

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

GARY SPANO, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Cause No. 06-CV-743 DRH
)	
THE BOEING COMPANY, et al.,)	
)	
Defendants.)	

**PARTIAL ANSWER OF DEFENDANTS TO
THE SECOND AMENDED COMPLAINT**

Come now defendants The Boeing Company, The Boeing Company Employee Benefits Plan Committee, Scott Buchanan and the Employee Benefits Investment Committee and for their Partial Answer to the Second Amended Complaint in this cause, admit, deny and aver as follows:

1. State that the allegations of paragraph 1 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 1.

2. Admit that 401(k) plans generally provide an opportunity for employees to save pre-tax dollars in individual accounts and that the accounts provide a number of investment alternatives into which employees may place a portion of their current income. Except as so admitted, deny the allegations of paragraph 2.

3. State that the allegations of paragraph 3 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 3.

4. Admit that reductions in 401(k) accounts' returns may result from market fluctuations. Except as so admitted, deny the allegations of paragraph 4.
5. Deny the allegations of paragraph 5.
6. Deny the allegations of paragraph 6.
7. State that paragraph 7 alleges legal conclusions as to the meaning of ERISA and that ERISA speaks for itself. Accordingly, deny the allegations of paragraph 7.
8. Admitted.
9. State that the allegations of paragraph 9 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 9.
10. Admit that the named plaintiffs seek the relief mentioned. Except as so admitted, deny the allegations of paragraph 10.
11. Denied.
- 12-14. Deny the allegations of paragraphs 12 through 14, inclusive, for lack of information and belief.
15. State that each plaintiff has been a participant in the Plan. Except as so admitted, deny the allegations of paragraph 15.
16. Admitted
17. Admitted.
18. Admitted.

19. Admit that the Committee is named as the Plan Administrator in the plan document. Further state that the plan document speaks for itself on the matters of appointment to and composition of the Committee.

20. Admit that the EBIC has the authority delegated to it by the Boeing Board of Directors. Further state that the plan document speaks for itself on the matter of authorizations and that the allegations of paragraph 20 represent plaintiffs' conclusions that require no answer. To the extent the Court deems any answer to be necessary, deny the remaining allegations of paragraph 20.

21. Admit that Mr. Buchanan is Boeing's Director of Benefits Delivery and admit that Mr. Buchanan is in charge of Plan filings with government regulators. Except as so admitted, deny the allegations of paragraph 21.

22. Admit that plaintiffs purport to bring this action pursuant to ERISA §§ 502(a)(2) and (a)(3) and that this Court has jurisdiction over the subject matter. State that ERISA speaks for itself and thus deny the remaining allegations of paragraph 22.

23. Admitted.

24. Deny that any breach of fiduciary duty occurred in this district or anywhere else and accordingly deny paragraph 24.

25. Admit that plaintiffs seek to bring this case as a class action on behalf of the persons described. Except as so admitted, deny the allegations of paragraph 25.

26. Denied in its entirety, including all subparts.

27. Denied in its entirety, including all subparts.

28. Admitted.

29. Admit that Boeing believes that there are employee relations and other good reasons to offer the Plan to eligible employees. Except as so admitted, deny the allegations of paragraph 29.

30. Admitted.

31. State that the allegations of paragraph 31 represent plaintiffs' conclusions, are unrelated to the claims against these defendants, and require no answer.

32. State that the allegations of paragraph 32 represent plaintiffs' conclusions, are unrelated to the claims against these defendants, and require no answer.

33. State that plaintiffs have not alleged any time period on which they base their allegation and therefore defendant lacks knowledge sufficient to form a belief as to the allegation as stated. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 33.

34-35. Admit only that plaintiffs have accurately quoted parts of the Master Trust's audited financial statements. Except as so admitted, deny the allegations of paragraphs 34 through 35.

36. Admitted.

37. Admit only that plaintiffs have accurately quoted parts of the SPD. Except as so admitted, deny the allegations of paragraph 37.

38. Admit only that Boeing has agreed to indemnify the Committee in certain circumstances. Except as so admitted, deny the allegations of paragraph 38.

39-43. Admit that ERISA imposes certain duties on fiduciaries. Deny that all defendants are fiduciaries and thus deny the remaining allegations of paragraphs 39 through 43.

44. Admit that, on behalf of the Plan, the Committee has purchased recordkeeping, administration, consulting and other services. Except as so admitted, deny the remaining allegations in paragraph 44.

45. Admit that the Plan's expenses are allocated to participants' accounts. Except as so admitted, deny the remaining allegations in paragraph 45.

46. Admit that services rendered by the Plan's service providers are paid by the Plan or the Master Trust. Except as so admitted, deny the remaining allegations of paragraph 46.

