

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE ABBOTT LABORATORIES INFANT
FORMULA SHAREHOLDER DERIVATIVE
LITIGATION

Case No. 1:22-cv-05513
Hon. Sunil R. Harjani

JOINT INITIAL STATUS REPORT UNDER FED. R. CIV. P. 26(f)

Pursuant to the Court's instruction, Plaintiffs International Brotherhood of Teamsters Local 710 Pension Fund ("Teamsters Pension Fund") and Southeastern Pennsylvania Transportation Authority ("SEPTA" and collectively with Teamsters Pension Fund, "Plaintiffs"), Defendants,¹ and Nominal Defendant Abbott Laboratories ("Abbott") (collectively with Plaintiffs and Defendants, the "Parties") represented by the undersigned counsel respectfully submit the following joint initial status report under Federal Rule of Civil Procedure 26(f).

I. THE NATURE OF THE CASE:

A. Counsel

The following individuals serve as Counsel for the parties. Contact information for Lead Counsel and additional counsel for the Parties are indicated on the signature blocks below.

For Lead Plaintiffs:

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For Nominal Defendant:

Sean Berkowitz
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¹ "Defendants" are Robert B. Ford ("Ford"), Robert J. Alpern ("Alpern"), Roxanne S. Austin ("Austin"), Claire Babineaux-Fontenot ("Babineaux-Fontenot"), Sally E. Blount ("Blount"), Paola Gonzalez ("Gonzalez"), Michelle A. Kumbier ("Kumbier"), Edward M. Liddy ("Liddy"), Darren W. McDew ("McDew"), Nancy McKinstry ("McKinstry"), Phebe N. Novakovic ("Novakovic"), William A. Osborn ("Osborn"), Michael F. Roman ("Roman"), Daniel J. Starks ("Starks"), John G. Stratton ("Stratton"), Glenn F. Tilton ("Tilton"), Miles D. White ("White"), Christopher J. Calamari ("Calamari"), and Robert E. Funck ("Funck"). Defendants Alpern, Austin, Blount, Calamari, Ford, Funck, Gonzalez, Kumbier, Liddy, McDew, McKinstry, Novakovic, Osborn, Starks, Stratton, Tilton and White are referred to herein collectively as the "Section 10(b) Defendants." Defendants Alpern, Austin, Babineaux-Fontenot, Blount, Ford, Gonzalez, Kumbier, Liddy, McDew, McKinstry, Novakovic, Osborn, Roman, Starks, Stratton, Tilton and White are referred to herein collectively as the "Director Defendants."

B. Nature of Claims Asserted

Plaintiffs bring this action derivatively, on behalf of nominal Defendant Abbott, against certain current and former members of Abbott's Board of Directors (the "Board") and senior management, seeking to remedy violations of the federal securities laws and breaches of fiduciary duties. The case stems from Abbott's manufacture and sale of allegedly tainted infant formula, which Plaintiffs allege resulted in the shutdown of Abbott's plant in Sturgis, Michigan, which Plaintiffs further allege ultimately contributed to a nationwide shortage of baby formula in 2022.

Following the Court's August 7, 2024 Memorandum and Opinion Order, Doc. No. 142 ("MTD Opinion"), there are two surviving claims in the action. First, Plaintiffs allege that the Section 10(b) Defendants violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and SEC Rule 10b-5 by disseminating or causing to be issued false or misleading statements about Abbott, which they knew or recklessly disregarded were false or misleading, thereby causing Abbott to repurchase its own shares of common stock at artificially inflated prices (the "Section 10(b) Claim"). *See* MTD Opinion at 11. Second, Plaintiffs allege that the Director Defendants, in their capacity as directors of Abbott, breached their fiduciary duty of loyalty to the shareholders by failing to oversee whether Abbott complied with applicable regulations regarding the production and sale of Abbott's infant formula products in the U.S (the "BOFD claim"). *See* MTD Opinion at 14. There are not currently any counterclaims or third-party claims.

