

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

MYLA NAUMAN,)	
JANE ROLLER, AND)	
MICHAEL LOUGHERY,)	
)	
<i>Plaintiffs,</i>)	No. 04-C-7199
)	
v.)	Judge Gettleman
)	Magistrate Judge Brown
ABBOTT LABORATORIES AND)	
HOSPIRA, INC.,)	
)	
<i>Defendants.</i>)	

AMENDED COMPLAINT

Plaintiffs, former employees of Abbott Laboratories (“Abbott”) through their counsel, present this Amended Complaint. The substantive allegations constituting the amendment begin at page 26.

I. NATURE OF THE ACTION

1. Plaintiffs bring this action under Section 510 and Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1140, 1132 (a)(3) on behalf of similarly situated former employees of Abbott.

2. This action arises out of the unlawful efforts of Hospira, Inc. (“Hospira”) and Abbott to deprive employees of Abbott’s hospital products division and related businesses (the “HPD Employees”) of their employment benefits, including Abbott’s decision to terminate HPD Employees before they could become eligible to earn addition employment benefits.

3. From the time they sought employment with the company and throughout their careers, Abbott induced plaintiffs and other employees to join, and remain loyal to, the company

by promising them “superior” employment and retirement benefits, including pension and retiree medical benefits.

4. Abbott’s inducements were particularly successful in retaining HPD Employees. According to an Abbott human resources executive, by 2003, Abbott’s hospital products division (“HPD”) was the “most senior” division in the company and 70% of its employees were age 40 or older.

5. Had HPD Employees not been terminated by Abbott, they would have retained eligibility to grow into substantial employment benefits as they approached retirement.

6. By 2003, Abbott faced significant benefit liabilities in connection with the employment benefits that were already earned by its employees. Although Abbott had, by then, begun to take steps to reduce the pension and retiree medical benefits that employees could earn, Abbott decided to take additional action to avert the enormous benefit costs it would incur if the HPD Employees succeeded in retiring from the company and becoming eligible for the retirement benefits they had been promised.

7. Consequently, Abbott decided to prevent HPD Employees from becoming eligible for retirement benefits by terminating them *en masse*. On August 22, 2003, Abbott announced that it intended to terminate its HPD Employees and spin off its hospital products businesses into a purportedly “separate and independent” company, which was later named Hospira.

8. After the announcement, Abbott and Hospira ensured that HPD Employees would not receive employee benefits they otherwise would have been entitled to by adopting no-hire policies. The Abbott no-hire policy precludes the spun-off HPD Employees from returning to Abbott for a period of two years. Under this policy, HPD Employees who return to Abbott

experience a break in service under Abbott's benefit plans that reduces the employment benefits they can earn after they return to Abbott. Hospira, likewise, adopted a two-year no-hire policy that prevents HPD Employees from retiring from Abbott and receiving retirement benefits, while continuing to work for Hospira.

9. The three named plaintiffs have brought this suit on behalf of themselves and other 10,000 or so similarly situated employees to have the actions by Abbott and Hospira declared unlawful and in violation of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, *et seq.* ("ERISA"). Plaintiffs also seek appropriate equitable relief.

II. JURISDICTION AND VENUE

10. This Court has exclusive subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1), (f).

11. Venue is proper, and this district 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.

III. THE PARTIES

A. Plaintiffs

12. Plaintiff, Myla Nauman, was an HPD Employee who was terminated by Abbott during the spin-off that was announced on August 22, 2003. Plaintiff Nauman was employed by Abbott for more than 20 years. Plaintiff Nauman is currently employed by Hospira. Plaintiff Nauman is 48 years old.

13. Plaintiff, Jane Roller, was an HPD Employee who was terminated by Abbott during the spin-off that was announced on August 22, 2003. Plaintiff Roller was employed by Abbott for more than 13 years. Plaintiff Roller is currently employed by Hospira. Plaintiff Roller is 45 years old.

