

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

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

Plaintiffs’ Reply in Support of Motion for Class Certification of Count IV

I. Introduction

On August 26, 2006, shortly after this Court’s August 14, 2006 denial of Abbott’s motion to dismiss Count IV, plaintiffs renewed their earlier motion for class certification on Count IV. Abbott filed its response in opposition to class certification on November 27, 2006, and plaintiffs now take this opportunity to reply.

In opposing class certification, Abbott ignores the history of this case, particularly the Court’s earlier order certifying Counts I through III of plaintiffs’ complaint for class treatment. In that order, dated December 30, 2005, the Court certified a class as to Counts I and II against Abbott that is identical to the class plaintiffs propose to be certified as to Count IV. In the December 30st order, the Court certified a class consisting of

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 a result of the spin-off of the HPD/creation of Hospira announced by Abbott on August 22, 2003.

The result Abbott seeks – a denial of class certification as to Count IV – makes no practical sense for the Court, for the 8,000 class members, or for Abbott itself. If class

certification is denied as to Count IV, then these 8,000 class members will be required to file individual actions in order to prosecute their ERISA breach of fiduciary duty claims, even though their classwide ERISA § 510 claims are pending before this Court and all of their claims arise from the same events involving Abbott's spin-off of Hospira.

Count IV has already survived Abbott's motion to dismiss. Indeed, the evidence shows that by the fall of 2003, Christopher Begley, who was then the president of Abbott's Hospital Products Division ("HPD") and was designated to become Hospira's CEO, and David Jones, a member of Abbott's Board of Directors who was soon to become Chairman of the Board of Hospira, determined in consultation with other top Abbott officials that Hospira would freeze the pension plan within 8 months of the spin-off, by December 31, 2004. *See Exhibit 1*, H03321 (email dated October 3, 2003 from Christopher Begley to David Jones, stating that "[i]f the benefit plan comes over we can and will freeze the plan on 12/31/04"). This determination was not disclosed to the Abbott employees who were slated to be spun to Hospira. As a result, they lacked material information that they needed to decide whether to go to the new company (rather than seeking other employment, retiring from Abbott, or protesting to Abbott management and demanding better benefits). These facts are indisputably common to the class on the breach of fiduciary duty claim; it would be folly to deny class certification, as Abbott argues, and require each of the 8,000 class members to pursue this claim individually while their other claims against Abbott, based on the same set of facts, are proceeding as a class action.

II. Argument

A. Abbott's omissions and misrepresentations provide common issues that should be tried in the same case.

The Court has several common classwide issues to try under Count IV, including (1) whether Abbott was acting in a fiduciary capacity when it failed to disclose accurate information to plan participants about benefits at the new company; (2) whether Abbott's communications to the class, or lack thereof, constituted a breach of its fiduciary duty; (3) whether and to what extent the class was harmed by the breach; and (4) what remedies are available to the class. Each of these issues can be tried on a class-wide basis. As this

Court has noted, just one common issue is enough to satisfy the commonality requirement of Rule 23. *Dunn v. City of Chicago*, 231 F.R.D. 367, 372 (N.D.Ill. 2005).

All of the class members' claims can and should be resolved before this Court. Rule 23 provides the court with an array of tools to manage any individual issues that might arise. As the Seventh Circuit has said, "[t]he more claimants there are, the more likely a class action is to yield substantial economies in litigation." *Carnegie v. Household International, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004). Inviting multiple individual actions in this District and others where Hospira employees now reside makes little sense when Rule 23 "allows district courts to devise imaginative solutions" to problems created by the presence of individual issues. *Id.* The Seventh Circuit has noted that those solutions include:

- (1) bifurcating liability and damage trials with the same or different juries;
- (2) appointing a magistrate judge or special master to preside over individual damages proceedings;
- (3) decertifying the class after the liability trial and providing notice to class members concerning how they may proceed to prove damages;
- (4) creating subclasses; or
- (5) altering or amending the class.

Id. at 661 (citation omitted). The Seventh Circuit has repeatedly recognized the advantage of trying issues that are common to the class even if individual liability or remedial relief must be determined later. *See, e.g., In re Allstate*, 400 F.3d 505, 508 (7th Cir. 2005) and additional authority cited at page 8 of Plaintiffs' Supplemental Motion and Memorandum In Support of Class Certification of Count IV, filed November 18, 2005 (Docket No. 91).

