

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

IN RE: CARDINAL HEALTH, INC.  
ERISA LITIGATION

) Case No. C2-04-643

)

) Judge Marbley

)

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) ORAL ARGUMENT REQUESTED

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

Defendant Richard J. Miller joins in and adopts the arguments, to the extent applicable to Mr. Miller, set forth in the reply memorandum in further support of 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' reply memorandum by reference. The relevant arguments raised in the Cardinal Defendants' reply memorandum apply with equal force to Mr. Miller and warrant the dismissal of all claims brought against Mr. Miller.

Mr. Miller joins in full the Cardinal Defendants' arguments that (i) monetary damages claims are not allowed under ERISA Section 502(a)(3); (ii) plaintiffs' imprudence claim fails as a matter of law; (iii) plaintiffs have failed to adequately plead loss causation in Count II; (iv)

Count II fails because plaintiffs have not pleaded actual reliance on any specific alleged misstatements; and (v) plaintiffs' co-fiduciary liability claims fail as a matter of law because the allegations in the complaint do not put defendants sufficiently on notice of the claims asserted against them.

**Conclusion**

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For the reasons set forth in this reply memorandum, Mr. Miller's opening memorandum, and the motion and supporting memoranda 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,

/s/ Roger P. Sugarman  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing REPLY MEMORANDUM IN SUPPORT OF 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, which will send notification of such filing to registered counsel electronically. Pursuant to that notification, a true and correct copy of the foregoing was mailed postage prepaid, this 10th day of November, 2005, to any party or counsel not receiving electronic service.

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/s/ Roger P. Sugarman  
Roger P. Sugarman