14. Plaintiff, Michael Loughery, was an HPD Employee who was terminated by Abbott during the spin-off that was announced on August 22, 2003. Plaintiff Loughery was employed by Abbott for more than 17 years. At the time of his termination, Plaintiff Loughery was over 50 years of age, had at least 10 years of service with Abbott for purposes of the Abbott Laboratories Annuity Retirement Plan (the "Pension Plan"), and was eligible to begin to receive early retirement benefits under the Pension Plan and retiree health care benefits under the Abbott Laboratories Retiree Health Care Plan (the "Retiree Health Plan"). Loughery is currently employed by Hospira.

15. At all relevant times, each of the above named plaintiffs was a participant and/or beneficiary of the Abbott Benefit Plans, as defined in paragraph 18 below, within the meaning of ERISA § 3(7) and (8), 29 U.S.C. § 1002(7) and (8).

B. Defendants

I. Abbott

16. Defendant Abbott is a publicly-traded Illinois corporation with its headquarters at 100 Abbott Park Road, Abbott Park, Illinois. Abbott conducts business and has offices throughout the United States and abroad.

17. Abbott is an “employer” and a “person” within the meaning of 29 U.S.C. § 1002(5) and (9), and at all relevant times is an employer engaged in commerce or in any industry or activity affecting commerce.

18. Abbott is the plan sponsor, pursuant to 29 U.S.C. § 1002(16)(B), and the administrator, within the meaning of 29 U.S.C. § 1002(16)(A), of several employee benefit plans, including the Pension Plan, the Retiree Health Plan, the Abbott Laboratories Health Care Plan, the Abbott Laboratories Flexible Benefit Plan, the Abbott Laboratories Employee Assistance Program, the Abbott Laboratories Cash Profit Sharing Plan, the Abbott Laboratories Extended Disability Plan, the Abbott Laboratories Transitional Pay Plan, the Abbott Laboratories Life Accident Plan, and the Abbott Laboratories Stock Retirement Plan. These plans, referred to collectively as the “Abbott Benefit Plans,” are employee benefit plans, within the meaning of 29 U.S.C. § 1002(3).

19. The Abbott Benefit Plans provide benefits to employees and former employees of Abbott and its United States subsidiaries, but do not cover employees who are employed outside of the United States or Puerto Rico. In addition, except for the Abbott Laboratories Flexible Benefit Plan, the Abbott Benefit Plans do not cover employees or former employees who are covered by a collective bargaining unit.

20. Abbott is responsible for providing plan documents, summary plan descriptions and accurate plan-related information to participants and beneficiaries of the Abbott Benefit Plans.

21. Abbott appoints, and exercises control over, other fiduciaries of the Abbott Benefit Plans.

22. Abbott is a fiduciary of the Abbott Benefit Plans within the meaning of ERISA, 29 U.S.C. § 1002(21). Abbott exercises discretionary authority and control over the management of the Abbott Benefit Plans, exercises authority and control over the management and disposition of the assets of the Abbott Benefit Plans, renders investment advice for a fee or other compensation or has the authority to do so, and has discretionary authority and responsibility in the administration of the Abbott Benefit Plans.

ii. Hospira

23. Defendant Hospira is a publicly-traded Delaware corporation with its headquarters at 275 North Field Drive, Lake Forest, Illinois. Hospira conducts business and has offices throughout the United States and abroad.

24. Between the date of its incorporation on September 16, 2003, and April 30, 2004, Hospira was a wholly-owned subsidiary of Abbott. Hospira was directly involved in the spin-off of HPD and the related termination of HPD Employees. Hospira is an opposing party against whom plaintiffs assert a claim. Alternatively, in Hospira's absence, complete relief cannot be accorded to the plaintiffs.

25. Hospira is an "employer" and a "person" within the meaning of 29 U.S.C. § 1002(5) and (9), and at all relevant times is an employer engaged in commerce or in any industry or activity affecting commerce.

26. Hospira is the plan sponsor, pursuant to 29 U.S.C. § 1002(16)(B), and the administrator, within the meaning of 29 U.S.C. § 1002(16)(A), of several benefit plans, including the Abbott/Hospira Transitional Annuity Retirement Plan (the "Transitional Plan"). The benefit

plans sponsored by Hospira, referred to collectively as the "Hospira Benefit Plans," are employee benefit plans, within the meaning of 29 U.S.C. § 1002(3).

