

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: CARDINAL HEALTH, INC. : Case No. C2-04-643
ERISA LITIGATION :
: Judge Marbley
: ; Magistrate Judge King
: ORAL ARGUMENT REQUESTED

**DEFENDANT RICHARD J. MILLER'S MOTION TO DISMISS
THE CONSOLIDATED AMENDED ERISA COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Local Rule 7.1 of the United States District Court for the Southern District of Ohio and applicable law, defendant Richard J. Miller hereby moves to dismiss with prejudice the Consolidated Amended ERISA Complaint. The basis for this motion is set forth in the attached memorandum.

Given the complexity of the legal issues and nature of plaintiffs' claims, Mr. Miller respectfully requests oral argument on the issues raised in this motion pursuant to Local Rule 7.1(b)(2).

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF DEFENDANT RICHARD J. MILLER'S
MOTION TO DISMISS THE CONSOLIDATED AMENDED ERISA COMPLAINT**

Defendant Richard J. Miller joins in the arguments, to the extent applicable to Mr. Miller, set forth in the motion to dismiss the Consolidated Amended ERISA Complaint (“Complaint”) made by defendants Cardinal Health, Inc. (“Cardinal”), Cardinal Employee Benefits Policy Committee, Paul Williams, Donna Brandin, Anthony J. Rucci, Carole Watkins, Susan Nelson, Robert D. Walter, William E. Bindley, Dave Bing, George H. Conrades, John F. Finn, Robert L. Gerbig, John F. Havens, J. Michael Losh, John B. McCoy, Richard C. Notebaert, Michael D. O'Halleran, David W. Raisbeck, Jean G. Spaulding, M.D. and Matthew D. Walter (hereinafter, the “Cardinal Defendants”), and Mr. Miller hereby incorporates the Cardinal Defendants’ motion by reference.

Mr. Miller joins in full the Cardinal Defendants’ arguments that (i) monetary damages claims are not allowed under ERISA Section 502(a)(3); (ii) Count I of the Complaint fails to state a claim because the Complaint does not allege an abuse of discretion in offering Cardinal stock as an investment option; (iii) plaintiffs fail to plead proximate causation in Count II; (iv) Count II fails because plaintiffs have not pleaded actual reliance on any specific alleged misstatements; and (v) the Complaint fails to state a claim for co-fiduciary liability.

With respect to Count II and the argument raised in section IV.E of the memorandum in support of the Cardinal Defendants’ motion, Mr. Miller recognizes that the Complaint alleges that Mr. Miller was the Chief Financial Officer and Principal Accounting Officer and a signatory on Form 11-K annual reports of the Cardinal 401(k) Savings Plan. Compl. ¶ 13. Nonetheless, the Complaint fails to provide any specific allegations to support the conclusory assertions that Mr. Miller knew or should have known that Cardinal’s SEC filings contained erroneous financial information or otherwise omitted “material adverse information.” *See* Compl. ¶¶ 22, 94, 97.

Plaintiffs allege that Cardinal subsequently restated and/or reclassified certain financial information and describe in conclusory fashion the alleged accounting improprieties (*see* ¶¶ 78-84), but they nowhere allege how Mr. Miller was involved in or aware of the relevant practices or that he knew or should have known that they were improper or incorrect. In short, the Complaint fails to raise any inference that Mr. Miller, or anyone else, participated in negligent misrepresentations or omissions.

Conclusion

For the reasons set forth in this motion and in the motion of the Cardinal Defendants, defendant Richard J. Miller respectfully requests that the Court dismiss with prejudice all claims asserted against him in the Consolidated Amended ERISA Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DEFENDANT RICHARD J. MILLER'S MOTION TO DISMISS THE CONSOLIDATED AMENDED ERISA COMPLAINT was electronically filed with the Clerk of this Court by use of the CM/ECF system, and also served via first-class mail, postage prepaid, this 22nd day of August, 2005, upon the following counsel of record:

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