

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

GARY SPANO, *et al.*,

Plaintiffs,

v.

THE BOEING COMPANY, *et al.*,

Defendants.

No: 3:06-cv-743-NJR-DGW

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

The Parties respectfully file this Motion under Rule 23(e) of the Federal Rules of Civil Procedure for preliminary approval of a Class Settlement.

1. This litigation, which was commenced on September 28, 2006, alleges, among other things, that the fiduciaries responsible for overseeing the Plan breached their duties under Employee Retirement Income Security Act of 1974, as amended (ERISA), by causing the Plan to pay excessive fees, imprudently including an excessively volatile Technology Sector Fund, and managing the Plan's Company Stock Fund in a manner inconsistent with ERISA's duty of prudence.

2. On November 4, 2015, after multiple court ordered mediation encompassing more than a year of arms-length negotiations, the Parties entered into the Settlement Agreement, which is attached hereto as Exhibit A. The Parties now respectfully request that the Court grant preliminary approval to the Settlement Agreement.

3. The Settlement is fundamentally fair, adequate, and reasonable in light of the circumstances of this case. Preliminary approval of the Settlement is in the best interests of the Class Members and the members of each of the sub-classes. In return for a release of the Class Representatives' and Class Members' claims, Defendants have agreed to pay a sum of \$57,000,000 into a Gross Settlement Fund. The Parties have further agreed to certain non-

monetary terms, as specified in Article 10 of the Settlement Agreement. Despite the foregoing, Defendants expressly deny and disclaim any wrongdoing, fault, or liability, and deny each and every claim asserted in this action.

4. The purpose of preliminary approval is to determine whether the proposed settlement is “within the range of possible approval.” *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). The preliminary approval hearing is not a fairness hearing. *Id.*

5. The Settlement reached between the Parties here more than satisfies this standard and is “within the range of possible approval” by the Court given the nature of the case and the result reached by the Parties. Preliminary approval will not foreclose interested persons from objecting to the Settlement and thereby presenting dissenting viewpoints to the Court.

6. Plaintiffs also submit to the Court a Memorandum in Support of this Joint Motion for Preliminary Approval, as well the Declaration of Class Counsel. Defendants are not submitting a Memorandum in Support of the Joint Motion.

WHEREFORE, the Parties request the following:

- That the Court hold a preliminary approval hearing to review the Settlement Agreement and to receive argument from Counsel regarding the adequacy of the Settlement;
- That following the preliminary approval hearing, the Court enter an Order granting its preliminary approval of the Settlement Agreement;
- That the Court order any interested party to file any objections to the Settlement within the time limit set by the Court, with supporting documentation, order such objections, if any, to be served on counsel as set forth in the proposed Preliminary Approval Order and Class Notice, and permit the Parties the right to limited discovery from any objector as provided for in the proposed Preliminary Approval Order;

- That the Court schedule a Fairness Hearing for the purpose of receiving evidence, argument, and any objections relating to the Parties' Settlement Agreement; and
- That following the Fairness Hearing, the Court enter an Order granting final approval of the Parties' Settlement, retaining jurisdiction to enforce the terms of the Settlement Agreement, and otherwise dismissing the Complaint in this Action with prejudice.

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2015, I served this document on all parties via the Court's CM/ECF system.

/s/ Jerome J. Schlichter

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among the Class Representatives, all Class Members, and the Defendants.

