

**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.

53. The long-tenured HPD Employees stood to accrue hundreds of millions of dollars in additional pension benefits under the Abbott Pension Plan as they approached their retirement.

54. The cost to Abbott of providing medical and dental coverage under the Retiree Health Plan to HPD Employees would have increased substantially if the HPD Employees had remained at Abbott and been permitted to become eligible for benefits, or grow into additional benefits, under the Retiree Health Plan.

55. Abbott, therefore, decided to terminate the HPD Employees in order to prevent them from earning benefits under the Abbott Benefit Plans, including the Pension Plan, and to prevent HPD Employees from becoming eligible for retiree medical and dental benefits under the Retiree Health Plan or from growing into additional medical and dental benefits under the Retiree Health Plan.

iii. Abbott and HPD execute the termination and spin-off

56. On April 30, 2004, Abbott spun off HPD. Abbott accomplished the spin-off through a special dividend distribution in which Abbott shareholders received one Hospira stock for every 10 common Abbott shares held as April 22, 2004.

57. Approximately 14,000 HPD Employees who were terminated by Abbott during the spin-off were hired by Hospira. 10,000 of these spun-off HPD Employees worked in the United States. In order to work for Hospira, the spun-off HPD Employees were required to sign an employment agreement with Hospira.

58. Pursuant to an Employee Benefits Agreement between Abbott and Hospira, the two companies divided the assets and liabilities of Abbott's pension and health benefit plans. Under the Employee Benefits Agreement, Abbott agreed to retain liability for post-retirement

medical and dental benefits under the Retiree Health Plan for any HPD Employee who retired or was retirement eligible as of the spin-off date. Abbott also retained liability for the pension benefits under the Abbott Pension Plan of any HPD Employee who retired on or before the spin-off date.

59. Abbott and Hospira also agreed, under the Employee Benefits Agreement, to establish the Transitional Plan. The Transitional Plan covers HPD Employees who became employed by Hospira after the spin-off.

60. Abbott and Hospira represented that the Transition Plan was a “duplicate plan” that would provide Hospira employees the pension benefits they had earned as Abbott employees under the Abbott Pension Plan, as well as additional pension benefits earned through the end of 2004.

C. Abbott and Hospira profit from the terminations and the elimination of benefits

61. As a result of the Employee Benefits Agreement between Abbott and Hospira, the pension plans that were retained by Abbott were slightly underfunded, since Abbott retained \$445 million in assets for pension plans that had \$464.5 million in projected benefit obligations. Hospira’s pension plans, on the other hand, were significantly underfunded as a result of the agreement between Abbott and Hospira, since Hospira retained \$263.3 million in assets for pension plans that had \$426.2 million in projected benefit obligations.

62. Approximately \$260.1 million of the \$263.3 million in pension plan assets that were transferred from Abbott to Hospira were allocated to the Transition Plan.

63. At the end of June 2004, almost two months after the spin-off date, Hospira revealed to its employees that, contrary to earlier representations, their benefits would not remain the same through the end of 2004. Hospira informed employees that effective May 1, 2004 – the day after the spin-off – it would not offer any medical or dental coverage to Hospira retirees. Hospira employees who had been eligible to retire from Abbott on the date of the spin-off remained eligible to receive benefits under Abbott's Retiree Health Plan when they retired from Hospira, but their years of service with Hospira could not be used to reduce the amount of their required contributions to the Retiree Health Plan. Hospira employees who were not eligible to retire from Abbott on the date of the spin-off were ineligible for any retiree medical and dental benefits.

64. Hospira also told its employees that pension benefits in the Transition Plan would be frozen on December 31, 2004, and that they would not accrue any additional pension benefits under the Transition Plan after that date.

65. Hospira immediately recognized a "curtailment gain" of \$64 million on its quarterly income statement after it decided to eliminate retiree medical benefits. This gain accounted for over one third of Hospira's pre-tax income during the company's first quarter as a free-standing company.