Abbott's primary argument against commonality (at pp. 2-3 and 12-15) is that the class members received varying communications and drew varying conclusions about the benefits that would be offered at the new company. Simply stated, this is incorrect. Abbott's class-wide communications were uniform and highly choreographed. For example, in August 2003, Abbott distributed an information sheet to all HPD employees and also posted it on the company's intranet web site. This August 2003 communication stated unequivocally:

The pay and benefits you have today will remain in place through December 31, 2004 Once 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 businesses The new company employees will continue to participate and earn benefits in the ARP or a similar plan

sponsored by the new company through December 31, 2004. Retirement plan benefits at the new company for 2005 and later years will be decided by the new company and will be communicated to you at a later date.

Exhibit 2, H001326-29; **Exhibit 3**, Denham Tr. 139:18-142:9. This August 2003 communication was never corrected, even though the documents make it clear that Begley and Kearney had decided by October 2003 that pension accruals under Hospira's plan would cease on December 31, 2004. *Id.* at 142:19-24.

Instead, in November 2003, Abbott sent another information sheet to HPD employees (also posted on Abbott's Intranet) in which it repeated its prior representations:

Retirement benefits (as well as other benefits) at the new company for 2005 and beyond will be determined by the new company and communicated at a later date.

Exhibit 4, H002145-48 (repeating the same); **Exhibit 5**, A012916 (email stating that the information sheet had been posted on Abbott's intranet and would be mailed or e-mailed to HPD employees). And on November 5, 2003, Abbott distributed a newsletter (also posted on its intranet) in which it described transition benefits for the new company up to December 31, 2004. **Exhibit 6**, MN00064-65. Abbott again attempted to assure HPD employees:

Remember, most Abbott benefits programs in place today will remain effective through Dec. 31, 2004. Beginning in 2005, the new company will establish a separate benefits program designed to meet the needs of the new company and its employees.

Id. Abbott even provided standardized scripts for managers speaking to employees about the spin. **Exhibit 7**, A005085-5102. Abbott's class-wide communications were uniform not merely in what the company said, but what it did not say: plaintiffs' claim is that Abbott knew, before the spin, that the pension plan would be frozen and retiree medical benefits would be eliminated after December 31, 2004, and that it *concealed the truth* from all of the putative class members. Instead of addressing the common omission head on, Abbott seeks to divert attention to other statements that were made (or that it speculates were made) to the plaintiffs and class members about their benefits. But Abbott's affirmative statements are uniformly misleading, because they *all omit the truth*

about the future benefits. These affirmative statements must be viewed in light of the omissions – to evaluate them individually is meaningless.

Nowhere in Abbott’s brief does it claim that it told *any* class member prior to the spin that the new company’s pension plan would be frozen and that retiree medical benefits would be eliminated after December 31, 2004. Instead, Abbott argues that it truthfully informed employees that their benefits “might change” at the new company (p. 2). But plaintiffs allege, and intend to prove, that Abbott knew, long before the spin date, that there would be no retiree medical plan and that the pension plan would be frozen after December 31, 2004. This is the common issue to the class. The “varied benefits communications” that Abbott claims (at p. 13) exist here fade to irrelevance in light of the primary common question – whether Abbott failed to disclose material information to plan participants about their benefits.

Abbott would have the Court deny class certification to a group of individuals who were all misled by Abbott’s official, company-wide position because, as it argues at pp. 13-15, individual employees may have drawn different conclusions about what their benefits would be. But this is tantamount to arguing that the class should be denied because Abbott wanted to keep the employees guessing. Abbott actually cites its own deception as the tool that would defeat commonality (at p. 14), arguing that “other proposed class members ... firmly believed that benefits would change, and, in fact, they correctly predicted that ‘the pension would go away with the new company.’” Abbott thus asks the Court to deny a class based on the fact that it *admittedly left employees to roll the dice* on the future of their benefits, rather than giving them the facts necessary to decide whether to go to Hospira, retire, seek alternative employment, or take other actions regarding their benefits.¹ But ERISA required much more of Abbott. As a trustee, its “fiduciary obligations ... to the participants and beneficiaries of the plan are

