

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

_____	X	
	:	No. C2-04-643
In re Cardinal Health, Inc.	:	
ERISA Litigation	:	Judge Marbley
	:	
_____	λ	Magistrate Judge King

**CONSOLIDATED AMENDED ERISA COMPLAINT
AND JURY DEMAND**

Lead Plaintiffs David L. McKeehan, James A. Syracuse and Timothy E. Ferguson, on behalf of themselves (hereinafter collectively “Plaintiffs”) and all other persons similarly situated (hereinafter the “Participants”), and on behalf of the Cardinal Health 401(k) Savings Plan (together with its predecessors,¹ the “Plan”), by their attorneys, allege the following for their Consolidated Amended ERISA Complaint (the “Complaint”):

¹ The “Plan” as used herein, includes the Cardinal Health Profit Sharing, Retirement and Savings Plan, which was amended and restated in its entirety, generally effective as of January 1, 2005, and renamed the Cardinal Health 401(k) Savings Plan. The “Plan” as used herein also includes all eligible individual account plans which have been merged into the Cardinal Health 401(k) Savings Plan at times relevant to this Complaint, including but not limited to 401(k) defined contribution retirement plans of the following employer entities:

- Allegiance Corporation
- Bindley Western Industries, Inc.
- Automatic Liquid Packaging, Inc.
- Pacific Surgical Innovations, Inc.
- Ransdell Surgical, Inc.
- International Processing Corp.
- American Threshold Industries, Inc.
- Premier Pharmacy Services, P.C.
- Beckloff Associates, LLC
- Snowden Pencer, Inc.

See Cardinal Health 401(k) Savings Plan, Amended and Restated Effective as of January 1, 2005 (CARDINAL-ERISA 000007) (Documents which have been produced to Plaintiffs’ counsel in this action pursuant to ERISA § 104(b)(4) are identified are (“CARDINAL-ERISA _____”).

NATURE OF THE ACTION

1. Plaintiffs are or were Participants in the Plan and bring this action for Plan-wide relief on behalf of the Plan, and on behalf of a class of all Participants in the Plan (“the Class”) for whose individual accounts the Plan purchased and/or held shares of the Employer Common Stock Fund (hereinafter the “Fund” or “stock”), a fund comprised primarily of common stock of Cardinal Health, Inc. (hereinafter “Cardinal Health” or the “Company”) **at any time from October 24, 2000 to the present (the “Class Period”).**² Excluded from the Class are Defendants herein, directors of Defendant Cardinal Health, members of their immediate families, and the heirs, successors or assigns of any of the foregoing. Plaintiffs bring this action on behalf of the Plan and the Class pursuant to §502(a)(2) and (3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §1132(a)(2) and (3).

2. As more fully set forth below, Defendants breached their fiduciary duties to the Plan and the Participants, including those fiduciary duties set forth in ERISA §404, 29 U.S.C. §1104, and Department of Labor Regulations, 29 C.F.R. 2550. Defendants breached their fiduciary duties to the Plan and the Participants in three principal ways, which are set out in three separate counts of this Complaint. Count I alleges that all Defendants negligently permitted the Plan to purchase and hold shares of common stock of the Company when it was imprudent to do so; Count II alleges that all Defendants except the Trustee Defendant (as defined herein) failed to disclose material facts to the Plan and the Participants in connection with the management of Plan assets; and Count III alleges that the Company and the Director Defendants (as defined herein) failed in their duty to monitor the

²In certain of the Plan documents, the Employer Common Stock Fund is referred to as the “Cardinal Stock Fund.” Summary Plan Description and Prospectus dated January 1, 2005 (CARDINAL-ERISA 000954, 955). The terms “Employer Common Stock Fund” and “Cardinal Stock Fund” are used interchangeably in this complaint.

performance of, and properly inform, the fiduciaries whom they appointed for the purpose of administering the Plan.

3. As a result of Defendants' actions and inactions, the Plan and the Participants suffered substantial losses. The assets of the Plan, to the extent the assets consisted of Cardinal Health common stock, lost a substantial portion of their value during the Class Period and the Plan and the Participants have been deprived of the value of prudent alternative investments.

JURISDICTION AND VENUE

4. Plaintiffs' claims arise under and pursuant to ERISA §502, 29 U.S.C. §1132.

5. This Court has jurisdiction over this action pursuant to ERISA §502(e)(1), 29 U.S.C. §1132(e)(1).

6. Venue is proper in this District pursuant to ERISA §502(e)(2), 29 U.S.C. §1132(e)(2), because this is the district where the Plan are administered, where the breaches took place and where one or more Defendants reside or may be found.

PARTIES

Plaintiffs

7. Lead Plaintiff David L. McKeehan is a resident of the State of Illinois and was at all relevant times a Participant in the Plan within the meaning of ERISA §3(7), 29 U.S.C. §1002(7).

8. Lead Plaintiff James A. Syracuse is a resident of the State of New York and was at all relevant times a Participant in the Plan within the meaning of ERISA §3(7), 29 U.S.C. §1002(7).

9. Lead Plaintiff Timothy E. Ferguson is a resident of the State of Florida and was at all relevant times a Participant in the Plan within the meaning of ERISA §3(7), 29 U.S.C. §1002(7).