66. Under an agreement between Abbott and Hospira, Hospira is required to purchase certain international operations and assets from Abbott over a two-year period after the spin-off date. The value of those assets, and Hospira's corresponding obligation to Abbott, as of June 30, 2004, was \$236 million.

D. Abbott and Hospira adopt no-hire policies

67. After the spin-off was announced on August 22, 2003, Abbott adopted a policy under which it refused to re-hire, for a period of two years, HPD Employees who were subject to the spin-off, including employees who chose to retire rather than seek employment with the new company.

68. Abbott implemented the no-hire policy in order to prevent HPD Employees from becoming eligible for benefits under the Abbott Benefit Plans.

69. Under Abbott's policy, HPD Employees who return to Abbott after two years are treated as new hires and, consequently, receive lower salaries than they would otherwise earn if their prior years of service to Abbott were considered. In addition, under Abbott's policy, returning HPD Employees suffer a break in service under the Abbott Pension Plan of at least two years, and Abbott will not bridge the future service provided by returning HPD Employees with their past service. Since benefit accruals under the Abbott Pension Plan are based on the highest average earnings during a consecutive 5-year period, Abbott's policy reduces the additional benefits that returning HPD Employees can accrue under the Abbott Pension Plan.

70. Hospira, likewise, adopted a policy under which it has refused to hire, for a minimum of two years, any HPD Employee who "retired" from Abbott and became eligible to receive benefits under the Abbott Benefit Plans, including the Abbott Pension Plan. Hospira implemented this policy with the specific intent to interfere with the rights of HPD Employees to receive benefits under the Abbott Benefit Plans.

VI. CLASS ALLEGATIONS RELATED TO COUNTS I-III

71. Plaintiffs bring the claims for relief in Counts I through III under ERISA § 510, 29 U.S.C. § 1140 as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class:

_____ All employees of Abbott who were participants and beneficiaries of the Abbott Benefit Plans whose employment with Abbott was terminated between August 22, 2003, and April 30, 2004, as a result of the spin-off announced by Abbott on August 22, 2003.

72. The requirements for maintaining this action as a class action under Rule 23(a) of the Federal Rules of Civil Procedure are satisfied:

- a. The members of the Class are so numerous that joinder of all members is impracticable. Although the exact number of class members is not known to plaintiffs at this time, plaintiffs estimate that the Class consists of over 10,000 former HPD employees;
- b. There are questions of law and fact that are common to the Class, including:
 - I. whether Abbott devised and implemented a policy or scheme to deprive Class members of their rights to receive employment benefits;
 - ii. whether Hospira devised and implemented a policy or scheme to deprive Class members of their rights to receive employment benefits;

- iii. whether Abbott terminated the members of the Class or otherwise altered their employment status with the specific intent to interfere with the rights of Class members to receive employment benefits under the Abbott Benefit Plans;
 - iv. whether Abbott adopted a policy against re-hiring Class members in order to interfere with their rights to receive employment benefits; and
 - v. whether Hospira adopted a policy against hiring “retired” Class members in order to interfere with their rights to receive employment benefits;
- c. Plaintiffs’ claims are typical of the claims of the members of the Class. Plaintiffs are participants and beneficiaries of the Abbott Benefit Plans. Like the other members of the Class, Plaintiffs’ employment with Abbott was terminated during the spin-off. Plaintiffs assert the same claims arising from their terminations that could be alleged by the other members of the Class, including that Abbott terminated their employment in order to interfere with their attainment of benefits under the Abbott Benefit Plans, and that after their terminations they were prevented from seeking re-employment with Abbott for a period of two years because Abbott adopted a no-hire policy that was intended to interfere with their attainment of benefits under the Abbott Benefit Plans; and

- d. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced in ERISA and class action litigation. Plaintiffs have no interest that is adverse or antagonistic to the interest of the Class.