1. Article 1 – Recitals

- 1.1** On September 28, 2006, Gary Spano, John Bunk, James White, Jr. and Victor Dubbs, all participants in The Boeing Voluntary Investment Plan (“the Plan”), filed a Complaint (Case No. 06-743) against The Boeing Company (“Boeing”), Boeing’s Employee Benefits Plans Committee (“EBPC”), and Scott M. Buchanan, all alleged to have fiduciary responsibility for the Plan (collectively with the Employee Benefits Investment Committee, “Defendants”) in the United States District Court for the Southern District of Illinois as representatives of a putative class asserting various claims of breaches of fiduciary duty, and seeking relief under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).
- 1.2** Plaintiffs filed an Amended Complaint on December 17, 2007, to, among other things, add Defendant Employee Benefits Investment Committee. Doc. 109. On August 25, 2008, Plaintiffs Spano, Bunk and James White, Jr. filed their Second Amended Complaint. Doc. 186. Over the course of this litigation, Marlene White would become a Plaintiff as a beneficiary of Mr. White’s account following his death, and these plaintiffs would be joined by Kenneth Griffin and Douglas Peterman. Doc. 491. Collectively, Spano, Bunk, Ms. White, Griffin and Peterman are referred to herein as “Class Representatives”.
- 1.3** Defendants filed a Motion to Dismiss or for Summary Judgment related to their defense of Statute of Limitations on September 9, 2008. Doc. 189. Plaintiffs filed their opposition on November 10, 2008. Doc. 201. Defendants filed their original Motion for Summary Judgment concerning the merits of Plaintiffs’ claims on January 15, 2009 (Doc. 213), which Plaintiffs also opposed (Doc. 223). Meanwhile, on September 29, 2008, the Court granted Plaintiffs’ Motion for Class Certification (Doc. 193), which Defendants subsequently appealed to the Seventh Circuit (Doc. 279) and which caused the Seventh Circuit to stay the case (Doc. 298). Ultimately, the initial order granting class certification was vacated, and the case was remanded for further proceedings. Doc. 306-1. On March 2, 2011, Plaintiffs filed their Amended Motion for Class Certification. Doc. 309. In light of developments during the litigation stay, the Court ordered rebriefing of summary judgment (Doc. 364) and Defendants renewed both of their motions (Docs. 368 and 370). On September 19, 2013, the Court granted certification of the current class and sub-classes (Doc. 397), and Defendants’ request for interlocutory review was denied (Doc. 398). The Court then permitted Defendants to resubmit their motions for summary judgment (Doc. 399), which Defendants did on January 8, 2014 (Docs. 406 and 407). Defendants’ motion on the merits was denied and their motion based on the statute of limitations was granted in part and denied in part on December 30, 2014. Doc. 466.
- 1.4** This case was set for trial to begin on August 26, 2015. Doc. 494.

- 1.5 The parties discussed settlement, including through both private mediation and mediation facilitated by the Magistrate Judges of the Southern District of Illinois, at various points throughout the litigation. On August 26, 2015, the parties reached an agreement through a mediation conducted by Chief Judge Michael J. Reagan. Doc. 546. The terms of the parties' settlement are memorialized in this Settlement Agreement.
- 1.6 The Class Representatives and Class Counsel consider it desirable and in the Class Members' best interests that the claims against Defendants be settled on behalf of the Class Representatives and the Class upon the terms set forth below, and they have concluded that such terms are fair, reasonable, and adequate and that this settlement will result in benefits to Class Representatives and the Class.
- 1.7 Defendants deny all liability to Plaintiffs, deny all of the claims made in the Class Action, deny all allegations of wrongdoing made in any of the complaints in this action, and deny that Plaintiffs or the Plan suffered any losses. Defendants further maintain that they acted prudently at all times and in all respects with regard to the Plan, that they complied with their duty of loyalty to the Plan, and that they are without any fault or liability. This Settlement Agreement, and the discussions between the settling parties preceding it, shall in no event be construed as, or be deemed to be evidence of, an admission or concession on Defendants' part of any fault or liability whatsoever.
- 1.8 The Settling Parties have concluded that it is desirable that the Class Action be finally settled upon the terms and conditions set forth in this Settlement Agreement.
- 1.9 Therefore, the Settling Parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree to the terms of this Settlement Agreement.

2. **Article 2 – Definitions**

As used in this Settlement Agreement and the Exhibits hereto (as listed in Paragraph 13.19), unless otherwise defined, the following terms have the meanings specified below:

- 2.1 "Administrative Expenses" means expenses incurred in the administration of this Settlement Agreement, including (a) all fees, expenses, and costs associated with providing the Settlement Notices to the Class; (b) related tax expenses (including taxes and tax expenses as described in Paragraph 5.3); (c) all expenses and costs associated with the distribution of funds pursuant to the Plan of Allocation, including but not limited to the fees of the Plan's current or former recordkeeper associated with implementing this Settlement Agreement, facilitating the distribution of funds pursuant to the Plan of Allocation, and gathering the data necessary to prepare the Plan of Allocation; (d) all fees and expenses of the Independent Fiduciary, Settlement Administrator, Independent Consultant, approved fees charged by the Plan current or former recordkeeper, and Escrow Agent; and (e) all fees, expenses, and costs associated with providing notices

required by CAFA. Excluded from Administrative Expenses are Defendants' internal expenses and the Settling Parties' respective legal expenses. Administrative Expenses shall be paid from the Gross Settlement Amount.