Defendants

The Company

10. Defendant Cardinal Health is an Ohio corporation with its principal executive offices located at 7000 Cardinal Place, Dublin, Ohio 43017.

11. Cardinal Health is engaged in the wholesale pharmaceuticals business.

Committee Defendants

12. Defendant Employee Benefits Policy Committee (“Plan Committee”) was a committee of Cardinal employees that participated with Cardinal in administering the Plan during the Class Period. (CARDINAL-ERISA 000301 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000111 (July 1, 2002 Amended and Restated Plan))³

13. At all times relevant to this Complaint, Defendant Richard J. Miller (“Miller”) was the Company’s Chief Financial Officer, Executive Vice President and Principal Accounting Officer. In addition, Miller was a member of the Plan Committee. Defendant Miller also signed most or all of the Form 11-K Annual Reports of the Plan during the Class Period, including the Plan’s Form 11-K Annual Report for the fiscal year ended December 31, 2003, which was filed with the SEC on or about June 28, 2004.

³ From the Plan documents effective in 2002 and earlier during the Class Period, the committee which participated with Cardinal in administering the Plan was officially named the “Employee Benefits Policy Committee.” Later in the Class Period it appears that the functions and responsibilities of the Employee Benefits Policy Committee were reallocated to and among committees denominated the “Financial Benefit Plans Committee” and the “Cardinal Health, Inc. Benefits Policy Committee.” (See Cardinal Health 401(k) Savings Plan, Amended and Effective as of January 1, 2005, Sections 1.03 and 1.33 (CARDINAL-ERISA 000008, 000014).

In this Complaint Plaintiffs intend to assert claims against the Employee Benefits Policy Committee and, to the extent the functions and responsibilities of the Employee Benefits Policy Committee were reallocated to other committees during the Class Period, such other additional committees.

14. At certain times relevant to this Complaint, Defendant Richard C. Adloff (“Adloff”) was a member of the Plan Committee. Among other things, Defendant Adloff signed one of the amendments to the Plan on February 12, 2002 (CARDINAL-ERISA 000626).

15. At certain times relevant to this Complaint, Defendant Paul Williams (“Williams”) was a member of the Plan Committee. Among other things, Defendant Williams signed one of the amendments to the Plan on February 12, 2002 (CARDINAL-ERISA 000626).

16. At certain times relevant to this Complaint, Defendant Donna Brandin (“Brandin”) was a member of the Plan Committee. Among other things, Defendant Brandin signed one of the amendments to the Plan on February 12, 2002 (CARDINAL-ERISA 000626).

17. At certain times relevant to this Complaint, Defendant Anthony J. Rucci (“Rucci”) was a member of the Plan Committee. Among other things, Defendant Rucci signed one of the amendments to the Plan on February 12, 2002 (CARDINAL-ERISA 000626).

18. At certain times relevant to this Complaint, Defendant Steven Alan Bennett (“Bennett”) was a member of the Plan Committee. Among other things, Defendant Bennett signed one of the amendments to the Plan on June 30, 2000 (CARDINAL-ERISA 000760).

19. At certain times relevant to this Complaint, Defendant Carole Watkins (“Watkins”) was a member of the Plan Committee. Among other things, Defendant Watkins signed one of the amendments to the Plan on February 12, 2002 (CARDINAL-ERISA 000626). Defendant Watkins served as Cardinal Health’s Executive Vice President of Human Resources at least as of August 2003 and thus during the Class Period (CARDINAL-ERISA 000285).

20. At certain times relevant to this Complaint, Defendant Susan Nelson (“Nelson”) was Cardinal Health’s Vice President of Compensation and Benefits (CARDINAL-ERISA 000288).

Defendant Nelson also served as Secretary of the Plan Committee as of June 2004 and December 2004 (CARDINAL-ERISA 000291, 000293).

21. Defendants Plan Committee, Miller, Adloff, Williams, Brandin, Rucci, Bennett, Watkins and Nelson are hereinafter referred to as the “Committee Defendants.” Liability is asserted herein against these defendants only for such periods of time during which such person was a member of the Plan Committee or otherwise acted as a fiduciary of the Plan.

22. Upon information and belief, because of their senior positions with Cardinal, Defendants Miller, Adloff, Williams, Brandin, Rucci, Bennett, Watkins and Nelson, and therefore, the Plan Committee itself, knew or should have known the undisclosed material adverse information set forth below.

Director Defendants

23. At certain times relevant to this Complaint, Defendant Robert D. Walter (“Walter”) served as the Company’s Chairman and Chief Executive Officer.

24. At certain times relevant to this Complaint, Defendant William E. Bindley (“Bindley”) served as a member of the Board of Directors of Cardinal Health.

25. At certain times relevant to this Complaint, Defendant Dave Bing (“Bing”) served as a member of the Board of Directors of Cardinal Health.

26. At certain times relevant to this Complaint, Defendant George H. Conrades (“Conrades”) served as a member of the Board of Directors of Cardinal Health.

27. At certain times relevant to this Complaint, Defendant John F. Finn (“Finn”) served as a member of the Board of Directors of Cardinal Health.

