

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LEON MARTIN, derivatively on behalf of
ABBOTT LABORATORIES,

Plaintiff,

v.

ROBERT B. FORD, et al.,

Defendants,

-and-

ABBOTT LABORATORIES,

Nominal Defendant.

Case No. 1:22-cv-05513

District Judge Manish S. Shah

Magistrate Judge Sheila M. Finnegan

**PLAINTIFF DAVID HAMILTON'S RESPONSE IN SUPPORT OF MOTION
TO CONSOLIDATE RELATED CASES AND APPOINT LEAD PLAINTIFF
AND APPROVE LEAD PLAINTIFF'S SELECTION OF CO-LEAD COUNSEL**

INTRODUCTION

On July 14, 2023, Plaintiff David Hamilton (“Hamilton”) in the action captioned *Hamilton v. Ford, et al.*, No. 1:23-cv-02648 moved the Court for an order: (1) consolidating the six factually related shareholder derivative actions pending before this Court on behalf of nominal defendant Abbott Laboratories (“Abbott” or “the Company”); (2) appointing Hamilton as Lead Plaintiff in the consolidated action; and (3) approving Hamilton’s selection of Willem F. Jonckheer of Schubert Jonckheer & Kolbe LLP (the “Schubert Firm”) and Kimberly A. Justice of Freed Kanner London & Millen LLC (“Freed Kanner”) as Co-Lead Counsel. (Doc. No. 67).

Three other motions seeking appointment of lead plaintiff and lead counsel in the consolidated action were filed by plaintiffs (1) Matthew Steele and Ilene Lippman (“Steele”) (Doc. No. 66), (2) the New York State Common Retirement Fund (“NYSCRF”) (Doc. No. 68), and (3) the International Brotherhood of Teamsters Local No. 710 Pension Fund and the Southeastern Pennsylvania Transportation Authority (“Teamsters/SEPTA”) (Doc. No. 72).

Hamilton believes that he satisfies the requirements to be appointed lead plaintiff, and that his selection of lead counsel should be approved, under the guiding factors set forth in *Dollens v. Zions*, 2001 U.S. Dist. LEXIS 19966, at *19 (N.D. Ill. Dec. 4, 2001). As reflected in his declaration, Hamilton is a long-term stockholder and a well-informed investor with prior experience as a shareholder plaintiff. Hamilton retained highly experienced counsel to represent him, performed an inspection demand of Abbott’s internal records under Illinois law, and filed the first complaint in this District with allegations supported by those records. Hamilton understands his duties and responsibilities and will be an effective advocate for Abbott’s stockholders.

Having compared the motions filed by Steele, NYSCRF, and Teamsters/SEPTA, Hamilton recognizes that the institutional shareholders before the Court (NYSCRF and Teamsters/SEPTA)

are motivated stockholders and strong candidates for lead plaintiff. Like Hamilton, institutional shareholders NYSCRF and Teamsters/SEPTA performed inspection demands prior to filing suit and used the documents obtained to bolster their allegations, and have each retained knowledgeable and experienced counsel. Under these circumstances, Hamilton believes that the Court should appoint (1) three co-lead plaintiffs, to include Hamilton, NYSCRF, and one of Teamsters or SEPTA, and (2) three co-lead counsel, to include one attorney currently representing each of these plaintiffs. Steele's motion should be denied in full.

Hamilton believes that this result will ensure vigorous pursuit of the claims and a cross-section of expertise across plaintiffs (including two institutions and Hamilton, a sophisticated individual investor) and their counsel in what will likely be a substantial litigation effort. Hamilton, NYSCRF, and Teamsters/SEPTA are all on a level playing field with access to Abbott's internal documents, and each is represented by successful practitioners in complex shareholder litigation with ample resources who frequently work with co-counsel on large cases like this one. At the same time, the proposed structure is sufficiently small and cohesive to guarantee efficient prosecution of the claims. Hamilton therefore respectfully requests the Court to adopt it.

ARGUMENT

Six factually related shareholder derivative complaints were filed in this Court concerning the problems uncovered at Abbott's Sturgis, Michigan infant formula manufacturing facility in 2022 and remain pending before this Court.¹ Of those six complaints, only three were supported by internal corporate records obtained from Abbott pursuant to the Illinois shareholder inspection statute. These complaints were filed, respectively, by Hamilton (on April 27, 2023), NYSCRF (on June 27, 2023), and Teamsters/SEPTA (on June 27, 2023). Hamilton respectfully submits that the

¹ A seventh action, *Huetteman v. Ford, et al.*, No. 1:23-cv-00296, was filed on January 18, 2023 (without inclusion of inspection demand materials), but voluntarily dismissed on March 30, 2023.

only viable candidates for appointment as lead plaintiff and counsel are Hamilton, NYSCRF, and Teamsters/SEPTA, who each put the time and effort into serving inspection demands and used the resulting information to construct their claims and allegations. Well-supported pleadings are essential in shareholder derivative actions, which are subject to the particularized pleading standard of Rule 23.1 governing the pivotal demand futility question. An adverse ruling on demand futility can be binding on all other shareholders. *See In re Wal-Mart Stores, Inc. Del. Derivative Litig.*, 2016 Del. Ch. LEXIS 75 (Del. Ch. May 13, 2016).