- 2.2** "Active Account" means an individual investment account in the Plan with a balance greater than \$0.
- 2.3** "Alternate Payee" means a person, other than a Plan Participant or Beneficiary, who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order.
- 2.4** "Attorneys' Fees and Costs" means the amount awarded by the Court as compensation for the services provided by Class Counsel and to be provided in the future during the Settlement Period. The amount of Attorneys' Fees for Class Counsel shall not exceed \$19,000,000, which shall be recovered exclusively from the Gross Settlement Amount. Class Counsel also will seek reimbursement for all litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation, not to exceed \$1,845,000, which also shall be recovered exclusively from the Gross Settlement Amount.
- 2.5** "Authorized Former Participant" means a Former Participant who has submitted a completed, satisfactory Former Participant Claim Form by the Claims Deadline set by the Court in the Preliminary Order and whose Former Participant Claim Form is accepted by the Settlement Administrator.
- 2.6** "Beneficiary" means a person who currently is entitled to receive a benefit under the Plan that is derivative of the interest of a Plan participant, other than an Alternate Payee. A Beneficiary includes, but is not limited to, a spouse, surviving spouse, domestic partner, or child who currently is entitled to a benefit.
- 2.7** "CAFA" means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715.
- 2.8** "Claims Deadline" means a date that is no later than the date of the Fairness Hearing.
- 2.9** "Class" means, as certified by the Court in Doc. 397, all Participants or Beneficiaries of the Plan, excluding the Defendants, members of the EBPC and EBIC during the Class Period, and any director of the Boeing board of directors during the Class Period, who had an account balance at any time between September 28, 2000 and December 31, 2006.
- 2.10** "Class Action" means *Gary Spano., et al. v. The Boeing Company, et al.*, Case No. 06-743 in the United States District Court for the Southern District of Illinois.
- 2.11** "Class Counsel" means Schlichter, Bogard & Denton LLP.
- 2.12** "Class Members" means all individuals in the Class and each respective sub-class.

- 2.13** “Class Period” means the period from September 28, 2000 through December 31, 2006.
- 2.14** “Class Representatives” means Spano, Bunk, Peterman, Griffin and Ms. White.
- 2.15** “Class Representatives’ Compensation” means any amount determined by the Court to be awarded to the Class Representatives, but not to exceed \$25,000 for each of Mr. Spano, Mr. Bunk and Ms. White, and \$10,000 for each of Mr. Peterman and Mr. Griffin.
- 2.16** “Company Stock Fund Sub-Class” means, as certified by the Court in Doc. 397, all Participants or Beneficiaries of the Plan, excluding the Defendants, members of the EBPC and EBIC during the Class Period, and any director of the Boeing board of directors during the Class Period, who, between September 28, 2000 and December 31, 2006, invested in the plan’s Boeing Company Stock Fund and whose investment in the Boeing Company Stock Fund underperformed that of Boeing Company Stock.
- 2.17** “Confidentiality Agreement” means the Confidentiality Agreement signed by the Parties on May 4, 2007.
- 2.18** “Court” means the United States District Court for the Southern District of Illinois.
- 2.19** “Court of Appeals” means the United States Court of Appeals for the Seventh Circuit.
- 2.20** “Current Participant” means a person who participated in the Plan during the Class Period and on September 30, 2015, had an Active Account balance.
- 2.21** “Defendants” means The Boeing Company, Employee Benefits Plans Committee, Employee Benefits Investment Committee and Scott M. Buchanan.
- 2.22** “Defense Counsel” means counsel for Defendants as of the date of this Settlement Agreement (Bryan Cave LLP and O’Melveny & Myers LLP).
- 2.23** “Escrow Agent” means Commerce Bank (Commerce Bancshares, Inc.), or another entity agreed to by the Parties.
- 2.24** “Fairness Hearing” means the hearing scheduled by the Court to consider (a) any objections from the Class to the Settlement Agreement, (b) Class Counsel’s Petition for Attorneys’ Fees and Costs, and Class Representatives’ Compensation; and (c) whether to finally approve the Settlement pursuant to Fed. R. Civ. P. 23.
- 2.25** “Final Order” means the order and final judgment approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Class Action with prejudice, to be proposed by the Settling Parties for approval by the Court, in substantially the form attached as Exhibit 5 hereto.