C. Major Legal and Factual Issues

The major legal and factual issues are as follows:

- With respect to the Section 10(b) Claim, whether the Section 10(b) Defendants, in connection with the share repurchases Abbott made, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange: (1) made a material misrepresentation or omission of fact, (2) with scienter, (3) in connection with the purchase or sale of a security, (4) upon which the plaintiff justifiably relied, and (5) that caused Abbott damages. *See Stoneridge Inv. v. Scientific-Atlanta*, 552 U.S. 148, 157 (2008).
- With respect to the BOFD Claim, whether the Director Defendants committed non-exculpated breaches of their fiduciary duties by (1) utterly failing to implement any reporting or information system or controls, or (2) having implemented such a system or controls, consciously failing to monitor or oversee its operations thus disabling themselves from being informed of risks or problems requiring their attention. *See* MTD Op. at 15.
- Whether and to what extent Abbott was harmed by the Section 10(b) violation and/or breach of fiduciary duties.

D. Relief Sought

Plaintiffs seek judgment as follows: (1) declaring that the Director Defendants have breached their fiduciary duties to Abbott; (2) declaring that the Section 10(b) Defendants violated

Section 10(b) of the Exchange Act and SEC Rule 10b-5; (3) awarding to Abbott the damages sustained by it, as a result of the federal securities law violations by the Section 10(b) Defendants and as a result of the breaches of fiduciary duties by the Director Defendants, in amounts to be proven at trial, together with pre- and post-judgment interest; (4) directing Defendants to perform all necessary actions to reform and improve Abbott's corporate governance and internal procedures; (5) awarding to Plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and (6) granting such other and further relief as the Court deems just and equitable.

II. JURISDICTION:

The Court has subject matter jurisdiction over the Section 10(b) Claim pursuant to 28 U.S.C. §1331, as well as Section 27 of the Exchange Act, 15 U.S.C. §78(n)(a), 78 (j) and the rules promulgated thereunder. The Court has supplemental jurisdiction over the BOFD Claim pursuant to 28 U.S.C. § 1367.

III. STATUS OF SERVICE:

All Defendants have been served or otherwise waived service in this action.

IV. PENDING MOTIONS AND DEFENDANTS' ANSWERS:

- On August 15, 2024, plaintiffs in the securities fraud action captioned *Pembroke Pines Firefighters and Police Officers Pension Fund v. Abbott Laboratories, et al.*, No. 1:22-cv-04661 (N.D. Ill.) (“Securities Fraud Plaintiffs”), moved to intervene in this action for the limited purpose of unsealing certain documents. Counsel for Abbott filed an opposition to the motion on August 30, 2024 (ECF No. 151).
- On August 27, 2024, Defendants moved to reconsider the Court’s ruling on their motion to dismiss. (ECF No. 147) The Court entered a briefing schedule for that motion that will have briefing completed on October 2, 2024. (ECF No. 150) Defendants’ Answer to the pending complaint in this Action is due on or before October 2, 2024. (ECF. No. 153)

V. CASE PLAN:

A. Discovery Needed:

Plaintiffs will seek fact discovery regarding: (1) communications, meetings, deliberations and discussions between and among the Individual Defendants, senior management of Abbott, and/or Abbott’s outside advisors related to the Stock Repurchase Programs, Abbott’s public filings and press releases, the Sturgis Plant, manufacturing of infant formula, and product safety; (2) Abbott’s compliance with the Food Drug and Cosmetic Act of 1938 (“FDCA”), including communications with, notifications by, inspections by, investigations by, or orders from the U.S. Food and Drug Administrations, other regulators, and U.S. Congress; (3) Abbott’s communications and filings with the U.S. Securities and Exchange Commission; (4) Abbott’s public statements including in press releases, investor calls, at conferences interviews, and to the press; (5) Abbott’s internal policies and controls regarding food safety, product quality, and public

reporting; (6) the Sturgis Plant, including any alleged or proven FDCA violations and/or unsafe or unsanitary conditions impacting the Sturgis Plant; (7) internal or external employee or whistleblower reports, complaints, or litigation concerning food safety or regulatory compliance; and (8) the damages sustained by the Company by virtue of the Section 10(b) Defendants' violations of federal securities laws and the Director Defendants' breaches of fiduciary duties, including but not limited to evidence concerning the shares repurchased as part of the Stock Repurchase Programs, as well as evidence concerning lost profits, legal fees and costs, other third-party fees and costs, fines, and other expenses associated with the shutdown of the Sturgis Plant and any associated regulatory or governmental investigation of Abbott, and reputational harm.

Defendants will seek fact discovery regarding Plaintiffs' allegations.

B. Proposed Schedule:

Counsel for Nominal Defendant Abbott has informed the Parties that the Board intends to consider whether to form a Special Litigation Committee ("SLC") at its upcoming meeting on September 19, 2024. If formed, the SLC may move to intervene in this case and move to stay the case pending the Committee's investigation.

