira consists of those Abbott employees who were retirement-eligible at the time of the spin and who were offered positions at Hospira on the condition they surrender their retirement eligibility. The subclass is comprised of “[a]ll [U.S.] employees of Abbott who were participants in the Abbott Benefit Plans and whose employment with Abbott terminated between August 22, 2003, and April 30, 2004, as a result of the spin-off

of the HPD/creation of Hospira announced by Abbott on August 22, 2003, and who were eligible for retirement under the Abbott Benefit Plans on the date of their terminations.” *Nauman*, 2005 WL 3601696 at \*5. This includes all employees who were eligible to retire on the date of the spin, whether they elected to retire or to go to Hospira. The subclass numbers 1,286. (Stip. 32.) Of those subclass members, 595 had left Hospira and 691 remained as of September 9, 2008. (Stips. 33, 34.)

12. On April 3, 2007, the Court certified a class against Abbott as to Count IV. *Nauman v. Abbott Laboratories*, No. 04 C 7199, 2007 WL 1052478 (N.D. Ill. Apr. 3, 2007). It is the same as the Counts I and II class (“[a]ll [U.S.] employees of Abbott who were participants in the Abbott Benefit Plans and whose employment with Abbott terminated between August 22, 2003, and April 30, 2004, as a result of the spin-off of the HPD/creation of Hospira announced by Abbott on August 22, 2003”). *Nauman*, 2005 WL 3601696 at \*2.

13. Plaintiffs seek equitable relief under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), on behalf of the class and the subclass for defendants’ alleged violations of ERISA §§ 510 and 404.

### **III. COUNT IV – THE BREACH OF FIDUCIARY DUTY CLAIM**

14. Our Circuit recently reiterated its longstanding position that fiduciary duties under ERISA are to be construed liberally: “The duty of care, diligence, and loyalty imposed by the fiduciary principle is far more exacting than the duty imposed by tort law not to mislead a stranger.” *Harzewski v. Guidant Corporation*, 489 F.3d 799, 805 (7th Cir. 2007).

15. Abbott, as fiduciary, had a duty not to deceive its plan participants. *Lingis v. Motorola, Inc.*, -- F.Supp.2d --, No. 03 C 5044, 2009 WL 1708097,\*11 (N.D. Ill. June 17, 2009) (“[t]he duty of loyalty that ERISA fiduciaries owe to beneficiaries includes the duty not to