- 2.26** “Final” means with respect to any judicial ruling, order, or judgment that the period for any motions for reconsideration, rehearing, appeals, petitions for certiorari, or the like (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of any judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand. The Settling Parties agree that absent an appeal or other attempted review proceeding, the period after which the Final Order becomes Final is thirty (30) calendar days after its entry.
- 2.27** “Former Participant” is a person who participated in the Plan during the Class Period and on September 30, 2015, did not have an Active Account.
- 2.28** “Former Participant Claim Form” means the form described generally in Paragraph 3.2.1 and substantially in the form attached as Exhibit 1 hereto.
- 2.29** “Gross Settlement Amount” means the sum of fifty-seven million dollars (\$57,000,000), contributed to the Qualified Settlement Fund pursuant to Article 5. The Gross Settlement Amount shall be the full and sole monetary payment to the Class, Plaintiffs, and Class Counsel made on behalf of Defendants in connection with the Settlement effectuated through this Settlement Agreement.
- 2.30** “Independent Fiduciary” means Gallagher Fiduciary Advisors or another independent fiduciary who agrees to be retained as a fiduciary to the Plan, who has no relationship to or interest in any of the Settling Parties, and is mutually agreed to by the Settling Parties.
- 2.31** “Independent Investment Consultant” means Mercer, Aon Hewitt or Towers Watson, as retained by the EBIC for the purpose of fulfilling the requirements of Article 10.3. The reasonable and necessary expenses of the Independent Investment Consultant in fulfilling the requirements of Article 10.3 are Administrative Expenses to the extent they are approved by the Settling Parties.
- 2.32** “Mutual Fund Sub-Class” means, as certified by the Court in Doc. 397, all Participants or Beneficiaries of the Plan, excluding the Defendants, members of the EBIC and EBPC during the Class Period, and any director of the Boeing board of directors during the Class Period, who, between September 28, 2000 and December 31, 2005, invested in any of the Plan’s mutual funds.
- 2.33** “Net Settlement Amount” means the Gross Settlement Amount minus: (a) all Attorneys’ Fees and Costs paid to Class Counsel; (b) all Administrative Expenses; (c) any and all Class Representatives’ Compensation; and (d) a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before

the end of the Settlement Period, and (3) an amount estimated to account for adjustments of data or calculation errors.

- 2.34** “Participant” means all Current Participants and Former Participants.
- 2.35** “Plaintiffs” means the Class Representatives and the Class Members.
- 2.36** “Plan of Allocation” means the methodology for allocating and distributing the Net Settlement Amount pursuant to Article 6 below.
- 2.37** “Plan Fiduciaries” means the Boeing Employee Benefits Plans Committee (the “EBPC”) and the Boeing Employee Benefits Investment Committee (the “EBIC”), collectively.
- 2.38** “Preliminary Order” means the order proposed by the Settling Parties and approved by the Court in connection with the Motion for Entry of the Preliminary Order to be filed by Class Representatives through Class Counsel, as described in Paragraph 3.2 and in substantially the form attached as Exhibit 2 hereto.
- 2.39** “Qualified Domestic Relation Order” means a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law) and that relates to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of a Participant and which has been determined qualified pursuant to the Plan’s procedures.
- 2.40** “Qualified Settlement Fund” or “Settlement Fund” means the interest-bearing, settlement fund account to be established and maintained by the Escrow Agent pursuant to Article 5 hereof and referred to as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).
- 2.41** “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.
- 2.42** “Released Claims” means any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action:

- 2.42.1 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;
 - 2.42.2 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;
 - 2.42.3 That would be barred by the doctrine of *res judicata* based on the entry of the Final Order;
 - 2.42.4 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
 - 2.42.5 That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.
 - 2.42.6 "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.
- 2.43 "Settlement" refers to the agreement embodied in this Settlement Agreement and its Exhibits.
 - 2.44 "Settlement Administrator" means Garden City Group, an independent contractor to be retained by Class Counsel.
 - 2.45 "Settlement Agreement Execution Date" means that date on which the final signature is affixed to this Settlement Agreement.
 - 2.46 "Settlement Effective Date" means the date on which the Final Order has become Final, provided that by such date the Settlement has not been terminated pursuant to Article 11.
 - 2.47 "Settlement Notice" means the Notices of Class Action Settlement and Fairness Hearing to be mailed by first class mail to Class Members identified by the Settlement Administrator following the Court's issuance of the Preliminary Order, in substantially the form attached as Exhibits 3 and 4 hereto. The Settlement Notice also shall inform Class Members of a Fairness Hearing to be held before the Court, on a date to be determined by the Court, at which any Class Member satisfying the conditions set forth in the Preliminary Order and the Settlement Notice may be heard regarding: (a) the terms of the Settlement Agreement; (b) the petition of Class Counsel for an award of Attorneys' Fees and Costs; and (c) payment of and reserve

for Administrative Expenses. The Settlement Notice shall inform Former Participants of the Claims Deadline by which they must file a completed Former Participant Claim Form to be eligible for a distribution pursuant to the Plan of Allocation.

- 2.48** “Settlement Period” means the period of time that begins on the Settlement Effective Date and ends three years after the Settlement Effective Date.
- 2.49** “Settlement Website” means the internet website established pursuant to Paragraph 12.2.
- 2.50** “Settling Parties” means the Defendants and the Class Representatives, on behalf of themselves and each of the Class Members.
- 2.51** “Small Cap Fund Sub-Class” means, as certified by the Court in Doc. 397, all Participants or Beneficiaries of the Plan, excluding the Defendants, members of the EBPC and EBIC during the Class Period, and any director of the Boeing board of directors during the Class Period, who, between September 28, 2000 and December 31, 2005, invested in the Small Cap mutual fund in the Plan.
- 2.52** “Technology Fund Sub-Class” means, as certified by the Court in Doc. 397, all Participants or Beneficiaries of the Plan, excluding the Defendants, members of the EBPC and EBIC during the Class Period, and any director of the Boeing board of directors during the Class Period, who, between September 28, 2000 and December 31, 2005, invested in the Plan’s Technology Fund and whose investment in the Technology Fund underperformed that of the diversified domestic equity markets as represented by the Standard and Poor’s 500 Index Fund minus 5 basis points for investment management.

3. Article 3 – Review and Approval by Independent Fiduciary, Preliminary Settlement Approval, and Notice to the Class

- 3.1** The Independent Fiduciary shall be retained by Boeing, on behalf of the Plan, to determine independently whether to approve and authorize the settlement of Released Claims on behalf of the Plan.
- 3.1.1** The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”) in making its determination, for the purpose of the EBPC’s reliance on PTE 2003-39.
- 3.1.2** The Independent Fiduciary shall notify the EBPC, directly or through EBPC’s Secretary, of its determination in writing (with copies to Class Counsel and Defense Counsel), which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing.

- 3.1.3** All fees and expenses associated with the Independent Fiduciary's determination and performance of its other obligations in connection with the Settlement will constitute Administrative Expenses to be deducted from the Gross Settlement Amount.
 - 3.1.4** The EBPC, Defense Counsel, and Class Counsel shall provide the Independent Fiduciary with sufficient information so that the Independent Fiduciary can review the Settlement Agreement and make the determinations required by PTE 2003-39.
 - 3.1.5** Within fifteen (15) business days of receipt of the notification from the Independent Fiduciary, the EBPC shall (a) review the determination by the Independent Fiduciary, (b) conclude whether the Independent Fiduciary has made the determinations required by PTE 2003-39, and (c) notify Class Counsel and Defense Counsel in writing of its conclusion in that regard.
- 3.2** Class Representatives, through Class Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement, and for entry of the Preliminary Order in substantially the form attached as Exhibit 2 hereto. The Preliminary Order to be presented to the Court, as to the Class Action, shall, among other things:
- 3.2.1** Approve the text of the Settlement Notice, to be provided to Class Members identified by the Settlement Administrator, and the Former Participant Claim Form, to be provided to Former Participants, to notify them of the Fairness Hearing and that notice of changes to the Settlement Agreement, future orders regarding the Settlement, modifications to the Class Notice, changes in the date or timing of the Fairness Hearing, or other modifications to the Settlement, including the Plan of Allocation, may be provided to the Class through the Settlement Website without requiring additional mailed notice;
 - 3.2.2** Determine that pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, the Settlement Notices constitute the best notice practicable under the circumstances, provide due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and comply fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law;
 - 3.2.3** Cause the Settlement Administrator to mail by first class mail the Settlement Notice to each Class Member identified by the Settlement Administrator and the Former Participant Claim Form to each Former Participant identified by the Settlement Administrator based upon the data provided by the Plan's current or former recordkeeper, as applicable;

