

**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

PLAINTIFFS' PROPOSED FINDINGS OF FACT

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I. Abbott Amends Its Benefit Plans

A. Abbott's Board Is Confronted with Rising Benefit Costs

1. At Abbott's December 12, 2002 board meeting, Thomas Freyman, Abbott's chief financial officer, provided the company's board with a pension update highlighting the escalating costs that the company was facing. (Tr. 1257.) This PowerPoint presentation showed pension costs rising from 2.8% of cash flow in 2002, up to 7.8% in 2006, with a peak of 8.8% in 2004. (Tr. 536, 1257-58.) In other words, Abbott's U.S. pension funding was projected to rise from \$105 million to \$428 million and would thus negatively impact Abbott's long-range plan.¹ (PX55 at A023304.)

2. Miles White, Abbott's Chief Executive Officer,² agreed that an expense of over \$400 million would shift the company's balance sheet. (Tr. 1086.)

3. Freyman projected that Abbott's pension funding obligations during the period 2002 through 2006 would exceed \$1.4 billion. (PX55 at A023304.) Abbott's use of cash to fund the pension would deprive the company of money to pay for research and development, pay down debt, and make acquisitions. (Tr. 1257-59.)

4. White thought that a dramatic increase in pension expense was likely dependent on whether the stock market recovered. The report that Freyman gave to the board followed a drop in the stock market, which decreased the value of the pension plan. (Tr. 1085.)

5. Freyman informed the board that in 2002, for the first time, Abbott's ABO

¹Abbott's long-range plan is intended to give management a look into the future for five years at a time regarding Abbott's growth and financial performance. (Tr. 535.)

²For the past eleven years, White has been the Chairman and Chief Executive Officer of Abbott. (Tr. 1017.)

(“Accumulated Benefit Obligation”) was projected to exceed the pension liability,³ necessitating a direct charge to equity. (PX55 at A023306.) The board was told that the adjustment would be around \$200 to \$300 million or 2 to 3 percent of book equity. (Tr. 1087; PX55 at A023306.)

6. White informed the board that he was going to review a number of divisions using Morgan Stanley, an investment bank, and internal support at Abbott to analyze the business and report back to the board. (Tr. 1023-24.) At that time, the review was not specific to any particular Abbott business division.⁴ (Tr. 1023.)

B. Abbott Retirement Strategy Task Force Works with Hewitt to Address Need for Fundamental Different Set Point for Benefit Costs

7. After the December 2002 board meeting, White asked his management team to look at the pension plan and provide him with a range of options. He wanted to know what was happening in the marketplace because he knew that many companies had abandoned their defined benefit plans and replaced them with 401(k) plans. (Tr. 1087.)

8. White did not want to abandon Abbott’s pension plan, but he needed the analysis performed to determine if the company could sustain its benefit plans. (Tr. 1088.)

9. White wanted to know from the strategy review of the retirement plan what cost savings might be available. (Tr. 1090.)

10. White asked Thomas Wascoe, the head of Abbott’s human resources, to consider

³At the end of 2002, Abbott’s pension plan was less well funded than it had been in proceeding years and, for purposes of both public accounting and plan funding, its benefit obligations exceeded the assets in the plan. (Tr. 537.)

⁴Prior to the December 2002 board meeting, Abbott was considering the potential divestiture of its interest in a joint venture known as TAP. At that time, TAP employees were participants in Abbott’s pension plan. Bill Preece, who was in charge of Abbott’s pension plan investments, was consulting with Hewitt Associates actuary Mary Moreland, to ascertain the effects of the potential divestiture of TAP. In 2003, after studying the transaction for eighteen months, Abbott ultimately chose not to pursue it. (Tr. 534-35.)

a cash balance plan. He also recalled Steven Fussell, the company's director of compensation and benefits, telling him of a \$20 million target in benefit savings in the first quarter of 2003. (Tr. 1088.)