73. Additionally, the requirements under Rule 23(b)(2), and, alternatively, Rule 23(b)(3) of the Federal Rules of Civil Procedure are satisfied:

- a. Abbott and Hospira have acted and refused to act on grounds generally applicable to the Class, including terminating the employment of the class members as a group and pursuant to a scheme to interfere with the rights of the Class members to receive employment benefits under the Abbott Benefit Plans, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole;
- b. The questions of law and fact that are common to the members of the Class, including the questions identified in paragraph 72(b) above, predominate over any questions affecting only individual members; and
- c. A class action is superior to other available methods for the fair and efficient adjudication of the dispute:
 - I. The substantial cost and burden of litigation, which would likely be needlessly duplicative if brought individually by class members, may make it impossible for class members to individually seek relief for Abbott's and Hospira's wrongful conduct; and

- ii. The commonality of all legal and factual issues should make the class action easy to manage.

COUNT I

TERMINATION CLAIM UNLAWFUL INTERFERENCE WITH ATTAINMENT OF BENEFITS (ERISA § 510, 29 U.S.C. §§ 1140 AND 1132(A) (3))

74. Plaintiffs incorporate the allegations contained in paragraphs 1 to 73 of this Complaint, as though fully set forth here.

75. Abbott designed and implemented a corporate scheme or policy with the specific intent to interfere with the attainment and receipt of benefits under the Abbott Benefit Plans.

76. As part of its scheme, Abbott terminated the employment of HPD Employees. As with its adoption of its illegal scheme, Abbott terminated the HPD Employees with the specific intent to interfere with their attainment and receipt of benefits under the Abbott Benefit Plans. Specifically, Abbott terminated the employees in order to prevent them from accruing additional benefits under the Abbott Benefit Plans, including the Abbott Pension Plan, and in order to prevent them from becoming eligible for benefits under the Abbott Benefit Plans, including the Retiree Health Plan.

77. Abbott's conduct, as set forth in this Count, violates Section 510 of ERISA, 29 U.S.C. § 1140.

COUNT II

**ABBOTT'S NO-HIRE POLICY
UNLAWFUL INTERFERENCE WITH ATTAINMENT OF BENEFITS
(ERISA § 510, 29 U.S.C. §§ 1140 AND 1132(A) (3))**

78. Plaintiffs incorporate the allegations contained in paragraphs 1 to 77 of this Complaint, as though fully set forth here.

79. Abbott designed and implemented a corporate scheme or policy with the specific intent to interfere with the attainment and receipt of benefits under the Abbott Benefit Plans.

80. As part of its scheme, Abbott adopted a no-hire policy under which it refused to hire terminated HPD Employees for a period of two years. In addition, under Abbott's no-hire policy, any HPD Employees who are rehired after two years are considered new hires for salary and compensation purposes, and Abbott will not bridge the future service provided by returning HPD Employees with their past service. As with its adoption of the illegal scheme, Abbott took this action with the specific intent to interfere with the attainment and receipt of benefits under the Abbott Benefit Plans. Specifically, Abbott adopted the no-hire policy in order to prevent terminated HPD Employees from becoming participants in, and earning benefits under, the Abbott Benefit Plans for at least two years.

81. Abbott also adopted the no-hire policy in order prevent HPD Employees who return to Abbott after two years from accruing the additional pension benefits that they would have been entitled to accrue in the absence of Abbott's no-hire policy.

82. Pursuant to Abbott's policy Abbott has refused to rehire HPD Employees.

83. Abbott's conduct, as set forth in this Count, violates Section 510 of ERISA, 29 U.S.C. § 1140.

COUNT III

**HOSPIRA'S NO-HIRE POLICY
UNLAWFUL INTERFERENCE WITH ATTAINMENT OF BENEFITS AND RETALIATION
(ERISA § 510, 29 U.S.C. §§ 1140 AND 1132(A) (3))**

84. Plaintiffs incorporate the allegations contained in paragraphs 1 to 83 of this Complaint, as though fully set forth here.