28. At certain times relevant to this Complaint, Defendant Robert L. Gerbig (“Gerbig”) served as a member of the Board of Directors of Cardinal Health.

29. At certain times relevant to this Complaint, Defendant John F. Havens (“Havens”) served as a member of the Board of Directors of Cardinal Health.

30. At certain times relevant to this Complaint, Defendant J. Michael Losh (“Losh”) served as a member of the Board of Directors of Cardinal Health.

31. At certain times relevant to this Complaint, Defendant John B. McCoy (“McCoy”) served as a member of the Board of Directors of Cardinal Health.

32. At certain times relevant to this Complaint, Defendant Richard C. Notebaert (“Notebaert”) served as a member of the Board of Directors of Cardinal Health.

33. At certain times relevant to this Complaint, Defendant Michael D. O’Halloran (“Halloran”) served as a member of the Board of Directors of Cardinal Health.

34. At certain times relevant to this Complaint, Defendant David W. Raisbeck (“Raisbeck”) served as a member of the Board of Directors of Cardinal Health.

35. At certain times relevant to this Complaint, Defendant Jean G. Spaulding, M.D. (“Spaulding”) served as a member of the Board of Directors of Cardinal Health.

36. At certain times relevant to this Complaint, Defendant Matthew D. Walter (“Matthew Walter”) served as a member of the Board of Directors of Cardinal Health.

37. Defendants Walter, Bindley, Bing, Conrades, Finn, Gerbig, Havens, Losh, McCoy, Notebaert, O’Halloran, Raisbeck, Spaulding and Matthew Walter are hereinafter referred to as the “Director Defendants.”

38. Liability is asserted herein against the Director Defendants only for such periods of time during which such person was a member of the Board of Directors of the Company or otherwise acted as a fiduciary of the Plan.

Trustee Defendant

39. Putnam Fiduciary Trust Company (“Putnam”) is a trust company which served as the trustee of the Plan during the Class Period until December of 2004. Defendant Putnam is sometimes herein referred to as the “Trustee Defendant.” Liability is only asserted herein against Putnam for such periods of time during which Putnam served as the trustee of the Plan or otherwise acted as a fiduciary with respect to the Plan.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this action in part as a class action pursuant to Rules 23(a) and (b)(1), (b)(2) and (3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all Participants in the Plan for whose individual accounts the Plan purchased and/or held shares of **common stock of the Company from October 24, 2000 to the present.** Excluded from the Class are Defendants herein, directors of the Company, members of their immediate families, and the heirs, successors or assigns of any of the foregoing.

41. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe there are, at a minimum, thousands of members of the Class. The Plan’s Form 5500 Annual Reports for the Class Period indicate that the Plan had over 30,000 Participants at one time during the Class Period, and it is reasonable to believe that many of these Participants held common stock of the Company in their individual accounts under the Plan.

42. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether Defendants were fiduciaries of the Plan and/or the Participants;
- b. whether Defendants breached their fiduciary duties;
- c. whether the Plan and the Participants were injured by such breaches; and
- d. whether the Class is entitled to appropriate equitable and/or injunctive relief.

43. Plaintiffs' claims are typical of the claims of the members of the Class, as Plaintiffs and members of the Class sustained injury arising out of Defendants' wrongful conduct in breaching their fiduciary duties and violating ERISA as complained of herein.

44. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained competent counsel. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

45. Prosecution of separate actions by members of the Class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

46. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, because the injury suffered by the individual Class members may be relatively small, the expense and burden of individual litigation makes it impracticable for the Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

DESCRIPTION OF THE PLAN

47. The Plan is an employee benefit plan within the meaning of ERISA §§3(3) and 3(2)(A), 29 U.S.C. §§1002(3) and 1002(2)(A).

48. The Plan is a “defined contribution” or “individual account” plan within the meaning of ERISA §3(34), 29 U.S.C. §1002(34), in that the Plan provides for individual accounts for each Participant and for benefits based solely upon the amount contributed to the Participant’s account, and any income, expenses, gains and losses, and any forfeitures of accounts of other Participants which may be allocated to such Participant’s accounts. Consequently, retirement benefits provided by the Plan are based solely on the amounts allocated to each individual’s account.

49. The Plan is a “401(k)” voluntary contribution plan whereby Participants direct the Plan to purchase investments from among the several investment options available in the Plan and allocate them to Participants’ individual accounts.

50. Participants were permitted to contribute from one percent to five percent of their eligible compensation to the Plan.

51. Under the Plan, Cardinal could contribute discretionary matching and profit-sharing contributions to be invested by the Plan.

52. Under the Plan, any company matching or other employer contribution would be invested in the same funds chosen by the Participant for the Participant’s contributions (CARDINAL-ERISA 000951). Accordingly, if the Participant selected the Fund for his entire retirement contribution option, all of Cardinal Health’s matching and employer contribution(s) would also be invested in the Fund, and thus invested almost entirely in Cardinal Health common stock.