11. Hewitt Associates' ("Hewitt") Mary Moreland was asked to deliver a proposed retirement strategy to White. (Tr. 993.) The purpose of the project was to give White some proposed alternatives to change benefit programs. (Tr. 994; PX337.) White had requested the project. (Tr. 994; PX337.) Part of the project was to provide White with information on cost savings information on Abbott's benefit plans. (Tr. 996; PX68.)

12. In approximately January 2003, Abbott assembled a retirement strategy task force to look at a variety of potential changes to the pension and retiree health plans. The project was staffed by a work team and a board of review. The board would make recommendations to White and, depending on the size of the change, it might need to be approved by the board of directors. (Tr. 994.)

13. Fussell worked with Moreland to examine the benefit plans. When they met on January 27, 2003, he told her that Abbott had a need for a "fundamentally different set point" for cost of benefit programs. (Tr. 1339; PX66.)

14. Grice Williams, a divisional vice president of benefits who attended the task force meeting, recalled that Fussell's goal was to be at the 25th percentile of the Benefits Index, and that Fussell had committed to delivering \$20 million in savings during the first quarter of 2003. (PX66 at HEW002174-75.) Williams noted that Fussell was in a challenging mode and was laying down a gauntlet. (Williams Dep. 118-23.)

15. Although those involved with benefits were constantly reevaluating them, this request was different because it was a "hurry up project." Williams said that it came out of the

December 2002 board meeting in which financials were reviewed and concern was generated over the rapidly rising cost of benefits. Two options that were discussed were freezing the pension plan and eliminating retiree medical for active employees. According to Williams, both of these options would have engendered significant negative employee reaction. (Williams Dep. 100-14.)

16. Hewitt spelled out the benefit project's objectives saying, "We know cost savings are critical." (Tr. 1002, 1341-42; PX68 at X002653.) The number one objective and guiding principle for the project was Abbott's desire to reduce benefit program costs in the short- and long-term. (PX68 at X002656.)

17. The second objective was to provide a "competitive benefit package." Abbott's goal was to provide an overall benefit package that was in the 50th percentile, measured against a strong core of pharmaceutical companies. (PX68 at X002657.) Moreland testified that the 50th percentile meant that Abbott would want to be average for pharmaceutical companies. As those companies have much richer benefits than the overall corporate world, it would mean that Abbott would have better benefits than most companies. (Tr. 1001.)

18. Hewitt's Benefit Board of Review presentation dated February 5, 2003 contained a chart showing the "Current Benefit Program Costs in Abbott's Long Range Plan." (PX67 at HEW002029.) The chart showed Abbott's Annuity Retirement Plan rising from 2.3% of pay in 2001 to 9.3% in 2007, and retiree medical rising 4.2% to 7.4% in those same years. Moreland wrote a note on the page that "Miles [White] wants a quality plan as cheap as he can get it. Miles doesn't want to be below market. Shoot at a moving target and aim in for the 50th percentile." (Tr. 1004; PX67 at HEW002029.)

19. Hewitt advised Abbott that in order to obtain dramatic short-term cost savings,

Abbott would have to make changes to benefits for current employees. Hewitt also advised Abbott that pension plans provided little value to younger, short-service employees. (Tr. 1343.)

20. Moreland's February 25, 2003 email provided a "quick summary of the benefit board of review meeting" held that same day. (Tr. 998; PX68.) As of that date, there was a consensus reached on reducing or eliminating Abbott's early retirement pension subsidy.⁵ This change was on a going-forward basis because if someone was vested in the early retirement subsidy at age 50 with 10 years of service, Abbott could not reduce the subsidy. (Tr. 999.)

21. At the company's March 2003 officers' meeting, Fussell communicated that eligibility changes to the pension and retiree health plans were the company's only option for realizing immediate cost savings. (Tr. 1347.)