27. The Hospira Benefit Plans provide benefits to employees of Hospira.

28. Hospira is responsible for providing plan documents, summary plan descriptions and accurate plan-related information to participants and beneficiaries of the Hospira Benefit Plans.

29. Hospira appoints, and exercises control over, other fiduciaries of the Hospira Benefit Plans.

30. Hospira is a fiduciary of the Hospira Benefit Plans within the meaning of ERISA, 29 U.S.C. § 1002(21). Hospira exercises discretionary authority and control over the management of the Hospira Benefit Plans, exercises authority and control over the management and disposition of the assets of the Hospira Benefit Plans, renders investment advice for a fee or other compensation or has the authority to do so, and has discretionary authority and responsibility in the administration of the Hospira Benefit Plans.

IV. EXHAUSTION IS NOT REQUIRED

31. Any effort to exhaust administrative remedies would be futile because (a) none of the Abbott Benefit Plans or the Hospira Benefit Plans provides an administrative procedure or remedy for reviewing the claims asserted herein; and (b) none of the Hospira Benefit Plans or the Abbott Benefit Plans grants any entity the authority to review claims based on the violations of ERISA asserted herein. On the contrary, the Abbott Benefit Plans provide the following instruction to participants and beneficiaries:

No one, including your employer or any other person, *may fire you or otherwise discriminate against you* in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.

If it should happen that . . . you are discriminated against for asserting your rights, *you may file suit in a federal court* or request assistance from the U.S. Department of Labor. (Employee Benefits Handbook 2004) (emphasis added).

32. None of the plaintiffs' claims would be advanced if they were submitted to an administrative entity of the Abbott Benefit Plans or the Hospira Benefit Plans.

V. SUBSTANTIVE ALLEGATIONS

A. Abbott decides retirement benefits are too costly and begins to reduce them

33. For many years, Abbott recruited new employees and induced existing employees to remain loyal to the company by offering "superior" health care and retirement benefits, including its pension and retiree medical plans.

34. In December 2002, *Money* magazine ranked Abbott third overall, out of a list of seventy-five large national corporations, on its list of "Corporate America's Best Benefits." According to *Money* magazine, Abbott earned this distinction "by paying 90% of the eligible retirement health-care premiums for employees age 50 or more with at least 10 years of service." The year before, in December 2001, Abbott had earned a sixth spot on *Money* magazine's list. To this day, Abbott touts the ranking it received by *Money Magazine* as "Number 3 on Best Company Benefits List" on its web site and in brochures describing its employment benefits.

35. Although proud of its reputation, Abbott's enthusiasm for providing the retirement benefits that it had promised dampened as the cost of these benefits began to reflect negatively on Abbott's financial statements. Between 2000 and 2002, the projected benefit obligations related to its pension plans soared from \$2.5 billion to \$ 3.7 billion. The projected

benefit obligations related to its retiree medical and dental plans jumped from \$741 million to \$1.2 billion during this same time frame.

36. By 2002, Abbott recorded a pension liability adjustment of \$343 million because the benefit obligations for its pension plans exceeded the market value of those plans' assets. This pension liability adjustment had a direct impact on Abbott's reported earnings. In its income statement for that year, Abbott, for the first time, was forced to take a charge of over \$203 million on account of the pension liability adjustment.

37. Abbott understood that its employee benefit liabilities would increase over time as its workforce grew older and approached retirement. In a June 30, 2003, memorandum to Abbott employees, Abbott CEO, Miles White explained

In recent years, health care costs for most employers, employees and retirees have increased and are expected to continue to rise. At the same time, returns on pension plan investments over the long term are projected to be lower than in the past due to less robust performance of the U.S. financial markets.

38. In a brochure that accompanied the June 30 memorandum from Miles White, Abbott further explained that "[o]ver the course of our Long Range Plan, which extends through 2007, total benefit costs . . . are expected to rise from roughly 25 percent of payroll to 38 percent of payroll, or approximately \$574 million in the U.S. alone."

39. Abbott responded to the increasing cost of providing benefits by launching a campaign to reduce benefits that culminated in the termination of HPD Employees.

40. One retirement benefit reduction that Abbott unveiled to employees on June 30, 2003, involved "[i]ncreased cost sharing of health care expenses, based on length of service" among Abbott employees who retired after January 1, 2004.