Given the Board's intention to consider whether to form an SLC, Defendants believe the most efficient course is to hold the start of discovery in this case to see what the Board decides. *See, e.g., N. Miami Gen. Emps. Ret. Funds v. Parkinson*, No. 10-6514 (N.D. Ill.), ECF No. 173 (adjourning further status conferences pending a board's decision whether to form an SLC); *Abbey v. Computer & Commc'n Tech.*, 457 A.2d 368, 375 (Del. Ch. 1983) ("If Zapata is to be meaningful, then it would seem that such an independent committee, once appointed, should be afforded a reasonable time to carry out its function. It would likewise seem reasonable to hold normal discovery and other matters in abeyance during this interval. If a derivative plaintiff were to be permitted to depose corporate officers and directors and to demand the production of corporate documents, etc. at the same time that a duly authorized litigation committee was investigating whether or not it would be in the best interests of the corporation to permit the suit to go forward, the very justification for the creating of the litigation committee in the first place might well be subverted."); *Kaplan v. Wyatt*, 484 A.2d 501, 510 (Del. Ch. 1984) ("It is a foregone conclusion that such a stay must be granted. Otherwise, the entire rationale of Zapata, i.e., the inherent right of the board of directors to control and look to the well-being of the corporation in the first instance collapses."); *Katell v. Morgan Stanley*, 1993 WL 390525, *4 (Del. Ch. Sept. 27, 1993) ("Delaware law requires that all proceedings in this action be stayed pending the Committee's investigation."); *Milliken v. Am. Realty*, 2018 WL 3745669 (S.D.N.Y. Aug. 7, 2018) (granting stay); *Moradi v. Adelson*, 2012 WL 3687576 (D. Nev. Aug. 27, 2012) (granting stay).

Plaintiffs disagree that discovery should be stayed at this juncture and that this is the appropriate submission to brief the issue. Rather, Plaintiffs submit that discovery should proceed in the normal course as there is currently no SLC nor any motion to stay before the Court. To the extent the Board forms an SLC and moves to stay this litigation, the Court should hear that motion on its merits in due course, rather than pre-determine the issue on this submission. Plaintiffs further believe that the stay envisioned by Defendants will be substantial and potentially

prejudicial. Defendants also have indicated that the composition of the SLC could be impacted by the Court's ruling on Defendants' motion for reconsideration.

Accordingly, for the purpose of this submission, the Parties have negotiated the proposed schedule below based on a "Start Date" for discovery; but the Parties disagree as to when that start date should be. Defendants propose that the Start Date be designated as 14 days following either (i) the day the Abbott Board declines to form a Special Litigation Committee; or (ii) the day the Court denies a motion to stay from the Special Litigation Committee. Defendants further propose that if the SLC moves for a stay and the Court grants the motion, that the Court not set a Start Date at present. Plaintiffs disagree and propose that the Start Date be designated as September 4, 2024, i.e., the date of the Parties' initial Rule 26(f) conference; or (ii) September 18, 2024, the date of the Parties' status conference with the Court.

The Parties jointly propose the following deadlines: (i) the Parties shall make all Rule 26(a)(1) disclosures on or before 30 days following the Start Date; (ii); the Parties shall issue their first set of written discovery requests on or before 30 days following the Start Date; (iii) the Deadline to amend pleadings and join parties shall be 270 days following the Start Date; and (iv) fact discovery shall conclude on or before 360 days from the Start Date.

The Parties anticipate the use of experts.

C. Protective Order

The Parties will meet and confer regarding a stipulated protective order governing the exchange of confidential information, subject to the Court's approval.

D. ESI Discovery

The Parties anticipate ESI discovery in this action and will meet and confer regarding an appropriate proposed stipulated protective order, subject to the Court's approval.

E. Trial

Plaintiffs request a jury trial for the action lasting ten (10) business days, with trial time equally split between the parties. Defendants do not yet have an estimate of the length of trial.

VI. CONSENT AND SETTLEMENT DISCUSSIONS:

Counsel has advised their respective clients of the ability to consent to the jurisdiction of a magistrate judge for this action. The Parties do not consent to do so. The Parties have not had any settlement discussions to date. The Parties may pursue mediation in the future. The Parties do not request a settlement conference with the Court at this time.

VII. OTHER MATTERS

The Parties do not have any further or other matters to present to the Court at this time.

Respectfully submitted,

Dated: September 11, 2024

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