¹Abbott attaches an email to its brief (Ex. G) from a local manager, Frank Lake, to Grice Williams, an Abbott Human Resources executive, dated October 23, 2003 (a few weeks after soon-to-be Hospira CEO Christopher Begley stated that “we can and will freeze the plan”). The email relates that Mr. Lake’s employees were trying to decide whether to retire and were “betting that the pension will go away.” Abbott’s response was that “[a]n announcement and details will be coming.” *Id.* But those details did not come in time for the employees to use them in their decisionmaking process. This email, rather than supporting Abbott’s position that there is no commonality, simply underscores plaintiffs’ claim that Abbott kept the truth from the entire class.

those of trustees of an express trust – the highest known to the law.” *Donovan v. Bierwirth*, 680 F.2d 263, 272 n. 8 (2d Cir. 1982) (citing RESTATEMENT OF TRUSTS 2d § 2, Comment b (1959)). As this Court stated during an earlier hearing in this case, “much of what we say in our lives that isn’t true is false only because of what we don’t say.”

Exhibit 8, Transcript of Proceedings, October 10, 2006, p. 4. Abbott may contend that different people heard different things, but with respect to the substance of its message, it makes no claim that it informed the plaintiffs or any participants of the truth.²

Abbott cites *In re Sears Retiree Group Life Insurance Litigation*, 198 F.R.D. 487 (N.D.Ill. 2000), in support of its argument that the communications at issue here are too varied to warrant class certification (p. 13). But in *Sears*, the misrepresentation claim was not based on an omission, but rather on a variety of affirmative statements that dated back some 20 years whose uniformity could be and was challenged by the defendant. As plaintiffs have noted in previous briefs on this subject, the correct analogy is *Joncek v. Local 714 International of Teamsters Health and Welfare Fund*, No. 98 C 4302, 1999 WL 755051 (N.D.Ill. Sept. 3, 1999), where this Court rejected the defendant’s argument that plaintiffs and class members might have relied on different affirmative representations, stating that “whether defendants withheld information from plaintiffs is a question of fact that is common to the class.” *Id.* at *4 (citing *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225 (7th Cir. 1983)) (claims directed at disclosure practices common).

Abbott’s other supporting case law similarly deals with affirmative misrepresentations that varied by class member. In *Spencer v. Central States Pension Fund*, 778 F.Supp. 985 (N.D.Ill. 1991), the breach turned on oral representations at 27 different union meetings, no two of which were the same. *Id.* at 990. In *Flanagan v. Allstate*, 223 F.R.D. 489 (N.D.Ill. 2004), the breach involved “oral statements made at different times to different class members” who inquired about the possibility of a new benefits plan. *Id.* at 495-6. And in *Sprague v. General Motors Corp.*, 133 F.3d 388 (6th

²Abbott states (at p. 2) that “conversations about Hospira’s future benefits plan continued until Hospira announced its full and complete benefits plan in June 2004,” implying that the decisions to freeze the pension plan and eliminate retiree medical benefits had not been made at the time of the spin. As seen above, however, the evidence shows that Abbott made the key decisions to freeze the pension plan. Even if this were disputed, the questions of whether and when Abbott made the decision is obviously common to the class.

Cir. 1998), plaintiffs asserted an estoppel claim alleging that each class member entered into an “individual side deal” with the company. Not surprisingly, the court found that individualized inquiry was necessary. *Id.* at 398.

B. Detrimental reliance is not an element of plaintiffs’ claim.

Once again, as it did in its motion to dismiss Count IV (Docket No. 98, p. 7), Abbott misstates the law of this Circuit governing the elements of a breach of fiduciary duty claim. Abbott contends that plaintiffs must prove “detrimental reliance,” and then, as it did at the motion to dismiss stage, argues that plaintiffs have failed to do so (at pp. 4-5 and 6-10). This Court has already denied Abbott’s motion to dismiss Count IV, so Abbott’s rehashing of the same arguments here is inappropriate. And, of course, such arguments on the merits are premature at the class certification stage. *Szabo v. Bridgeport Machs., Inc.*, 249 F.3d 672, 677 (7th Cir. 2001) (“[t]he success of the 1966 amendments [which are still in force] depends on making a definitive class certification decision before deciding the case on the merits....”). The only inquiry at issue now is whether Count IV, as alleged by the plaintiffs, meets the requirements of Rule 23 for class treatment.

