

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**GARY SPANO, JOHN BUNK,  
MARLENE WHITE, DOUGLAS  
PETERMAN, and KENNETH GRIFFIN,  
as representatives of a class of similarly  
situated persons, and on behalf of the  
Plan,**

**Plaintiffs,**

**vs.**

**Case No. 06-CV-743-NJR-DGW**

**THE BOEING COMPANY, EMPLOYEE  
BENEFITS PLANS COMMITTEE,  
SCOTT BUCHANAN, and EMPLOYEE  
BENEFITS INVESTMENT  
COMMITTEE,**

**Defendants.**

**FINAL APPROVAL ORDER AND JUDGMENT**

**ROSENSTENGEL, District Judge:**

Pending before the Court is the Settling Parties’ joint motion for final approval of the settlement of this action (the “Class Action”) pursuant to the terms of the Class Action Settlement Agreement dated November 4, 2015 (the “Settlement Agreement”). On November 18, 2015, the Court preliminarily approved the Settlement Agreement (Doc. 558). On March 30, 2016, the Court held a Final Fairness Hearing, at which all interested persons were given an opportunity to be heard. The Court has read and considered all submissions made in connection with the Settlement Agreement, including statements made in open court at the Final Fairness Hearing.

The Court hereby **ORDERS** and **ADJUDGES** as follows:

1. For purposes of this Final Approval Order and Judgment, the following terms have the meanings listed:

1.1 “Defendants” means (a) The Boeing Company, (b) The Boeing Company’s Employee Benefits Plans Committee, (c) The Boeing Company’s Employee Benefits Investment Committee, and (d) Scott M. Buchanan.

1.2 “Plan” means the Boeing Company Voluntary Investment Plan, a 401(k) Plan sponsored by Defendant The Boeing Company.

1.3 “Released Parties” means (a) each Defendant, (b) each Defendant’s past, present, and future parent corporation(s), (c) each Defendant’s **past, present, and future** affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns, **and (d) with respect to (a) through (c) above, all of their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, assigns, administrators, service providers, subcontractors, officers, directors, partners, agents, managers, members, employees, independent contractors, representatives, attorneys, other persons serving in fiduciary functions (with the exception of the Independent Fiduciary), insurers, co-insurers, reinsurers, shareholders, accountants, auditors, advisors, consultants, trustees, associates, and all persons acting under, by, through, or in concert with any of them.**

1.4 “Released Claims” means, as defined in Section 2.42 of the Settlement Agreement, any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action:

(a) That were asserted in the Class Action, or that arise out of the conduct alleged in any Complaint filed in this action, whether or not pleaded in the Second Amended Complaint;

(b) That relate to: (1) the selection, oversight, retention, or performance of the Plan’s investment options and service providers, (2) fees, costs, or expenses charged to, paid, or reimbursed by the Plan, or (3) disclosures or failures to disclose information regarding the Plan’s investment options or service providers;

(c) That would be barred by the principle of *res judicata* based on the entry of the Final Approval Order;

(d) That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any member of the Settlement Class pursuant to the Plan of Allocation; or

(e) That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

“Released Claims” specifically exclude claims of denial of benefits or labor or employment claims, including but not limited to employment discrimination or wrongful termination and claims arising from conduct outside of the Class Period.

1.5 “Settling Parties” means the Defendants and the Class Representatives, on behalf of themselves and each of the Class Members.

2. In accordance with the Court’s Preliminary Approval Order (Doc. 558), notice was timely distributed by first-class mail to all Class Members who could be identified with reasonable effort, and notice was timely published on the Settlement Website maintained by Class Counsel. In addition, pursuant to the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.*, notice was provided to the Attorney General for each of the states in which a Class Member resides, the Attorney General of the United States, and the United States Secretary of Labor.

3. The form and methods of notifying the Class Members of the terms and conditions of the proposed Settlement Agreement met the requirements of Federal Rule of Civil Procedure 23(c)(2), any other applicable law, and due process, and constituted the best notice practicable under the circumstances. Due and sufficient notices of the Final Fairness Hearing and the rights of all Class Members have been provided to all people, powers, and entities entitled to notice.

4. All requirements of the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.*, have been met.

5. Class Members had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.

6. Nine Class Members out of more than 244,000 Class Members filed objections with the Court (*see* Docs. 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 576).<sup>1</sup> For the reasons expressed on the record at the hearing on March 30, 2016, each objection to the settlement is **OVERRULED with prejudice**.

7. The motion for final approval of the Settlement Agreement (Doc. 577) is **GRANTED**, the settlement of the Class Action is **APPROVED** as fair, reasonable, and adequate to the Plan and the Class, and the Settling Parties are directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

8. The operative complaint and all claims asserted therein are **DISMISSED with prejudice** and without costs to any of the Settling Parties other than as provided for in the Settlement Agreement.

9. The Plan, the Class and the Sub-Classes (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors and assigns) on behalf of the Plan, fully, finally and forever settle, release, relinquish, waive and discharge Defendants and Released Parties from Released Claims, whether or not such Class Members have executed and delivered

---

<sup>1</sup> As noted at the Final Fairness Hearing, the objection filed by Thomas Francis Wilson (Doc. 576) was withdrawn (*see* Docs. 585, 586).

a Former Participant Claim Form, whether or not such Class Members have filed an objection to the Settlement, to any application by Class Counsel for an award of attorneys' fees and costs, or to any award of compensation to Class Representatives, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

10. The Class Members and the Plan acting individually or together, or in combination with others, are barred from suing or seeking to institute, maintain, prosecute, argue, or assert in any action or proceeding (including an IRS determination letter proceeding, Department of Labor proceeding, or proceeding before a state insurance department or commissioner), any cause of action, demand or claim on the basis of, connected with, arising out of, or substantially related to, any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of the Settlement Agreement pursuant to the procedures set forth in the Settlement Agreement.

11. Class Counsel, the Class Members, or the Plan may hereafter discover facts in addition to or different from those which they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with Defendants and the Released Parties or the decision to release, relinquish, waive, and discharge the Released Claims, or might have affected the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Member and the Plan hereby fully, finally and forever settle, release, relinquish, waive, and discharge any and all Released Claims.

12. The Class Members and the Plan hereby settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including without limitation, Section 1542 of the California Civil Code, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." The Class Members and the Plan with respect to the Released Claims also hereby waive any and all provisions, rights and benefits conferred by any law of any State or territory of the United States or any foreign country, or any principle of common law, which are similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

13. The Court finds that it has subject matter jurisdiction over the claims and personal jurisdiction over the Class Members pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing this Final Approval Order and the Settlement Agreement. Any motion to enforce paragraphs 8 through 12 of this Final Approval Order or the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Approval Order may also be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

14. Each member of the Class shall hold harmless Defendants, Defense Counsel, and the Released Parties for any claims, liabilities, attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for

all tax liability and associated penalties and interest as well as related attorneys' fees and expenses.

15. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Authorized Former Participant.

16. With respect to payments or distributions to Authorized Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion.

17. With respect to any matters that arise concerning distributions to Current Participants (after allocation decisions have been made by the Settlement Administrator in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan's Administrator pursuant to the applicable law and governing Plan terms.

18. At a reasonable date following the issuance of all settlement payments to Class Members, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who was issued a settlement payment and the amount of such payment.

19. Upon entry of this Order, all Settling Parties and the Plan shall be bound by the Settlement Agreement as amended and by this Final Approval Order.

**IT IS SO ORDERED.**

**DATED: March 31, 2016**

s/ Nancy J. Rosenstengel  
**NANCY J. ROSENSTENGEL**  
**United States District Judge**