41. Under the Retiree Health Plan, Abbott retirees are required to contribute toward the cost of their coverage under the plan.

42. Before January 1, 2004, the amount of a retiree's contribution was based on the amount that an active employee contributed for similar coverage under the Abbott's employee health care plan. For example, an Abbott retiree who was at least 50 years old on December 31, 1998, was required to make a contribution that was approximately equal to the contribution made by an active employee for similar health care coverage. An Abbott retiree who was not at least 50 years old on December 31, 1998, was required to make a contribution that was equal to the contribution made by an active employee multiplied by a factor, which ranged from 1.0 to 4.0, depending on the years of service that the retiree had provided to Abbott.

43. Abbott changed the contribution formula under the Retiree Health Plan so that, after January 1, 2004, the amount that a retiree contributes is no longer directly related to the contribution made by an active employee for similar health care coverage. Instead, under the new contribution formula, an Abbott retiree contributes an amount equal to a percentage of the cost of coverage under the Retiree Health Plan. The percentage that a retiree contributes depends on the years of service that the retiree provided to Abbott before retirement, and ranges from 60% of the cost of coverage for a retiree with 10 years of service, to 20% of the cost of coverage for a retiree with at least 35 years of service.

44. Another employee benefit reduction that Abbott announced on June 30, 2003, involved changes to the early retirement benefits provided by the Abbott Pension Plan.

45. Under the Abbott Pension Plan, retirement benefits paid to employees who retire before age 62 are discounted, while retirement benefits paid to employees who retire on or after age 62 are not discounted.

46. Before June 30, 2003, the discount applied to retirement benefits under the Abbott Pension Plan was generally no more than three percent per year for each year the benefit was paid before age 62. On June 30, 2003, Abbott informed employees that the early retirement benefits attributable to service after 2003 would be discounted using an "actuarial reduction" that was based on mortality and interest rate assumptions. Under these assumptions, the discount applied to retirement benefits attributable to service after 2003 is approximately six percent for each year the retirement benefit is paid before age 65.

47. Less than two months after it announced that retirees would be required to contribute more toward the cost of their health care benefits and that early retirement benefits under the Abbott Pension Plan would be reduced, Abbott unveiled its most aggressive benefit-reducing initiative – the termination of the employees in its hospital products division.

B. Abbott terminates HPD employees

I. Abbott announces the spin-off and HPD employee terminations

48. On August 22, 2003, Abbott announced that it intended to spin off HPD into a new company. The new company, Hospira, would employ approximately 14,000 of Abbott's HP Employees worldwide.

49. Abbott also revealed that Hospira's officers would be comprised of top executives from Abbott. Specifically, the president of HPD, Chris Begley, would become CEO of Hospira; Abbott's treasurer, Terry Kearney, was expected to become Hospira's chief financial officer; the

vice president of Abbott's Domestic Legal Operations, Brian Smith, would become Hospira's general counsel; the head of the HPD's core hospital products business, John Arnott, would serve as the head of global commercial operations for Hospira; and the head of Research & Development for HPD, Ed Ogunro, would serve as head of Hospira's Research & Development Department.

50. On the day the spin-off was announced, Abbott CEO, Miles White, issued a letter to Abbott employees informing them that "[c]ompensation and benefits for employees of the new company – including pay, bonuses/incentives, stock options, vacation, health, and insurance coverage, etc. – will remain the same through the end of 2004."

51. White stated that Abbott had "done this to remove uncertainties so that all employees of the new organization can focus on their work and the successful launch of the new company." White's letter was intended to induce the terminated HPD Employees into believing that they were no worse off after their terminations than they were before.

ii. Abbott evidences specific intent to interfere with benefits

52. On September 22, 2003, Abbott hosted a conference call with HPD Employees who were expected to be terminated as a result of the spin-off. During that call, Henry Weishaar, Abbott's Vice President of Human Resources for HPD informed HPD Employees that approximately 10,000, or over 70%, of the 14,000 spun-off employees were over the age of 40. Weishaar also admitted that HPD was the "most senior division" in the company. Weishaar also singled out HPD as the Abbott division that had the highest participant loan balances in Abbott's pension plans.