ALL DEFENDANTS WERE FIDUCIARIES

53. As more fully alleged below, at all times relevant to this Complaint, Defendants were fiduciaries of the Plan because they were so named and/or because they exercised authority or control respecting management or disposition of the Plan's assets or had discretionary authority or responsibility in the administration or management of the Plan. ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). In that regard, a person is a fiduciary even if a plan does not name him as such or by its terms assign fiduciary duties to him where by his conduct he engages in fiduciary activities. The test for whether a person is a fiduciary is functional and based on actual conduct. Those who have control over management of a plan or plan assets are fiduciaries regardless of the labels or duties assigned to them by the language of a plan. Moreover, in order to fulfill the express remedial purpose of ERISA, the definition of "fiduciary" is to be construed broadly.

The Company Was A Fiduciary of the Plan

54. Defendant Cardinal Health was the named fiduciary for the Plan. (CARDINAL-ERISA 000373 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000187 (July 1, 2002 Amended and Restated Plan)). The Company's fiduciary status with respect to the Plan is further demonstrated by the following information from Cardinal's Plan-related documents :

a. "The Company shall have the sole authority to appoint and remove the Trustee and members of the [Plan] Committee . . . [and] shall have the final responsibility for the administration of the Plan, which responsibility is specifically described in this Plan and the Trust, and shall be the 'Plan Administrator' and the named fiduciary." (CARDINAL-ERISA 000373 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000187 (July 1, 2002 Amended and Restated Plan)).

b. The Plan defines “Plan Administrator” as “Cardinal Health, Inc., or the person(s) or entity appointed by Cardinal Health, Inc. to serve as Plan Administrator.” (CARDINAL-ERISA 000307 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000117 (July 1, 2002 Amended and Restated Plan)).

c. The Plan indicates that the Company “reserve[s] the right to change the investment options available under the Plan and rules governing investment designations from time to time.” (CARDINAL-ERISA 000369 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000182 (July 1, 2002 Amended and Restated Plan)).

d. The Plan requires the Company, “within the time prescribed by ERISA and the applicable regulations,” to “furnish all Participants and Beneficiaries a summary description of any material amendment to the Plan or notice of discontinuance of the Plan and all other information required by ERISA to be furnished without charge.” (CARDINAL-ERISA 000369 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000182 (July 1, 2002 Amended and Restated Plan)).

e. The Plan specifically provided that “[i]n no event shall Participants be permitted to direct that such Accounts and/or such additional contributions be invested in the Employer Common Stock Fund until Cardinal Health, Inc, the Plan, the Trustee and all other relevant parties have fully complied with such requirements, including, but not limited to, federal and state securities laws, as the Committee has determined to be applicable.” (CARDINAL-ERISA 000370 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000183 (July 1, 2002 Amended and Restated Plan)). Consequently, the Company exercised discretion over Plan investments in the Fund to the extent that there was compliance with applicable law.

The Committee Defendants Were Fiduciaries of the Plan

55. The Plan's description of the role of the Plan Committee and members of the Plan Committee clearly indicates that the Committee Defendants were also fiduciaries of the Plan:

a. The Plan Committee was described as "the person or persons appointed pursuant to Article X as the Cardinal Health, Inc. Employee Benefits Policy Committee, as from time to time constituted, to assist the Employer in the administration of the Plan in accordance with said Article." (CARDINAL-ERISA 000301 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000111 (July 1, 2002 Amended and Restated Plan)).

b. The Committee, together with the Trustee, was required to "establish rules governing the administration of Investment Funds and procedures for Participant direction of investment." (CARDINAL-ERISA 000369 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000182 (July 1, 2002 Amended and Restated Plan)).

c. The Committee, together with the Company, "reserve[d] the right to change the investment options available under the Plan and rules governing investment designations from time to time." *Id.*

d. The investment of any moneys in accordance with the directions of Plan participants was made "subject to such restrictions as the Committee may determine, in its sole discretion, to be advisable or necessary under the circumstances." (CARDINAL-ERISA 000370 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000183 (July 1, 2002 Amended and Restated Plan)).

e. The Plan specifically provided that "[i]n no event shall Participants be permitted to direct that such Accounts and/or such additional contributions be invested in the Employer Common Stock Fund until Cardinal Health, Inc, the Plan, the Trustee and all other

relevant parties have fully complied with such requirements, including, but not limited to, federal and state securities laws, as the Committee has determined to be applicable.” *Id.* Consequently, the Plan Committee had the duty to determine compliance with and exercised discretion over Plan investment in the Fund to the extent that there was no compliance with applicable law.

f. The Plan additionally empowered the Committee to adopt rules and regulations necessary for the proper and efficient administration of the Plan, and to construe and enforce the terms of the Plan as well as the terms of its rules and regulations. (CARDINAL-ERISA 000374 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000188 (July 1, 2002 Amended and Restated Plan)).

The Director Defendants Were Fiduciaries of the Plan

56. The Director Defendants were also fiduciaries of the Plan because the Plan Committee was required to, and, upon information and belief, did, regularly report to the Board of Directors of Cardinal Health. The Defendant Directors had the power and responsibility to appoint as members of the Plan Committee persons with sufficient education, knowledge and experience to inform themselves as necessary to perform their duties as Plan Committee members, including the duty to evaluate the merits of investment options under the Plan. The Director Defendants also had an ongoing duty to ensure that the persons appointed to the Plan Committee were fully informed and performing their duties properly with respect to the selection of investment options under the Plan and the investment of the assets of the Plan. The role of the Board Defendants is set out in the Plan documents as follows.