47. Denied.

48. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 48 and therefore deny the allegations of that paragraph.

49. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 49 and therefore deny the allegations of that paragraph.

50. Denied.

51. Denied.

52. Denied.

53. Admit that the Plan's Form 5500 filings identify the Plan's participation in the Master Trust. Further admit that the Master Trust's Form 5500 filings

report payments made to the Plan's service providers. Except as so admitted, deny the allegations of paragraph 53.

54. State that the allegation in paragraph 54 represents plaintiffs' conclusions, are unrelated to the claims against defendants, and require no answer.

55. Admit that expenses of the Plan are paid out of the Master Trust. Except as so admitted, deny the remaining allegations of paragraph 55.

56. Admit that expenses of the Plan are paid out of the Master Trust and that these expenses are allocated to participants' accounts. Except as so admitted, deny the allegations of paragraph 56.

57. State that the allegations of paragraph 57 represent plaintiffs' conclusions, are unrelated to the claims against these defendants, and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 57.

58. Plaintiffs fail to identify a time period for the Master Trust's filings. Defendants lack knowledge or information sufficient to form a belief as to the allegations in paragraph 58 and therefore deny the allegations of that paragraph.

59. Admitted.

60. Denied.

61. Admitted.

62. Admitted.

63. State that the allegations of paragraph 63 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 63.

64. Denied.

65. State that the allegations of paragraph 65 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 65.

66. Admitted.

67. State that the allegations of paragraph 67 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 67.

68. State that the allegations of paragraph 68 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 68.

69. State that the allegations of paragraph 69 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 69.

70. Admitted.

71. Denied.

72. Denied.

73. State that the allegations of paragraph 73 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 73.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Admitted.

82. Denied.

83. State that the allegations of paragraph 83 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 83.

84. State that the allegations of paragraph 84 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 84.

85. Admitted.

86. Admit that the Plan pays fees to investment managers. Lack knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 86 and therefore deny those allegations.

87. Admit that investment returns may be reported net of investment management fees. Lack knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 87 and therefore deny those allegations.

88. Admit that investment returns may be reported net of investment management fees. Except as so admitted, deny the allegations of paragraph 88.

89. Admitted.

90. Admitted.

91. State that the allegations of paragraph 91 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 91.

92. Deny the allegations of paragraph 92 as stated.

93. Denied.

94. Admit that defendant Boeing provides the participants' salary, healthcare and other benefits. Lack knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 94 and therefore deny those allegations.

95. State that the allegations of paragraph 95 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 95.

96. Deny the allegations of paragraph 96 as stated.

97. Denied.

98. Denied.

99. Admit that The Boeing Company Stock Fund is comprised of employer stock and cash or cash equivalents. The remaining allegations of paragraph 99 represent plaintiffs' conclusions and therefore require no answer. To the extent the Court deems any answer to be necessary, deny the remaining allegations of paragraph 99.

100. State that the allegations of paragraph 100 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the remaining allegations of paragraph 100.

101. Denied.

102. Admit that fees charged to The Boeing Company Stock Fund are allocated to participants' accounts. The remaining allegations of paragraph 102 represent plaintiffs' conclusions and therefore require no answer. To the extent the Court deems any answer to be necessary, deny the remaining allegations of paragraph 102.

103. State that the allegations of paragraph 103 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the remaining allegations of paragraph 103.

104. State that the allegations of paragraph 104 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the remaining allegations of paragraph 104.

105. Admit that The Boeing Company Stock Fund is comprised of Boeing company stock and cash or cash equivalents. Further admit that some participants own units in The Boeing Company Stock Fund. The remaining allegations of paragraph 105 are denied.

106. Admitted.

107. Admit that the value of each unit in The Boeing Company Stock Fund is based on the value of Boeing stock and the value of the cash or cash equivalent held in the Fund. The remaining allegations of paragraph 107 are denied.

108. Denied. The statement is not a complete sentence and is incomprehensible.

109. State that the allegations of paragraph 109 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 109.

110. State that the allegations of paragraph 110 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 110.

111. Denied.

112. Admit only that plaintiffs' mathematics are correct but state that they do not take into account expenses of such non-Plan investors, among other factors.

113. Admitted.

114. Admit only that plaintiffs' mathematics are correct.

115. Admit that participants investing in The Boeing Company Stock Fund incur some fees and expenses. Except as so admitted, deny the allegations of paragraph 115.

116. State that plaintiffs have not alleged any time period on which they base their allegation and therefore defendants lack knowledge sufficient to form a belief

as to the allegation as stated. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 116.