22. On April 16, 2003, White attended a meeting where there was an "Overview of Retirement Program Issues Presented" by Hewitt. (PX75.) One of the issues was Abbott's long-range plan showing pension expense, P&L increasing from \$100 million in 2003 to \$253 million in 2006. (PX75 at HEW01396.) White said that it was a significant concern. (Tr. 1099.)

23. Prior to Abbott's June 2003 board meeting, White learned from Hewitt that the pension plan changes resulting from the retirement plan project would result in annual cost savings of \$24.6 million. (Tr. 1094; DX40 at X002791.)

C. Abbott Announces Changes to Early Retirement and Retiree Medical

⁵Prior to 2004, employees at Abbott tended to retire earlier than predicted under Hewitt's retirement projections for the pension plan. The average retirement age at Abbott was around 57 years. When employees retire earlier than predicted by the plan's actuarial assumptions, an actuarial loss or experience is incurred by the pension plan. An actuarial loss to the plan increases the costs of operating the plan on an amortized basis, and losses have an impact on how much Abbott would have to contribute to the plan for purposes of minimum funding requirements. A mass wave of early retirements where the average age across the board is younger than the expected age in the actuarial tables would at that point in time create an amortizable actuarial loss. (Tr. 542-43.)

24. The pension plan changes addressed White's concern over Abbott's average retirement age being 57. White was concerned about whether Abbott could sustain it and knew that the early retirements were adding to the costs of the pension plan. (Tr. 1093, 1098; PX75 at HEW001396.) White said that Abbott's plan was "generous" in allowing employees to retire at age 50 with ten years of service. Abbott's June 2003 changes (which became effective on January 1, 2004) adopted a policy to grandfather the "50 and 10" early-retirement eligibility criteria for existing employees, and changed the requirement for new hires to "55 and 10." (Tr. 1093-94.)

25. Hewitt also advised White that the retiree medical changes that Abbott adopted would achieve cost savings of approximately \$43 million in 2003 and \$48 million in 2004. (Tr. 1096; DX40 at X002792.) The changes in retiree medical resulted from White's desire to shift more of the costs to employees. Abbott had been paying 90% of the costs while retirees paid 10%. White wanted to shift this to 80/20 so that it would be more sustainable. (Tr. 1095.) The shift from retirees paying a 10% contribution to paying 20% would take place over a five-year period. (Tr. 1095.)

26. At the June 2003 meeting, the subject of "changes in the company's pension and health benefits; and progress made year-to-date" was a topic of discussion. (Tr. 1092, 1097, 1109; PX83 at A023825-24.) In the summer of 2003, Abbott informed its workforce of changes in the pension and retiree medical plans to take effect January 1, 2004.

D. Abbott Amends "Bridging Rights" after Spin-Off of HPD

27. Under the bridging provisions of Abbott's pension plan in 2003 and 2004, employees who left Abbott and returned within a year were treated as if they had continuous service. Employees who left Abbott and returned in two years did not receive credit for the

period of separation, but bridged back into the plan as long as the separation period was less than the employee's actual service credit. (Tr. 1350.)

28. In conjunction with the August 22, 2003 public announcement of the spin-off of its Hospital Products Division ("HPD"), Abbott informed the employees of a two-year hiring freeze. According to the policy, after the two-year period expired, an employee could resign from one company and join the other. The notice further provided, "[h]owever, you'll be treated as a *new hire* with no special provisions for bridging past service." (Tr. 174, PX124 at A16927.) (emphasis added). Thus, if an employee affected by the spin-off was rehired by Abbott, he or she would not be allowed to bridge back into Abbott's pension plan under the existing bridging provisions.

29. The no-hire and no-bridging policies were announced before any decision had been made by Abbott regarding whether the pension plan assets and liabilities would be retained or transferred to the new company, Hospira. (Tr. 175-76.) *See infra* III.F.