Abbott admits (at p. 7), as it must, that it is “[t]rue the Seventh Circuit has never expressly stated ... that detrimental reliance is an element” of a breach of fiduciary duty claim. Yet Abbott goes on to speculate that “there is no reason to believe the Seventh Circuit would illogically” hold that proof of detrimental reliance is not required. Notwithstanding Abbott’s determination to rewrite circuit law, the Seventh Circuit has clearly and repeatedly explained the elements of a claim for breach of fiduciary duty: a plaintiff need only allege “(1) that the defendants are plan fiduciaries; (2) that the defendant breached their fiduciary duties; and (3) that the breach caused harm to the plaintiff.” *Kamler v. H/N Telecommunication Services*, 305 F.3d 649, 661 (7th Cir. 2004).

Abbott criticizes plaintiffs for relying “solely” on *Kamler* (at p. 6), but that case is no outlier. The Seventh Circuit reiterated the three elements of proof for a breach of fiduciary duty claim enunciated in *Kamler* in *Jenkins v. Yager*, 444 F.3d 916 (7th Cir. 2006) and *Brosted v. Unum Life Ins. Co. of Am.*, 421 F. 3d 459, 465 (7th Cir. 2005). *See also Herdrich v. Pegram*, 154 F.3d 362, 369 (7th Cir. 1998), *rev’d on other grounds*,

Pegram v. Herdrich, 530 U.S. 211 (2000) (plaintiff must allege only “that a cognizable loss resulted”).

Abbott argues (at p. 6) that despite recent case law to the contrary, the Seventh Circuit implicitly adopted the detrimental reliance standard in *Baker v. Kingsley*, 387 F.3d 649, 661 (7th Cir. 2004) because, in describing the Supreme Court’s *Varity* holding, the court said “that an employer breaches its fiduciary duty by lying to employees in order to *induce* them to surrender their benefits.” *Id.* But this reference to *Varity* did not rewrite the elements of proof for a breach of fiduciary duty claim. The *Baker* case was remanded to this Court, where it followed the Seventh Circuit’s standard in holding “that a claim for breach of fiduciary duty under ERISA has three elements: ‘(1) that the defendants are plan fiduciaries; (2) that the defendants breached their fiduciary duties; and (3) that the breach caused harm to the plaintiff.’” *Baker v. Kingsley*, No. 03 C 1750, 2006 WL 2927606, *2 (N.D. Ill. Oct. 10, 2006) (*citing Brosted v. Unum Life Ins, Co., of Am.*, 421 F.3d 459, 465 (7th Cir. 2005)). Despite Abbott’s novel interpretations to the contrary, all plaintiffs need allege is that the breach caused harm – and they have done so.

C. Contrary to Abbott’s assertions, its breach harmed the class.

As shown, the Seventh Circuit does not require the plaintiffs to show “detrimental reliance” in order to sustain a claim for breach of fiduciary duty under ERISA – rather, it requires a showing that the breach caused them *harm*. The class representatives testified at length during both their first and second depositions that they were harmed because they were kept in the dark by Abbott regarding their future benefits.³ Abbott’s claim (at pp. 3-5 and 12) that the class representatives failed to allege that they would have done

³Class representative Michael Loughery, who was retirement-eligible at the time the spin was announced, testified that he would have retired from Abbott and taken his chances in the then-robust pharmaceutical sales job market if he had known the truth about his Hospira benefits. **Exhibit 9**, Loughery Tr. (2nd) at 61:13-21. He also testified that had he known what was going to happen to his benefits at Hospira, he would have searched more aggressively for alternative employment. *Id.* at 46:8-9; 48:6-9. Similarly, Jane Roller testified that had she known that benefits would be eliminated, she would have started the job search earlier (prior to the spin date) and would have seriously considered moving to another company. **Exhibit 10**, Roller Tr. (2nd) at 50:22-51:4. And Myla Nauman testified that the market for pharmaceutical sales jobs was strong during the period before the spin, and that she would have taken advantage of the timing if she had known the truth about her future benefits at Hospira. **Exhibit 11**, Nauman Tr. (2nd) at 82:19-83:3.

“anything differently” is wrong, and the harm alleged by the plaintiffs is common to the class.