117. Denied.

118. State that allegations in paragraph 118 represent plaintiffs' conclusions and therefore require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 118.

119. State that allegations in paragraph 119 represent plaintiffs' conclusions and therefore require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 119.

120. State that allegations in paragraph 120 represent plaintiffs' conclusions and therefore require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 120.

121. State that allegations in paragraph 121 represent plaintiffs' conclusions and therefore require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 121.

122-137. State that the allegations of paragraphs 122 through 137 fail to state a claim upon which relief may be granted and are subject to a pending motion to dismiss under Rule 12(b)(6), Fed. R.Civ. P. and, therefore, no response is required.

138. Admit that the Plan has offered actively-managed investment options. State that the remaining allegations in paragraph 138 represent plaintiffs' conclusions and therefore require no answer. To the extent the Court deems any answer to be necessary, deny the remaining allegations of paragraph 138.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. States that the allegations of paragraph 147 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 147.

148. Denied.

149. Denied.

COUNT I:

150. Restate and incorporate by reference paragraphs 1 through 150 of this Answer as though fully set forth herein.

151. State that the allegations of paragraph 151 represent plaintiffs' conclusions and require no answer. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 151, including all subparts, as stated.

152. Denied, including all subparts.

153. Denied.

154. Denied.

COUNT II

155. Restate and incorporate by reference paragraphs 1 through 155 of this Answer as though fully set forth herein.

156. Admit that plaintiffs purport to seek relief in Count II pursuant to ERISA § 502(a)(3). Except as so admitted, deny the allegations of paragraph 156.

157. Admit that under § 502(a)(3), a participant may, in certain circumstances, seek equitable relief. Except as so admitted, deny the allegations of paragraph 157.

158. State that the allegations of paragraph 158 are legal conclusions to which no response is required. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 158.

159. State that the allegations of paragraph 159 are legal conclusions to which no response is required. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 159.

160. Denied.

161. State that the allegations of paragraph 161 are legal conclusions to which no response is required. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 161.

162. Denied.

163. State that the allegations of paragraph 163 are legal conclusions to which no response is required. To the extent the Court deems any answer to be necessary, deny the allegations of paragraph 163.

164. Denied.

165. Admit that plaintiffs make the request set forth in paragraph 165 but deny that such request is proper.

166. Admit that plaintiffs make the request set forth in paragraph 166 but deny that such request is proper.

167. Admit that plaintiffs make the request set forth in paragraph 167 but deny that such request is proper.

Further responding, defendants deny each and every allegation not affirmatively admitted or otherwise answered herein. In addition, defendants deny that plaintiffs are entitled to the relief requested or to any relief whatsoever from defendants.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs lack standing to sue on behalf of the Plan and the Plan participants.

SECOND AFFIRMATIVE DEFENSE

Neither plaintiffs, the Plan, nor anyone else suffered a loss as a result of the actions or inactions of defendants, as required by ERISA § 409, 29 U.S.C. §1109.

THIRD AFFIRMATIVE DEFENSE

Defendants received no benefit as a result of any of the transactions alleged in the Complaint and engaged in no prohibited transactions within the meaning of ERISA § 406, 29 U.S.C. § 1106.

FOURTH AFFIRMATIVE DEFENSE

The alleged “revenue sharing payments” are not “plan assets” for purposes of ERISA § 406(b), 29 U.S.C. § 1106(b).

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations set forth at ERISA § 413, 29 U.S.C. § 113, or by laches, or both.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to exhaust their administrative remedies.

SEVENTH AFFIRMATIVE DEFENSE

The fees associated with the Plan are not excessive or unreasonable and have been properly disclosed.

EIGHTH AFFIRMATIVE DEFENSE

Defendants' conduct has been both procedurally and substantively prudent.

NINTH AFFIRMATIVE DEFENSE

The Boeing Stock Fund requires cash for liquidity purposes, and the cash maintained therein is not excessive.

TENTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

ELEVENTH AFFIRMATIVE DEFENSE

Pursuant to ERISA § 404(c), defendants are relieved of any alleged liability based on participants' exercise of control over their individual accounts.

TWELFTH AFFIRMATIVE DEFENSE

One or more of the defendants are not fiduciaries within the meaning of ERISA § 3(21)(A).

THIRTEENTH AFFIRMATIVE DEFENSE

The Plan Administrator prepared filings and made disclosures of the Plan's fees and expenses based on the requirements of ERISA as they were commonly understood by the 401(k) plan community.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs seek relief that is not available under ERISA.

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Respectfully submitted,

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that the Answer Of Defendants To The Amended Complaint was filed electronically with the Court on this 9th day of September, 2008, and a copy was sent via the Court's electronic filing system notification to:

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