- 3.2.4** Provide that, pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Defendants, the Released Parties, or the Plan;
- 3.2.5** Set the Fairness Hearing for no sooner than one hundred twenty (120) calendar days after the date the Motion for Entry of the Preliminary Order is filed, in order to determine whether (i) the Court should approve the Settlement as fair, reasonable, and adequate, (ii) the Court should enter the Final Order, and (iii) the Court should approve the application for Attorneys' Fees and Costs, and Class Representatives' Compensation;
- 3.2.6** Provide that any objections to any aspect of the Settlement Agreement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been filed validly with the Clerk of the Court and copies provided to Class Counsel and Defense Counsel. To be filed validly, the objection and any notice of intent to appear or supporting documents must be filed at least thirty (30) days prior to the scheduled Fairness Hearing. Any person wishing to speak at the Fairness Hearing shall file and serve a notice of intent to appear within the time limitation set forth above;
- 3.2.7** Provide that the Settling Parties may, but are not required to, serve discovery requests, including requests for documents and notices of deposition not to exceed two (2) hours in length, on any objector within ten (10) days of receipt of the objection and that any responses to discovery or depositions must be completed within ten (10) days of the discovery request being served on the objector;
- 3.2.8** Provide that any party may file a response to an objection by a Class Member at least five (5) days before the Fairness Hearing;
- 3.2.9** Set a deadline of no later than the date of the Fairness Hearing by which each Former Participant must file a Former Participant Claim Form with the Settlement Administrator in order to be considered for a distribution pursuant to the Plan of Allocation; and
- 3.2.10** Provide that the Fairness Hearing may, without further direct notice to the Class, other than by notice to Class Counsel, be adjourned or continued by order of the Court.
- 3.3** Defense Counsel shall respond timely to written requests, including by e-mail, from the Settlement Administrator for readily accessible data that are reasonably necessary to determine the feasibility of administering the Plan of Allocation or to implement the Plan of Allocation. The actual and reasonable expenses of any third party, including the Plan's current or former recordkeeper, that are necessary to

perform such work shall be Administrative Expenses to be deducted from the Gross Settlement Amount.

- 3.3.1** The Settlement Administrator shall be bound by the non-disclosure or security protocol required by the Parties.
 - 3.3.2** The Settlement Administrator shall use the data provided by Defendants and the Plan's current or former recordkeeper, as applicable, solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.
 - 3.3.3** The Settling Parties shall have the right to approve a written protocol to be provided by the Settlement Administrator concerning how the Settlement Administrator will maintain and store information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.
- 3.4** By the date and in the manner set by the Court in the Preliminary Order, and unless otherwise set forth below, the Settlement Administrator shall:
- 3.4.1** Cause to be mailed to each Class Member identified by the Settlement Administrator a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached as Exhibits 3 and 4 hereto or a form subsequently agreed to by the Parties and the Court. The Settlement Notice shall be sent by first-class mail, postage prepaid, to the last known address of each Class Member provided on behalf of the Plan from the Plan's current or former recordkeeper (or its designee) through Defense Counsel, unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided on behalf of the Plan. Class Counsel also shall post a copy of the Settlement Notice on the Settlement Website. The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-mail such documents one additional time.
 - 3.4.2** Cause the Former Participant Claim Form, which shall be in substantially the form attached as Exhibit 1 hereto, or a form subsequently agreed to by the Parties and the Court, to be included with the Settlement Notice that is mailed to the Former Participants.
 - 3.4.3** Have prepared and provided CAFA notices to the Attorney General of the United States, the Secretary of the Department of Labor, and the Attorneys General of all states in which members of the Class reside, as specified by 28 U.S.C. § 1715, within ten (10) calendar days of Class Representatives' filing of the Settlement Agreement and proposed Preliminary Order.