30. At trial, Abbott witnesses, including Fussell, testified that the no-hire policy was a "best practice" recommended by Hewitt. *See infra*, ¶ 101. Dave Kompare of Hewitt testified that he was aware that there was an element of the no-hire policy that prohibited Hospira employees from bridging back into Abbott's benefit plans, but this was not part of his rationale for recommending the policy. (Tr. 1202.) He never discussed bridging with Abbott, and he did not know why Abbott implemented the no-bridging policy. (Tr. 1202-03.)

31. At trial, Fussell was asked when he realized the no-hire policy was in conflict with the pension plan's provisions that allowed employees to bridge back into the pension plan upon rehire. (Tr. 1353.) In response, Fussell claimed that the no-hire policy and the bridging of pension benefits were separate things: the no-hire policy "... didn't have anything to do with a

bridging pension benefit.” (Tr. 1353.) Fussell repeated that they were completely separate issues: “A ... no-hire policy doesn’t have anything to do with the bridging policy.” (Tr. 1354.)

32. The Abbott Laboratories Annuity Retirement Plan (i.e., the pension plan or ARP) was amended effective January 1, 2006. The Twenty-Seventh Amendment added “Special Rules for Rehired Employees of Hospira, Inc.” (DX180, paragraphs 9-3.) It provided that, “[i]n the event a Hospira Participant becomes an employee of an employer and is eligible to participate in the Plan after April 30, 2004,” certain rules would apply to the rehired Abbott employee. Those rules would require a deduction of the amount of the benefit that was transferred from the Abbott plan to the Abbott/Hospira Transitional Annuity Retirement Plan, and the Abbott Plan benefit would be calculated disregarding benefit service and basic earnings prior to May 1, 2004. (DX180, paragraphs 9-3(a)-(b).)

33. Fussell was asked on direct what effect spinning off the plan assets to the new company had on the potential bridging rights. (Tr. 1322.) Fussell testified that if Abbott had not amended its plan, it would have ended up with employees who were rehired receiving redundant pension amounts from both firms (i.e., “double dipping”). (Tr. 1322-23.) Abbott no longer had the money to pay the pensions and would have an obligation under the plan if the bridging rules that were in place at the time were not amended. (Tr. 1323.)

34. While Abbott had informed employees in August 2003 that if they were rehired after the spin-off, they would be treated as “new hires” with no special provision for bridging past service, this policy turned out only to apply to those employees who accepted employment with Hospira, and not those who were involuntarily terminated and voluntarily separated prior to the spin-off. (Tr. 1354-55; DX180 paragraph 9-3.)

35. Abbott never corrected the information that it provided to employees that its no-

hire policy was completely separate from bridging past service. Nor did Abbott advise employees who did not go to work for Hospira, that if they were rehired by Abbott, they could bridge back into Abbott's pension plan. Fussell admitted that Abbott never affirmatively told employees who left Abbott as a result the spin-off but who did not go to work for Hospira that the new-hire no-bridging restriction did not apply to them. (Tr. 1354-55.) According to Fussell, "[t]here were a handful of retirees who did come back to work. And it would have been communicated to them in their own reemployment with the company." (Tr. 1355.)

36. According to Kompare, the no-hire policy should apply to all affected employees in the same way; he has never seen one applied differently to different classes of employees. (Tr. 1171.)

II. The Demographics of HPD

37. As Abbott's director of retirement funds, William Preece, has regularly worked with Hewitt to forecast the costs of Abbott's pension plan based on actuarial assumptions and actual demographic data. Every January, Abbott provides Hewitt with employee census data, including cost center codes linked to each employee's particular business unit. (Tr. 533.) Thus, Hewitt was fully capable of generating information regarding the age and service demographics of any particular Abbott business unit and how a divestiture of a unit would impact Abbott's benefit costs.

38. In March 2003, Freyman, a member of Abbott's Retirement Plan Investment Board, received a report from Hewitt. Among other things, the report identified three cost pressures on Abbott's annuity retirement plan: headcount, interest rates, and rate of return. Abbott had no control over interest rates and minimal control over rate of return. It did have the ability to control its headcount through hiring, acquisitions and divestitures. (Tr. 1260-62;