57. The Plan indicates that “[a] committee consisting of three or more persons shall be appointed by and serve at the pleasure of the Board to assist in the administration of the Plan. In the event of any vacancies on any Committee, the remaining Committee member(s) then in office shall

constitute the Committee and shall have full power to act and exercise all powers of the Committee as described in this Article X.” (CARDINAL-ERISA 000373 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000187 (July 1, 2002 Amended and Restated Plan)).

58. The Plan further provides that “[t]he Committee may act at a meeting or in writing without a meeting. The Committee may elect one of its members as chairperson, appoint a secretary, who may or may not be a Committee member, and advise the Trustee of all relevant actions. The secretary shall keep a record of all meetings and forward all necessary communications to the Employer, or the Trustee, as appropriate. *Id.* In 2005, this provision was clarified to clearly indicate that the Committee must “*report its activities at least annually to the Human Resources and Compensation Committee of the Board.*” (Emphasis added) (CARDINAL-ERISA 000061-62).

The Trustee Defendant

59. Defendant Putnam was also a fiduciary of the Plan. Under the Plan, the Trust Agreement and ERISA, Putnam was obligated to prevent or preclude Plan investment in Cardinal Health common stock while Cardinal Health common stock was not a prudent investment.

60. Although the Plan authorized the Trustee to offer the Employer Common Stock Fund as an investment option, it did not require it, nor did the Plan documents require Putnam to allow the Plan to invest in Cardinal Health common stock. To the contrary, the Plan and ERISA dictated that Putnam, as trustee, prohibit Plan investment in Cardinal Health common stock when Cardinal Health common stock was not a prudent investment. The obligations imposed on all fiduciaries of the Plan, including the Trustee, trumped any purported obligation to offer Cardinal Health common stock as an investment option under the Plan. *See* Plan Section 9.10 (CARDINAL-ERISA 000063-64).

61. The trust agreement between Cardinal Health and Putnam (CARDINAL-ERISA 000894 *et seq.* dated January 2, 2001) also specifically provides that Putnam may not follow the

requests or instructions of Cardinal Health, the Plan Committee or any other person if “it is clear on the face of such order, request or instruction that the actions to be taken thereunder would be prohibited by the fiduciary duty rules of ERISA or would be contrary to the terms of the Plans or of this Agreement.” (CARDINAL-ERISA 000902 ¶ 10). Thus, Putnam had discretionary authority and was a fiduciary with respect to investments in the Fund.

62. Furthermore, the Plan specifically provided that “[i]n no event shall Participants be permitted to direct that such Accounts and/or such additional contributions be invested in the Employer Common Stock Fund until Cardinal Health, Inc, the Plan, the Trustee and all other relevant parties have fully complied with such requirements, including, but not limited to, federal and state securities laws, as the Committee has determined to be applicable.” *Id.* Consequently, the Trustee exercised discretion over Plan investments in the Fund to the extent that there was noncompliance with applicable law.

63. The Trustee, together with the Committee, was required to “establish rules governing the administration of Investment Funds and procedures for Participant direction of investment.” (CARDINAL-ERISA 000369 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000182 (July 1, 2002 Amended and Restated Plan)).

64. In October, 2003, charges brought by state and federal regulators brought to light certain so-called “market timing” trading activities by Putnam employees within certain Putnam mutual funds. These irregular activities led to the Supplemental Agreement between Cardinal Health and Putnam effective as of March 1, 2004 (CARDINAL-ERISA 000937 *et seq.*) and ultimately led to Putnam being replaced as Plan trustee by Fidelity Management Trust Company. Putnam’s liability is asserted herein only for the period of time in which Putnam served as trustee of

the Plan or otherwise acted as a fiduciary of the Plan, which is believed to be from October 24, 2000 to December 1, 2004.

ERISA AND THE PLAN ITSELF IMPOSE STRICT DUTIES ON ALL FIDUCIARIES

65. Fiduciaries of the Plan are required under ERISA to furnish certain information to Participants. For example, ERISA §101, 29 U.S.C. §1021, requires a plan's administrator to furnish a Summary Plan Description ("SPD") to Participants. ERISA §102, 29 U.S.C. §1022, provides that the SPD must apprise Participants of their rights and obligations under the Plan. The SPD and all information contained or incorporated therein constitute representations in a fiduciary capacity upon which Participants are entitled to rely in determining the identity and responsibilities of fiduciaries under a plan and in making decisions concerning their benefits and investment and management of plan assets allocated to their accounts.

66. Cardinal also incorporated by reference into the Summary Plan Descriptions (SPDs) which it provided to the Participants certain of its filings with the Securities and Exchange Commission, and exercised its discretion in determining the content of those filings. For example, the January 1, 2005 SPD for the Plan states in relevant part that "[t]he SEC allows Cardinal Health to 'incorporate by reference' into this document the information Cardinal Health files with the SEC. This means Cardinal Health can disclose important business, financial and other information in its filings by referring you to the documents containing that information." (CARDINAL-ERISA 000947).