On the May 23, 2023 telephonic status conference, this Court observed the significance of a books and records inspection to crafting a shareholder derivative complaint. *See* May 23, 2023 Hr’g Tr., 4, lines 16-20 (Doc. No. 72-3) (“On the other hand, I think a complaint that does have the benefit of the results of a books and records investigation may very well be different and more substantial than a complaint that doesn’t have the benefit of that information.”). Given Steele’s strategy to file his lawsuit without the benefit of a books and records investigation, the Steele complaint is of inferior quality and potentially jeopardizes the claims, and his motion should be denied in favor of plaintiffs who performed the extra diligence before filing their cases.²

Indeed, whether a plaintiff pursued a pre-suit inspection demand is an important factor in selecting lead counsel. *See N. Miami Beach Gen. Emples. Ret. Fund v. Parkinson*, 2011 U.S. Dist. LEXIS 71736, at *4-5 (N.D. Ill. Jul. 5, 2011) (giving “advantage” to successful movant’s complaint because it included “allegations based on non-public information that [movant] obtained from [nominal defendant] pursuant to its books-and-records inspection rights under 8 Del. Code §

² At the May 23, 2023 conference, the Court cast doubt on Steele’s central argument in his motion to be appointed lead plaintiff that Steele is the only “shareholder of record” before the Court. *Id.* at 3-4, lines 20-25, 1-14. That argument fails for the same reasons the Court identified at the hearing.

220 [the Delaware inspection statute]”); *In re Investors Bancorp, Inc.*, 2016 Del. Ch. LEXIS 123, at *11, *13 (Del. Ch. Aug. 12, 2016) (appointing movants who “utilized documents they obtained in their books and records demands, including board and compensation committee meeting minutes, to provide meaningful, additional factual support for their allegations,” resulting in “superior” complaint compared to movants who relied on public information).

As among the candidates who qualify under the reasoning of the foregoing cases (Hamilton, NYSCRF, and Teamsters/SEPTA), Hamilton recognizes that he has the smallest “financial stake” and is not an institutional shareholder. However, as Hamilton explained in his opening brief, all of the parties’ relative ownership stakes render the inquiry less significant given Abbott’s massive size and market capitalization. In any event, no matter the size of a particular shareholder’s investment, the central inquiry remains which plaintiff is incentivized to litigate and has a track record of doing so. While his investment may be comparatively small in dollar terms, Hamilton has prior experience pursuing derivative claims on behalf of a large public company, and has pursued the claims here with equal (or more) vigor as compared to the institutional plaintiffs, filing the first complaint in this Court supported by Abbott’s internal corporate records.

In terms of the quality of the pleadings, each of Hamilton, NYSCRF, and Teamsters/SEPTA has filed a quality pleading because each used the inspection demand process to obtain evidence in support of their claims, and their complaints each cite to it extensively. Hamilton believes that his complaint is superior, including in its clarity, economy, and organization. Regardless of any differences, each of the complaints alleges well-pled legal theories seeking to hold Abbott’s current and former officers and directors liable for their persistent breaches of fiduciary duty and other violations in connection with the Company’s Sturgis, Michigan infant formula production facility. Among other things, each of the complaints describes

a coherent factual narrative, makes diligent use of the inspection demand materials, alleges persuasive arguments in support of demand futility, and concisely alleges the harm suffered and to be suffered by Abbott. Any stylistic differences are not a basis to choose among otherwise adequate shareholders. *SEPTA v. Rubin*, 2011 Del. Ch. LEXIS 67, at *5 (Del. Ch. Apr. 29, 2011) (pleading differences may represent “strategic choices”). These differences can be ironed out when the plaintiffs work together to file a consolidated complaint. Indeed, following consolidation, Hamilton’s proposed three-way co-lead plaintiff and co-lead counsel structure will ensure that all views and perspectives are considered when the operative pleading is filed.

Finally, all counsel proposed by Hamilton, NYSCRF, and Teamsters/SEPTA are competent firms, and Hamilton’s counsel (the Schubert Firm and Freed Kanner) have worked together with NYSCRF’s counsel and Teamsters/SEPTA’s counsel on prior occasions on different types of complex litigation. The motions filed by NYSCRF and Teamsters/SEPTA demonstrate that their counsel frequently work with other firms to achieve successful results, as is common in complex litigation. According to their motion, Teamsters/SEPTA’s counsel, Cohen Milstein Sellers & Toll PLLC and Scott+Scott Attorneys at Law LLP, have worked with co-counsel on multiple successful derivative cases. Similarly, NYSCRF features The Boeing Company derivative litigation in Delaware Court of Chancery as an example of its success, a case in which NYSCRF was co-lead plaintiff and its counsel, Lief Cabraser Heimann & Bernstein, LLP, was co-lead counsel. Hamilton believes the leadership structure he proposes will contribute to the best possible result for Abbott’s shareholders.

CONCLUSION

For the reasons stated, the Court should appoint (1) Hamilton, NYSCRF, and either Teamsters or SEPTA as co-lead plaintiffs, and (2) one attorney from a law firm currently

representing each plaintiff as co-lead counsel. Hamilton and his counsel will work constructively with other plaintiffs and counsel in whatever organization the Court orders.

Dated: July 28, 2023

Respectfully Submitted,

By: /s/ Kimberly A. Justice

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