4. Article 4 – Final Settlement Approval

4.1 No later than ten (10) business days before the Fairness Hearing, Class Counsel and Defense Counsel shall submit to the Court a mutually agreed upon motion for entry of the Final Order (Exhibit 5), which shall request approval by the Court of the terms of this Settlement Agreement and entry of the Final Order in accordance with this Settlement Agreement. The Final Order as proposed by the Settling Parties shall provide for the following, among other things, as is necessary to carry out the Settlement consistent with applicable law and governing Plan documents:

4.1.1 For approval of the Settlement of the Released Claims covered by this Settlement Agreement adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class and directing the Settling Parties to take the necessary steps to effectuate the terms of the Settlement Agreement;

4.1.2 For a determination pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure that the Settlement Notice constitutes the best notice practicable under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class Members has been provided;

4.1.3 For dismissal with prejudice of the Class Action and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Class, or derivatively to secure relief for the Plan, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement, except for retention of jurisdiction to enforce the terms of the Settlement Agreement;

4.1.4 That each member of the Class and their respective heirs, Beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns, shall be (i) conclusively deemed to have, and by operation of the Final Order shall have fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants and the Released Parties from all Released Claims, and (ii) barred from suing Defendants or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Class Action and the Released Claims, whether or not such Class Members have executed and delivered a Former Participant Claim Form, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed;

- 4.1.5** That the Plan and each member of the Class (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 shall be (i) conclusively deemed to have, and by operation of the Final Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants and the Released Parties from all Released Claims, and (ii) barred from suing Defendants or the Released Parties in any action or proceeding alleging any of the Released Claims, even if the Plan or any member of the Class on behalf of the Plan may thereafter discover facts in addition to or different from those which the Plan or any member of the Class on behalf of the Plan now knows or believes to be true with respect to the Class Action and the Released Claims;
- 4.1.6** That each member of the Class shall release Defendants, Defense Counsel, Class Counsel, the Released Parties, and the Plan for any claims, liabilities, and 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;
- 4.1.7** That all applicable CAFA requirements have been satisfied;
- 4.1.8** That 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 pursuant to the Plan of Allocation approved by the Court;
- 4.1.9** That, 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;
- 4.1.10** That, with respect to any matters that arise concerning the implementation of 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 EBPC pursuant to the applicable law and governing Plan terms; and
- 4.1.11** That within twenty-one (21) calendar days following the issuance of all settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who received a settlement payment or contribution from the Qualified Settlement Fund and the amount of such payment or contribution.

4.2 The Final Order shall provide that upon its entry all Settling Parties and the Plan shall be bound by the Settlement Agreement and by the Final Order.

5. Article 5 – Establishment of Qualified Settlement Fund

5.1 No later than four (4) business days after entry of the Preliminary Order, the Escrow Agent shall establish an escrow account. The Settling Parties agree that the escrow account is intended to be, and will be, an interest-bearing Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent timely shall make such elections as necessary or advisable to carry out the provisions of this Paragraph 5.1, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5.2 For the purpose of § 468B of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns necessary or advisable with respect to the Gross Settlement Amount (including without limitation applying for a Taxpayer Identification Number for the Fund and filing the returns described in Treas. Reg. § 1.468B-2(k)). Such returns, as well as the election described in Paragraph 5.1, shall be consistent with this Article 5 and, in all events, shall reflect that all taxes (as defined in Paragraph 5.3 below) (including any estimated taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be deducted and paid from the Gross Settlement Amount as provided in Paragraph 5.3 hereof.

5.3 Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including but not limited to: (1) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned on the Gross Settlement Amount, including any taxes or tax detriments that may be imposed upon Defendants or Defense Counsel with respect to any income earned on the Gross Settlement Amount for any period during which the Gross Settlement Amount does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (2) all tax expenses and costs incurred in connection with the operation and implementation of this Article 5 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article 5). Such taxes and tax expenses shall be Administrative Expenses and shall be paid timely by the Escrow Agent out of the Gross Settlement Amount without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Class Member any funds necessary to pay such amounts, including the establishment of adequate

reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendants, Defense Counsel, nor Class Counsel are responsible nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article 5.