67. Pursuant to ERISA §404, plan fiduciaries have a duty to discharge their duties with respect to the plan prudently and solely in the interests of Participants and Beneficiaries and for the exclusive purpose of providing benefits to Participants and their Beneficiaries. A fiduciary's duties of loyalty and prudence also entail a duty to conduct an independent investigation into, and to

continually monitor, the merits of the investment alternatives in the plan, including employer securities, to ensure that each investment is a suitable and proper option for the plan. The selection, monitoring, and continuation of the investment alternatives under the Plan in this case were subject to the above-described fiduciary duties.

68. Fiduciaries who have the responsibility for appointing other fiduciaries have the further duty under ERISA to monitor the performance of the fiduciaries who are appointed. This duty to monitor requires both informing the appointed fiduciaries of the facts necessary for the appointed fiduciaries to fulfill their responsibilities under ERISA, and involves reviewing the performance of the appointed fiduciaries for compliance with ERISA.

69. Pursuant to ERISA §404(a), 29 U.S.C. §1104(a), the plan fiduciaries had a duty to discharge their duties with respect to the plan with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and of like aims, and to diversify investments in the plan so as to minimize the risk of large losses.

70. Pursuant to ERISA §409(a), 29 U.S.C. §110(a), any fiduciary who breaches any of the responsibilities, obligations or duties imposed by ERISA §404 shall be personally liable to make good to a plan any losses to the plan resulting from each breach and shall be subject to such other equitable and remedial relief as the court may deem appropriate.

71. The Plan recognizes and reinforces the obligations of all of the fiduciaries. It provides that “[i]n performing their duties, all fiduciaries with respect to the Plan shall act solely in the interest of the Participants and their Beneficiaries, and:

- a. For the exclusive purpose of providing benefits to the Participants and their Beneficiaries;

- b. With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;
- c. To the extent a fiduciary possesses and exercises investment responsibilities, by diversifying the investments of the Trust Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- d. In accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of Title I of ERISA.”

(CARDINAL-ERISA 000375-76 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000189-90 (July 1, 2002 Amended and Restated Plan)).

72. Discussing “Allocation of Responsibility among Fiduciaries for Plan and Trust Administration,” the Plan provided that “[e]ach fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of this Plan and the Trust, authorizing or providing for such direction, information or action.” (CARDINAL-ERISA 000373 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000187 (July 1, 2002 Amended and Restated Plan)).

73. The Plan also provided that “[i]n no event shall Participants be permitted to direct that such Accounts and/or such additional contributions be invested in the Employer Common Stock Fund until Cardinal Health, Inc, the Plan, the Trustee and all other relevant parties have fully complied with such requirements, including, but not limited to, federal and state securities laws, as the Committee has determined to be applicable.” (CARDINAL-ERISA 000370 (July 1, 1998 Amended and Restated Plan); CARDINAL-ERISA 000183 (July 1, 2002 Amended and Restated Plan)).

74. Under the Plan, a failure on the part of the Company to comply with federal securities laws relating to the disclosure of the Company’s true financial and operating condition should have

prevented Plan investment in Cardinal Health common stock until Cardinal Health's noncompliance with federal securities laws was corrected. To the extent that Defendants have violated applicable law based on the claims alleged below, they are liable for breach of these terms of the Plan.

75. The Summary Plan Descriptions ("SPDs") which Cardinal Health provided to Participants on a regular basis also acknowledged the duty of Cardinal Health and others to act prudently on behalf of the Participants. For example, the SPD effective January 1, 2001 states:

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Savings Plan. The people who operate the Savings Plan, called "fiduciaries," have a duty to do so prudently and in the interest of you and other Savings Plan participants and beneficiaries.

No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your ERISA rights.

(CARDINAL-ERISA 001031)

76. At certain times during the Class Period, including as of December 31, 2002 and December 31, 2003, the Plan held over \$300 million worth of Company common stock. The Plan was thus substantially invested in Company stock at various times during the Class Period, even though Company stock was not a prudent investment for the Plan for the reasons alleged herein. As of the filing of this Complaint a substantial portion of the value of the Plan's assets has been destroyed, and Defendants are liable for all losses suffered by the Plan and the Participants.

COUNT I (AGAINST ALL DEFENDANTS): DEFENDANTS BREACHED THEIR FIDUCIARY DUTIES BY DESIGNATING THE CARDINAL STOCK FUND AS AN INVESTMENT OPTION, PERMITTING THE PLAN TO INVEST IN THAT FUND, AND PERMITTING THE FUND TO INVEST IN CARDINAL STOCK.

77. Plaintiffs repeat and incorporate into this Count of the Complaint all prior allegations of the Complaint.

78. Cardinal common stock and the Fund were imprudent investments during the Class Period because the price of Cardinal's stock was artificially inflated as a result of undisclosed materially adverse information. Cardinal engaged in accounting improprieties in violation of generally accepted accounting principles which led to an October 2003 informal inquiry, and a May 6, 2004 formal investigation by the SEC, and eventually required the company to restate three years of earnings results.

79. Cardinal improperly recognized \$10 million as operating earnings in the second quarter of fiscal year 2001, and \$12.5 million as operating earnings in the first quarter of fiscal year 2002, amounts which the Company estimated that it would subsequently receive through settlement of outstanding lawsuits against vitamin manufacturers. At the time that the Company posted these operating earnings, the amounts in question had not been paid, nor had a settlement been finalized.