85. Abbott and Hospira designed and implemented a corporate scheme or policy with the specific intent to interfere with the attainment and receipt of benefits under the Abbott Benefit Plans.

86. As part of the scheme, Hospira adopted a no-hire policy under which it refuses to hire any terminated HPD employee who "retired" pursuant to the Abbott Benefit Plans. As with its adoption of the illegal scheme, Hospira took this action with the specific intent to interfere with the attainment and receipt of benefits under the Abbott Benefit Plans. Specifically, Hospira adopted the no-hire policy in order to prevent terminated HPD employees who were retirement-eligible on the date of the spin-off but who wished to work for Hospira from applying for and receiving retirement benefits under the Abbott Benefit Plans, including the Abbott Pension Plan.

87. By announcing its no-hire policy to HPD Employees, and by subsequently refusing to consider retired HPD Employees for employment, Hospira precluded plaintiffs and other HPD Employees from retiring from Abbott and receiving retirement benefits under the Abbott Benefit Plans, while at the same time being employed by Hospira.

88. Hospira's conduct, as set forth in this Count, violates Section 510 of ERISA, 29 U.S.C. § 1140.

PRAYER FOR RELIEF FOR COUNTS I-III

WHEREFORE, Plaintiffs pray that the Court:

A. Certifies this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of the proposed plaintiff Class, and that plaintiffs' counsel of record be designated as class counsel;

B. Enters judgment against Abbott and Hospira and determines that the practices complained of herein are a violation of Section 510 of ERISA, pursuant to 29 U.S.C. § 1132(a)(3);

C. Enjoins Abbott and Hospira to repeal the no-hire policies that prevent plaintiffs and Class members from transferring between Abbott and Hospira for a period of two years, pursuant to 29 U.S.C. § 1132(a)(3);

D. Enjoins Abbott to offer to reinstate all plaintiffs and Class members to employment status under the same terms and conditions that existed prior to the termination of their employment, including participation in the Abbott Benefit Plans, pursuant to 29 U.S.C. § 1132(a)(3);

E. Awards plaintiffs and Class members lost benefits, or, alternatively, enjoins Abbott to restore plaintiffs and Class members to each of the Abbott Benefit Plans and to credit each plaintiff and Class member with continued employment service, for purposes of the Abbott Benefit Plans, from the date of their terminations to the date they are restored to the Abbott Benefit Plans;

F. Awards plaintiffs and Class members future benefits and other equitable relief in lieu of reinstatement;

G. Requires Abbott and Hospira to disgorge to the Plaintiffs and Class members any profits made as a result of their violations of ERISA;

H. Imposes a constructive trust on the assets of Abbott and Hospira, who were unjustly enriched as a result of their violations of ERISA;

I. Awards such other equitable or remedial relief, pursuant to ERISA § 502(a)(3), including equitable restitution and equitable monetary relief against the defendants;

J. Awards plaintiff and class members their attorneys' fees, costs and expenses of this litigation; and,

K. Awards any other relief, under ERISA or under federal common law, as the Court deems equitable and proper.

VII. CLASS ALLEGATIONS RELATED TO COUNT IV

89. Plaintiffs bring the claims for relief in Counts IV for breach of fiduciary duty under ERISA Sections 404, 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1104, 1132(a)(2) and 1132(a)(3) as a class action under Rule 23 of the Federal Rules of Civil Procedure.

90. The class they seek to certify in Count IV is the same as the class from Counts I-III above:

All employees of Abbott who were participants in the Abbott Benefit Plans whose employment with Abbott was terminated between August 22, 2003 and April 30, 2004, as result of the spin-off of the HPD/creation announced by Abbott on August 22, 2003.