For example, both Myla Nauman and Jane Roller testified that if they had known about the plans to cut their benefits, they would have taken steps to oppose the decision. Their reaction, as future Hospira employees, was crucial, because, as Abbott knew, Hospira could not succeed without an intact workforce – the success of the spin was reliant on having an instant pool of experienced workers to run the new company. **Exhibit 12**, A004752-55 at A004753 (announcing Abbott’s goal of “[e]ncouraging continued employment with the new company”). Without a smooth transition of the 8,000 workers from Abbott to Hospira, the spin could not have occurred – so Abbott decided to withhold the information that benefits would be cut.⁴ Abbott also knew full well that the workforce would be intensely focused on what their benefits would be at the new company. *Id.* at A004752 (noting that “a key question for employees moving to the new company is: ‘What will happen to my retirement benefits?’”).

If the class members had not been lulled into inactivity by Abbott’s omissions, they could have taken affirmative steps to avoid the loss of their benefits. Class representative Jane Roller testified that if she had known the truth, she would have done everything she could to get Abbott to listen to the needs of the future Hospira workforce and change its mind about eliminating the benefits, including requesting a meeting with the future Hospira CEO, Christopher Begley. *Id.* at 51:4-10. In fact, when Ms. Roller did find out about the benefits cuts in the summer of 2004, she tried to schedule a meeting with Mr. Begley to attempt to “come up to something together, figure out a different way.” **Exhibit 14**, Roller Tr. (1st), 17:15-24. She worked her way up the chain of command, trying to generate interest in such a meeting, *id.* at 18:1-20:10, but, of course,

⁴From the outset, Abbott executives knew that the new company would have to make substantial cuts in benefits to be successful. *See* **Exhibit 13**, H003442, an email in which Steve Fussell, who headed Compensation and Development at Abbott, explained to Terrence Kearney upon Kearney’s selection as the new company’s CFO that benefits would have to be cut back from Abbott standards. Mr. Fussell concluded that part of making Newco “a great investment will be fundamentally changing the cost structure, including looking at the market numbers on benefits and comp, as a result taking somewhere around 12 to 15% off your benefits burden as well as staff and plant rationalization. Couple that with this business being such a core part of Abbott and I do not believe people will be happy at first” *Id.*

by that time it was too late – the decision to cut benefits had been made months ago, before the spin was ever finalized. Had Ms. Roller known about the decision at the time it was made (or at any time prior to the spin, for that matter), she would have had the opportunity to mobilize the future Hospira work force (which Abbott knew it needed to keep intact to make the new company viable) to lobby for their benefits. Similarly, class representative Myla Nauman testified that she would have talked to her coworkers and tried to mobilize them to demand benefits at the new company before it was too late.

Exhibit 11, Nauman Tr. (2nd), 81:2-9.

Courts have agreed that the loss of this right to protest and make further inquiry is an actionable harm: in *Hensley v. P.H. Glatfelter Co.*, No. 1:04-CV-200, 2005 WL 3158033 (W.D.N.C. November 28, 2005), the court found that the defendant’s omissions “deprived the plaintiffs of the opportunity to make further inquiry regarding the possible effects this relationship could have had on their benefits. Further, a reasonable jury could determine that plaintiffs relied on this omission or misrepresentation to their detriment, for they had no way of knowing further inquiry was necessary.” *Id.* at *5.

Indeed, plaintiffs’ expert, Lawrence Quartana, whose areas of expertise include human resources management and group and organizational behavior, summarized Abbott documents and employment data from the time of the spin and concluded that “had the Abbott employees who were terminated by Abbott and subsequently employed by Hospira been fully informed of the benefit changes that were to be ultimately enacted at Hospira, they would have reacted with unambiguous dissatisfaction, a sense of inequitable treatment, and a feeling of deep betrayal. Such reactions would have created the conditions that are well known to precipitate turnover, and these would have been highly likely to explore alternative employment opportunities.” **Exhibit 15**, Expert Report of Lawrence Quartana, p. 15.