80. Cardinal improperly allocated revenue for the business segment that had traditionally been Cardinal's largest source of revenue – pharmaceutical distribution and provider services.

a. Cardinal's pharmaceutical distribution service involves the purchase of pharmaceuticals from manufacturers such as Pfizer, delivery to a Cardinal warehouse, storage, sale and transportation to retail establishments. For some larger clients, Cardinal transports pharmaceuticals directly from the manufacturer to the client's warehouse without unpacking or repacking the load in any way.

b. Cardinal did not report bulk deliveries of pharmaceuticals from manufacturers shipped directly to customer warehouses without repacking as part of its "operating revenue." Rather, it reported revenues from these shipments separately as "bulk deliveries to customer warehouses." Since profit margins for bulk deliveries were considerably less than those which apply to the rest of Cardinal's pharmaceutical delivery services, "operating revenue" was the more

important benchmark for analysts. Cardinal's disclosed accounting practice was to consider any shipment that was held more than 24 hours as "operating revenue." During the Class Period, Cardinal held up these bulk deliveries for more than 24 hours for the purpose of counting them toward the key operating revenue figure.

81. Towards the end of several reporting periods, notably, the second, third and fourth quarters of fiscal year 2003, and the second quarter of 2004, Cardinal improperly accelerated payment of certain vendors' invoices for the purpose of accelerating its recognition of vendor cash discounts to reduce the reported cost of products sold for the reporting period in question.

82. Cardinal also improperly accelerated its recognition of income from equipment installations by having the installation confirmation documents signed and submitted before installation was complete.

83. Cardinal improperly reported reductions in its reserve accounts, and its inventory and its accounting policy for dividends did not comply with the generally accepted accounting principles.

84. From the time that the Company acquired Syncor in June of 2002, Cardinal Health was also saddled with liabilities resulting from Syncor's systemic illegal payments to doctors and others in violation of the Foreign Corrupt Practices Act.

85. As late as October of 2004 Cardinal remained on Rating Watch Negative by Fitch Ratings. On October 27, 2004 Fitch Ratings published a report stating in relevant part:

Cardinal remains on Rating Watch Negative; however, as the SEC investigations remain open, so does the company's audit committee investigation. Although the company's audit committee investigation is 'substantially complete,' Fitch will continue to monitor for SEC comments and/or actions and monitor for additional accounting discrepancies as the new executive-level positions assume their responsibilities. Additionally, Fitch cites a lack of clarity regarding the ultimate margin effect of the company's transition to a pure fee-for-service model and additional company guidance stating that Cardinal's nondistribution businesses are

also likely to experience margin pressure in fiscal 2005. Cardinal issued back-end loaded guidance of 10% earnings growth for fiscal 2005 but indicated that achieving such results is contingent upon successful implementation of cost containment efforts.

86. Based on the foregoing, Defendants knew or should have known that Cardinal stock and the Fund were not prudent investment options throughout the Class Period. As a result, the Plan should have terminated the Fund and Cardinal stock as investment options, halted the purchase of shares of the Fund and Cardinal stock and disclosed all undisclosed materially adverse information.

87. Because the Defendants knew or should have known that Cardinal stock and the Fund were imprudent investments for, among other reasons, the undisclosed materially adverse information set out above, they breached their fiduciary duties by (a) offering Cardinal stock and the Fund as investment options for the Plan; (b) permitting the Plan and the Fund to purchase shares of Cardinal stock; (c) permitting the Plan to maintain its investment in Cardinal stock and the Fund; and (d) failing to disclose all undisclosed materially adverse information.

88. As a consequence of the Defendants' breaches, the Plan suffered losses.

89. The Defendants are personally liable to make good to the Plan any losses to the Plan resulting from each breach under 29 U.S.C. Section 502(a)(2).

90. Each Defendant is liable for the acts of the other Defendants as a co-fiduciary. Upon information and belief, each Defendant (a) knowingly participated in, or knowingly undertook to conceal the breaches of the other fiduciaries; (b) by virtue of his own breach of fiduciary duty, enabled the other Defendants to breach their fiduciary duties; and/or (c) had knowledge of the other Defendants' breaches and failed to take reasonable steps to remedy them.

91. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. Section 1132(a)(3), the Court should award equitable relief to the class.

COUNT II (AGAINST ALL DEFENDANTS EXCEPT PUTNAM): ALL DEFENDANTS EXCEPT PUTNAM FAILED TO DISCLOSE MATERIAL INFORMATION

92. Plaintiffs repeat and incorporate into this Count of the Complaint all prior allegations of the Complaint.

93. The Company, the Committee Defendants and the Director Defendants failed to disclose complete and accurate information in a fiduciary capacity in Cardinal's Summary Plan Description ("SPD"). These documents were intended to communicate to Participants information necessary for them to manage their retirement benefits under the Plan. The SPD incorporated by reference Cardinal's SEC filings. Consequently, the SEC filings were part of the SPD. Defendants exercised discretion in determining the information contained in the SEC filings to be incorporated into the SPD, and in disseminating the SPD to Participants.