91. The requirements for maintaining this action as a class action under Rule 23(a) of the Federal Rules of Civil Procedure are satisfied:

- a. The members of the Class are so numerous that joinder of all members is impracticable. Although the exact number of class members is not known to plaintiffs at this time, plaintiffs estimate that the Class in Count IV consists of over 10,000 former HPD employees.
- b. There are questions of law and fact that are common to the Class, including:
 - i. whether Abbott and Hospira's treatment of plan amendments and implementation of the spin-off violated ERISA; and
 - ii. whether Abbott and Hospira breached their fiduciary duties to the class.
- c. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs are participants and beneficiaries of the Abbott Benefit Plans. Like the other members of the Class, Plaintiffs' employment with Abbott was terminated during the spin-off. Plaintiffs assert the same claims arising from their terminations that could be alleged by the other members of the Class, including that the same boilerplate representations were broadcast to the entire class, and that the plaintiffs' claims are based upon the same legal theory as the class.
- d. Plaintiffs and their counsel will fairly and adequately protect the interests of the Class and have retained counsel experienced in ERISA and class action litigation. Plaintiffs have no interest that is adverse or antagonistic to the interest of the Class.

92. Additionally, the requirements under Rule 23(b)(2), and, alternatively, Rule 23(b)(3) of the Federal Rules of Civil Procedure are satisfied:

- a. Abbott and Hospira have acted and refused to act on grounds generally applicable to the Class, including terminating the employment of the class members as a group and pursuant to a scheme to interfere with the rights of the Class members to receive employment benefits under the Abbott Benefit Plans, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole;
- b. The questions of law and fact that are common to the members of the Class, including the questions identified in paragraph 72(b) above, predominate over any questions affecting only individual members; and
- c. A class action is superior to other available methods for the fair and efficient adjudication of the dispute:
 - i. The substantial cost and burden of litigation, which would likely be needlessly duplicative if brought individually by class members, may make it impossible for class members to individually seek relief for Abbott's and Hospira's wrongful conduct; and
 - ii. The commonality of all legal and factual issues should make the class action easy to manage.

COUNT IV

**ABBOTT'S AND HOSPIRA'S BREACH OF THEIR FIDUCIARY DUTIES
(ERISA §§ 404, 502(A)(2) AND 502(A)(3), 29 U.S.C. §§ 1054 (G)(1), 1132(A)(2) AND 1132(A)(3))**

93. Plaintiffs incorporate the allegations contained in paragraphs 1 to 92 of this Complaint, as though fully set forth here.

94. Abbott was acting as an ERISA fiduciary when it exercised its discretionary authority to communicate with the plaintiffs and similarly situated employees about their benefits on termination from Abbott and the future of those benefits if they accepted employment with Hospira.

95. Hospira was acting as an ERISA fiduciary when it exercised its discretionary authority to communicate with the plaintiffs and similarly situated employees about their benefits on termination from Abbott and the future of those benefits if they accepted employment with Hospira.

96. In electing to communicate information about the benefits on termination and the future benefits at the new company, Abbott and Hospira each had a fiduciary responsibility to existing benefits and their future plan benefits in order for the beneficiaries to make an informed communicate accurate information to the plaintiffs and other plan beneficiaries about their choice about whether to go to work for the new company.

97. On August 22, 2003, the Plan participants were jointly told by Abbott and the new company management team that "compensation and benefits for employees of the new company will remain the same through the end of 2004. For 2005 and beyond, the new company's

management team and the Board of Directors will assess current and future management needs, and make appropriate decisions for you and the company.” Exhibit 1, MN00022.

98. Similarly, the written materials provided to future Hospira employees stated that “[o]nce the new company is separate it will make its own decisions about what pay and benefits programs are most appropriate for its employees and its business.” Exhibit 2, H001304.

99. The new company’s management team stated in an August 22, 2003 telephone conference call to 600 employees that it “would take a look at the entire benefit program and all potential opportunities that we have, and decide what is a good program for all of our employees in terms of doing that.” Exhibit 3, H001872-73.