Abbott cannot deny that it understood that the elimination of retiree medical benefits and pension accruals would be a heavy blow to employees, because it took pains to make up the value of lost benefits to certain Abbott executives who had been selected to lead Hospira. In an email dated January 23, 2004 from Thomas Wascoe, Abbott senior Human Resources executive, to Steven Fussell, Abbott’s Executive Vice President of Total Compensation, Mr. Wascoe relates that Christopher Begley (Hospira’s future CEO)

and Miles White (Abbott's CEO)

D. The harm to the class can be remedied on a classwide basis.

Just as liability here turns on common questions, the remedies available to the Court for breach of fiduciary duty are common to the class. The class members all suffered from the same lack of information, and they can be compensated by providing across-the-board relief. If Abbott were correct that breach of fiduciary cases can never be resolved on behalf of a class, then employers acting in a fiduciary capacity who lie to their plan participants could never be held fully accountable other than through the prosecution of individual actions. This ignores ERISA's core goal of protecting plan participants from fiduciary breaches such as lying. 29 U.S.C. § 1001(b) (policy of ERISA is to "provid[e] for appropriate remedies, sanctions, and ready access to the Federal courts").

Once a breach of fiduciary duty is proven, “uncertainties in fixing damages will be resolved against the wrongdoer.” *Donovan*, 754 F.2d at 1056. This Court has the obligation under ERISA to determine whether Abbott met the high standards of conduct for a fiduciary advising participants about their benefits. As the Supreme Court noted, ERISA was designed to “establish ... standards of conduct, responsibility, and obligations for fiduciaries ... and ... provid[e] for appropriate remedies” for breach of those duties. *Varity Corp., v. Howe*, 516 U.S. 489, 513 (1996).

If Abbott is found to have violated those standards by lying to plan participants, this Court can craft a number of remedies to effectuate ERISA’s goals that are amenable to class treatment. Chief among them is the return of ill-gotten profits that Abbott gained by committing the breach. 29 U.S.C.A. § 1109 (fiduciaries are “personally liable ... to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary); *Holmes v. Pension Plan of Bethlehem Steel Corp.*, 213 F.3d 124, 133 (3d Cir. 2000) (disgorgement of ill-gotten profits to prevent unjust enrichment held to be appropriate equitable remedy).⁵ No proof of detrimental reliance is necessary for the Court to determine whether Abbott’s breach resulted in unjust enrichment. Here, plaintiffs contend that Abbott withheld the truth about their benefits in order to ensure that the class members went quietly to the new company. Not only did the breach deprive the class of information necessary to its decision about whether to work for Hospira or not, but it also allowed Abbott to proceed with a transaction that it calculated would allow it to shed

Exhibit 20, X002112-29 at X002116. Plaintiffs’ actuarial expert, David Feinstein, concluded that Abbott reaped significant financial rewards from the spin-off by transferring

Exhibit 21, Expert Report of David Feinstein, pp. 3, 11. Abbott also saved in retiree medical costs. *Id.* Abbott should not be allowed to be unjustly enriched from its breach, and a remedy can and should be determined on a classwide basis.

⁵ Other remedies that courts have applied in similar cases include the appointment of an independent fiduciary for the plan, *Brock v. Robbins*, 830 F. 2d 640, 647 (7th Cir. 1987), and reinstatement of the class members into the plan, *Varity*, 516 U.S. at 515.

III. Conclusion

Abbott is wrong in contending that Count IV rests on individual issues that prevent certification, as shown above. Count IV should be certified as a class action and proceed with Counts I and II, which are already pending as class claims before the Court. For all the reasons presented above, the plaintiffs respectfully request that the Court certify Count IV on behalf of a class consisting of

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 a result of the spin-off of the HPD/creation of Hospira announced by Abbott on August 22, 2003.

Dated: December 18, 2006

Respectfully submitted,

/s/ Jamie S. Franklin

Steven M. Sprenger
Mark A. Amadeo
SPRENGER & LANG, PLLC
1400 Eye Street, N.W., Suite 500
Washington, DC 20005
(202) 265-8010

Michael M. Mulder
Jamie S. Franklin
MEITES MULDER MOLLICA & GLINK
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 263-0272

Certificate of Service

I, the undersigned, certify that on December 18, 2006, I had the following documents filed electronically with the Clerk of the Court for the United States District Court for the Northern District of Illinois through ECF: Plaintiffs' Reply in Support of Motion for Class Certification of Count IV. ECF will send an e-notice on the following parties:

Joseph J. Torres
WINSTON & STRAWN LLP
35 West Wacker Drive
Chicago, IL 60601

Christopher D. Ligouri
JENNER & BLOCK LLP
One IBM Plaza
Chicago, IL 60601

/s/ Jamie S. Franklin