94. The SEC filings which were incorporated into the SPD negligently failed to disclose Cardinal's actual financial results and other information. In particular, Cardinal's Forms 10-k for fiscal years 2001, 2002, and 2003, and its quarterly Forms 10-Q for the periods ending from September 30, 2000 until March 31, 2004, negligently failed to disclose Cardinal's actual revenue and earnings, actual revenue and earnings growth, accounting irregularities, violations of generally accepted accounting principles, and other undisclosed materially adverse information, as alleged above and incorporated herein by reference.

95. Defendants breached their fiduciary duties by failing to provide to the Plan and Participants complete, accurate and material information necessary for Participants to make decisions concerning the prudence of directing the Plan to invest in the Fund.

96. The SPD and all information contained or incorporated therein constitutes representations in a fiduciary capacity upon which the Plan, the Plaintiffs and the Participants are

and were entitled to rely in determining the identity and responsibilities of fiduciaries under the Plan and in making decisions concerning their benefits and investment and management of Plan assets. Plaintiffs, the Plan and the Participants relied upon, and are presumed to have relied upon, the representations and nondisclosures of the Defendants named in this Count to their detriment.

97. As a consequence of the foregoing negligent nondisclosures, Defendants also breached their fiduciary duties in that they failed to provide the Plan and the Participants with an adequate description of the risk and return characteristics of Cardinal stock and the Fund.

98. As a consequence of the Defendants' breaches, the Plan suffered losses.

99. The Defendants are liable to personally make good to the Plan any losses to the Plan resulting from each breach under 29 U.S.C. Section 502(a)(2).

100. Each Defendant is liable for the acts of the other Defendants as a co-fiduciary. Upon information and belief, each Defendant (a) knowingly participated in, or knowingly undertook to conceal the breaches of the other fiduciaries; (b) by virtue of his own breach of fiduciary duty, enabled the other Defendants to breach their fiduciary duties; and/or (c) had knowledge of the other Defendants' breaches and failed to take reasonable steps to remedy them.

101. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. Section 1132(a)(3), the Court should award equitable relief to the class.

COUNT III (AGAINST THE COMPANY AND THE DIRECTOR DEFENDANTS)

102. Plaintiffs repeat and incorporate into this Count of the Complaint all prior allegations of the Complaint.

103. The Director Defendants were responsible as fiduciaries for the appointment of the Plan Committee. CARDINAL-ERISA 000373 (July 1, 1998 Amended and Restated Plan); 000187 (July 1, 2002 Amended and Restated Plan).

104. The Director Defendants had a fiduciary duty to appoint as members of the Plan Committee persons with sufficient education, knowledge and experience to inform themselves as necessary to perform their duties as Plan Committee members, including the duty to evaluate the merits of investment options under the Plan, and had an ongoing fiduciary duty to ensure that the persons appointed to the Plan Committee were fully informed and performing their duties properly with respect to the selection of investment options under the Plan and the investment of the assets of the Plan.

105. Based on information that members of the Board knew or should have known, the members of the Plan Committee were *not* performing their duties properly during the Class Period, because they continued to permit investment in the Fund, and continued to allow the Fund to be invested in Cardinal common stock, when such investments were imprudent, for the reasons set forth in Count I.

106. The Director Defendants took no action to ensure that the members of the Plan Committee properly carried out their fiduciary duties with respect to the administration of the Plan. Accordingly, the Director Defendants breached their own fiduciary duty toward the Plan.

107. As a consequence of the Defendants' breaches, the Plan suffered losses.

108. The Director Defendants are liable to personally make good to the Plan any losses to the Plan resulting from each breach under 29 U.S.C. Section 502(a)(2).

109. The Company is liable for the Director Defendants' breaches of fiduciary duty in connection with the Director Defendants' failures to properly appoint, monitor and inform the fiduciaries whom they appointed under the doctrine of *respondeat superior*.

110. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. Section 1132(a)(3), the Court should award equitable relief to the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

A. A Declaration that the Defendants, and each of them, have breached their ERISA fiduciary duties to the Participants;

B. An Order compelling the Defendants to make good to the Plan all losses to the Plan resulting from Defendants' breaches of their fiduciary duties, including losses to the Plan resulting from imprudent investment of the Plan's assets, and to restore to the Plan all profits the Defendants made through use of the Plan's assets, and to restore to the Plan all profits which the Participants would have made if the Defendants had fulfilled their fiduciary obligations;

C. Imposition of a Constructive Trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plan as the result of breaches of fiduciary duty;

D. An Order enjoining Defendants, and each of them, from any further violations of their ERISA fiduciary obligations;

E. Actual damages in the amount of any losses the Plan suffered, to be allocated among the Participants' individual accounts in proportion to the accounts' losses;

F. Equitable relief;

G. Costs pursuant to 29 U.S.C. §1132(g);

H. Attorneys' fees pursuant to 29 U.S.C. §1132(g) and the common fund doctrine; and

I. Such other relief as the Court may deem equitable and just.

JURY DEMAND

Plaintiffs demand trial by jury of all issues so triable.

DATED: April 29, 2005

Respectfully submitted,

**CLARK, PERDUE, ARNOLD
& SCOTT CO., L.P.A.**

By: /s/ James E. Arnold _____

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