100. However, Abbott and the new company management knew full well that the new company benefits would be reduced for 2005 and beyond. Abbott and the new company’s management team made the decisions about whether certain retirement benefits would continue after 2005, prior to the effective date of the spin-off.

101. Abbott and Hospira failed to inform plan participants that their long-standing defined benefit pension plan would be frozen at year end 2004 and that Hospira would not provide any retiree medical benefit coverage. Abbott and Hospira knew that the pension plan would be frozen and that the new company would eliminate retiree medical coverage long before the May 1, 2004 effective date of the spin but omitted to provide the information to the plan participants.

102. Prior to the May 1, 2004 effective date of the spin Abbott also knew that if the truth were known by the plan participants that their benefits were targeted for reduction through cost savings that more employees would retire, resulting in additional costs to Abbott.

103. Many of the persons involved in meetings concerning the retirement benefits the new company would offer were on the Hospital Transition Team, including Abbott's Chairman of the Board and Chief Executive Officer, Miles White, President and Chief Operating Officer of the Medical Products Group, Richard Gonzalez, President and Chief Operating Officer of the Pharmacy Group, Jeffrey Leiden, Executive Vice President, Finance and Chief Financial Officer, Thomas Freyman, and Senior Vice President of Hospital Products, Christopher Begley. Begley and Freyman were also on a Steering Committee with Abbott's treasurer Terrence Kearney and others. Support for the HTT team was provided by Abbott's Executive Vice President of Total Compensation and Development, Stephen Fussell, Abbott's Comptroller, George Linder and others. By August 1, 2003 Abbott had appointed Christopher Begley as the new company's Director and Chief Executive Officer and Terrence Kearney as Vice President and Chief Financial Officer.

104. Abbott and Hospira knowingly, willfully and significantly deceived the plaintiffs and other beneficiaries by managing communications in order to save each employer money and to encourage plaintiffs and similarly situated Abbott terminees to accept offers of employment with new company. In deceiving the plaintiffs and plan participants about employee benefits, defendants breached their respective duties of loyalty to act solely in the interest of the pla participants. It was only after the spin that Hospira, during June 2004, finally disclosed the truth to plaintiffs and the plaintiff class about their benefits: "The pension plan will be frozen as o December 31, 2004, and retiree medical coverage will not be offered." Exhibit 4, H000471.

105. In these ways and others, Abbott and Hospira breached their fiduciary duties to the plaintiffs and the class.

WHEREFORE, plaintiffs pray that the Court:

A. Certify this Fourth Cause of Action under ERISA Sections 404, 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1104, 1132(a)(2) and 1132(a)(3), as a class action under Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class:

All employees of Abbott who were participants in the Abbott Benefit Plans whose employment with Abbott was terminated between August 22, 2003 and April 30, 2004, as result of the spin-off of the HPD/creation announced by Abbott on August 22, 2003;

B. Designate plaintiffs' counsel of record as class counsel;

C. Enter a declaratory judgment against Abbott and Hospira and determine that the practices complained of herein are a violation of Section 404 of ERISA, pursuant to 29 U.S.C. § 1104;

D. Enjoin Defendant Abbott to reinstate plaintiffs and class members in the Abbott Annuity Retirement Plan;

E. Award plaintiffs and Class members future benefits and other equitable relief in lieu of reinstatement;

F. Require Abbott and Hospira to disgorge to the plaintiffs and Class members any profits made as a result of their violations of ERISA;

G. Impose a constructive trust on the assets of Abbott and Hospira, who were unjustly enriched as a result of their violations of ERISA;

H. Award such other equitable or remedial relief, pursuant to ERISA § 502(a)(3), including equitable restitution and equitable monetary relief against the defendants.

I. Award plaintiffs and Class members their Attorneys' fees, cost and expenses of this litigation; and,

J. Award any other relief, under ERISA or under federal common law, as the Court deems equitable and proper.

Dated: November 18, 2005

Respectfully submitted,

/s/ Michael M. Mulder

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