

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MYLA NAUMAN, JANE ROLLER, AND MICHAEL LOUGHERY	)	
	)	
	)	
Plaintiffs,	)	
	)	Case No. 1:04 C 7199
v.	)	Hon. Robert W. Gettleman
	)	
ABBOTT LABORATORIES, AND HOSPIRA, INC.,	)	
	)	
	)	
Defendants.	)	

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**MOTION OF THE SECRETARY OF LABOR FOR LEAVE TO FILE A BRIEF  
AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS ON THE SCOPE OF  
SECTION 502(A)(3) REMEDIES**

Hilda Solis, the United States Secretary of Labor ("the Secretary"), in her capacity as the federal officer statutorily responsible for interpreting and enforcing the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, respectfully moves this Court for leave to file an amicus curiae brief in this case.

The brief addresses issues raised in this case and addressed in the parties' post-trial briefs regarding the scope of available remedies under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), for violations of ERISA sections 404 and 510, 29 U.S.C. §§ 1104 and 1140.

In support of this motion, the Secretary, through undersigned counsel, states as follows:

1. This case involves allegations that the implementation of a company spin-off and mutual no-hire provisions by Defendants Abbott Laboratories ("Abbott") and Hospira violated ERISA sections 404 and 510, 29 U.S.C. §§ 1104, 1140. In particular, the Plaintiffs allege that Defendant Abbott, in its capacity as a fiduciary for its company-

sponsored plans, violated section 404 through material misrepresentations to plan participants regarding post-spinoff benefits. In addition, the Plaintiffs allege that both Defendants violated section 510 by orchestrating a spin-off of one of Abbott's divisions into a new company that, in concert with mutual no-hire agreements, had the specific intent of interfering with participant benefits. On October 8, 2009, a bench trial was completed regarding the Defendants' potential liability.

2. The Secretary of Labor takes no position and expresses no opinion regarding the merits of the Plaintiffs' allegations against the Defendants.

3. The Plaintiffs seek relief under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), for the Defendants' alleged ERISA violations. Specifically, the Plaintiffs seek reinstatement to positions with Abbott and to the Abbott plans and restitution or disgorgement (plus interest) against Abbott for its alleged section 404 violations. The Plaintiffs seek reinstatement to positions with Abbott and to the Abbott plans, with back pay and restoration of lost benefits, or, alternatively, front pay in lieu of reinstatement against both Abbott and Hospira for their alleged section 510 violations. The Plaintiffs support the filing of the Secretary's briefs.

4. The Defendants have argued that the various forms of relief sought by the Plaintiffs are unavailable under section 502(a)(3) for violations of sections 404 and 510. The Defendants have represented to the Secretary that they disagree with this motion because they do not believe the Secretary's views are necessary to the resolution of this case.

5. The Secretary has a significant interest in this Court's determination of the relief available to remedy those alleged violations should any be found. Generally speaking,

the Secretary seeks to ensure the proper application of the safeguards Congress established through ERISA for the administration of employee benefits plans and the protection of participants in those plans. Secretary of Labor v. Fitzsimmons, 805 F.2d 682 (7th Cir. 1986) (en banc). The Secretary is particularly interested in seeing that those safeguards are given effect, so that participants in employee benefit plans are able to obtain the necessary and proper relief for violations of their plan and statutory rights. This Court's determination of the available relief under section 502(a)(3) affects both the scope of relief available for participants in private civil actions and the scope of relief the Secretary is able to obtain on behalf of participants under section 502(a)(5), 29 U.S.C. § 1132(a)(5). A proper resolution of this potential issue is therefore important because it relates to the Secretary's general interest in enforcing fiduciary standards and protecting plan assets and her own ability to carry out her statutory responsibility of enforcing ERISA.

6. Because of her significant interest in the proper construction and application of the statute, the Secretary frequently appears as amicus curiae in cases raising important legal issues under ERISA, and has previously briefed similar issues regarding the scope of the "appropriate equitable relief" available in a section 502(a)(3) or (a)(5) action. E.g., Amschwand v. Spherion Corp., 505 F.3d 342 (5th Cir. 2007) (brief supporting grant of cert.), cert. denied, 128 S. Ct. 2995 (2008); LaRue v. DeWolff, Boberg & Assocs., Inc., 552 U.S. 248 (2008) (brief supporting Petitioner); Callery v. U.S. Life Ins. Co. in the City of New York, 392 F.3d 401 (10th Cir. 2004); Millsap v. McDonnell Douglas Corp., 368 F.3d 1246 (10th Cir. 2004).

7. The parties submitted post-trial briefs on December 4, 2009. The Secretary is not aware of any hearing that is currently scheduled in this case.

Wherefore, because this Court's ruling is likely to impact the ability of the plan participants to obtain relief in the event the Plaintiffs' ERISA suit is successful, and may likewise affect the Secretary's ability to obtain relief in her own litigation on behalf of plan participants, the Secretary moves for leave to file an amicus brief on December 17, 2009, to bring her position on these issues to the Court's attention. In addition, the Secretary requests an opportunity to be heard at any oral argument on the remedies issues addressed in the parties' post-trial briefs.

December 17, 2009

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Stephen Silverman, an attorney, hereby certify that on December 17, 2009, I caused a true and correct copy of the foregoing **MOTION OF THE SECRETARY OF LABOR FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE** to be served via Electronic Mail Transmission via ECF as to Filing Users upon the following:

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