

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

MYLA NAUMAN, JANE ROLLER, )  
AND MICHAEL LOUGHERY, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 ABBOTT LABORATORIES, AND )  
 HOSPIRA, INC., )  
 )  
 Defendants. )

Case No. 04 C 7199

Hon. Robert W. Gettleman

THE SECRETARY OF LABOR'S POST-TRIAL BRIEF  
AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS

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### STATEMENT OF INTEREST

This case involves an action under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq., alleging violations of ERISA sections 404 and 510, 29 U.S.C. §§ 1104 and 1140. If the Court finds violations under those provisions, the case presents an important and recurring question regarding ERISA remedies: what is the scope of "appropriate equitable relief" under section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to remedy a section 404 fiduciary breach or a violation of section 510, the Act's anti-retaliation and anti-discrimination provision. The Secretary of Labor (the "Secretary") has a strong interest in the proper construction of ERISA's remedial provisions, which were enacted to ensure the prudent management of pension plan assets and to safeguard participants who exercise their rights under the Act. The Secretary has primary enforcement authority for Title I of ERISA and is authorized under section 502(a)(5), 29 U.S.C. § 1132(a)(5), to bring civil actions to obtain "appropriate equitable relief" to redress violations of, and to enforce, Title I. Accordingly, this Court's determination of what constitutes "appropriate equitable relief" may affect not only the scope of private civil actions under section 502(a)(3), which are a necessary complement to the Secretary's authority to enforce Title I of ERISA, but also the remedies available to the Secretary under section 502(a)(5).

### STATEMENT OF THE ISSUES

1. Whether plan participants may recover restitution of the benefits they would have received but for a fiduciary breach as "appropriate equitable relief" available under section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to remedy a violation of ERISA section 404, 29 U.S.C. § 1104.

2. Whether plan participants may obtain reinstatement and back pay, or, alternatively, seek front pay as "appropriate equitable relief" available under section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to remedy a violation of ERISA section 510, 29 U.S.C. § 1140.

#### STATEMENT OF THE CASE

On August 22, 2003, Defendant Abbott Laboratories ("Abbott") announced that it was spinning off its Hospital Products Division ("HPD") into Defendant Hospira, a newly created independent corporate entity, effective April 30, 2004. Nauman v. Abbott Laboratories, 2008 WL 4773135, \*1-2 (N.D. Ill. July 10, 2008). At the time of the announcement, the Plaintiffs were employees in Abbott's HPD and participants in Abbott's pension plan. Id. at \*1.

Before the spin-off became effective, Abbott and Hospira entered into an agreement that included mutual no-hire provisions. Id. at \*5. Hospira agreed not to hire any HPD employees whose employment with Abbott was terminated between the announcement of the spin-off and the end of the two-year period from the effective spin-off date – or May 1, 2006. Id. Abbott promised not to hire any HPD employees transferred to Hospira in the spin-off before the same date. Id. A few days before the two-year no-hire period expired, Abbott amended its plan so that any Hospira employee who previously transferred from Abbott and who was rehired by Abbott after May 1, 2006, would be treated as a "new hire" for benefits purposes even if they had previously been vested participants in the Abbott plans. Id. at \*2.

Following the spin-off, the Plaintiffs and approximately 10,000 other HPD employees were transferred to Hospira, where they were entitled to benefits under a

"transitional" benefit plan that provided the same benefits as the Abbott plan until December 31, 2004. Id. at \*1-2. On January 1, 2005, Hospira employees were transferred to Hospira's plan, which, among other changes in benefits, "froze" the Abbott pension plan (i.e., prevented the further accrual of pension benefits), and eliminated retiree medical benefits. Id. at \*2. In addition, as a result of the mutual no-hire agreements, retirement-eligible HPD employees who retired from Abbott received their Abbott benefits but could not work for Hospira for at least two years. HPD employees who instead accepted employment with Hospira could not return to work at Abbott for at least two years – and then they would not regain their former rights to continue accruing benefits as if they had never left Abbott employment. Id.

The Plaintiffs filed a complaint on November 9, 2004, pursuant to section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), alleging that Defendants Abbott and Hospira ("Defendants") violated ERISA section 510, 29 U.S.C. § 1140, through "termination of their employment, and defendants' adoption of no-hire policies . . . with the specific intent of depriving plaintiffs of their ERISA-protected benefits." Id. at \*9. In November 2005, the Plaintiffs added a fiduciary breach claim alleging that the Defendants, in their capacity as fiduciaries, violated ERISA section 404, 29 U.S.C. § 1104, by deliberately misrepresenting in the period before the spin-off the benefits that Hospira employees could expect post-spin-off. Id. at \*1.<sup>1</sup> The Plaintiffs seek all appropriate equitable relief available under Section 502(a)(3), including reinstatement to Abbott employment and the Abbott plans and restitution or disgorgement (plus interest)

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<sup>1</sup> The Court dismissed the Section 404 claim as to Hospira by order of August 4, 2006, but the Section 404 claim against Abbott remains. Nauman v. Abbott Laboratories, 2006 WL 2413712 (N.D.Ill. Aug. 14, 2006).