- 5.4** Defendants, or their agents or insurers (as applicable), will deposit the Gross Settlement Amount into the Qualified Settlement Fund (the “Funding”) within twenty (20) business days after the later of (a) the entry of the Preliminary Order, or (b) the establishment of the escrow account described in Paragraph 5.1 and the Escrow Agent having furnished to Defendants in writing the escrow account name, IRS W-9 Form with tax identification number, and all necessary wiring instructions.
- 5.5** The Escrow Agent shall, at the written direction of Class Counsel, invest the Qualified Settlement Fund in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.
- 5.6** The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion thereof, except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and Defense Counsel. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.
- 5.7** Within one hundred fifty (150) calendar days after the Settlement Effective Date, the Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: (a) first, all Attorneys’ Fees and costs shall be paid to Class Counsel within five (5) business days after the Settlement Effective Date; (b) second, all Administrative Expenses not paid previously, and any Class Representatives’ Compensation, shall be paid within five (5) business days after the Settlement Effective Date; (c) third, a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties shall be set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period, (3) an amount estimated to account for adjustments of data or calculation errors; and (d) fourth, the Net Settlement Amount will be distributed pursuant to the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund.
- 5.8** The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Qualified Settlement

Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund and for all tax reporting and withholding obligations, if any, for amounts distributed from it. Defendants, Defense Counsel, and/or Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

- 5.9** No later than February 15 of the year following the calendar year in which Defendants, their insurers, or agents make a transfer to the Qualified Settlement Fund pursuant to the terms of this Article 5, each “transferor” within the meaning of Treas. Reg. § 1.468B-1(d)(1) (including the Defendants, their insurers, or agents, as applicable) shall timely furnish a statement to the Escrow Agent, or the Settlement Administrator on its behalf, that complies with Treas. Reg. § 1.468B-3(e)(2), which may be a combined statement under Treas. Reg. § 1.468B-3(e)(2)(ii).

6. Article 6 – Plan of Allocation

- 6.1** After the Settlement Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to the Authorized Former Participants and to the Plan for distribution to the Current Participants in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.
- 6.2** To be eligible for a distribution from the Net Settlement Amount, a person must be a Current Participant or an Authorized Former Participant, Beneficiary, or Alternate Payee of such a person. Current Participants shall receive their settlement payments as contributions to their Plan accounts as described in this Article 6 unless, as of the date of the settlement payments, they no longer have an account in the Plan. Authorized Former Participants shall receive their settlement payments in the form of checks as described in this Article 6.
- 6.3** Beneficiaries will receive checks as described in this Article 6 in amounts corresponding to their entitlement as Beneficiaries of the Current Participant or of the Authorized Former Participant with respect to which the payment is made. Alternate Payees will receive checks if and to the extent they are entitled to receive a portion of a Current Participant’s or Authorized Former Participant’s allocation under this Article 6 pursuant to the terms of the applicable Qualified Domestic Relations Order. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.
- 6.4** Payments to Authorized Former Participants and Current Participants shall be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:

- 6.4.1** The Settlement Administrator shall obtain the following information from the Plan, through its former recordkeeper or otherwise: the quarter-ending account balances for all Class Members during the Class Period as well as the quarter-ending account balances in each of the four mutual funds offered as core investment options during the class period and the Company Stock Fund.
- 6.4.2** The Settlement Administrator shall obtain, in writing, an agreement between Class Counsel and the Settlement Administrator on the Net Settlement Amount, and the amount apportioned to each sub-class. The Net Settlement Amount shall be allocated to the sub-classes as follows: (a) 50% to the Recordkeeping Class (the “Recordkeeping Allocation”); (b) 20% to the Mutual Fund Sub-Class (the “Mutual Fund Allocation”); (c) 15% to the Technology Fund Sub-Class (the “Tech Fund Allocation”); (d) 10% to the Company Stock Fund Sub-Class (the “CSF Allocation”); and (e) 5% to the Small Cap Fund Sub-Class (the “SCF Allocation”).
- 6.4.3** The Recordkeeping Allocation will be divided among Class Members on a pro rata basis in proportion to each Class Member’s average quarter-ending Plan account balance over the Class Period, starting with the Fourth Quarter of 2000 and ending with the Fourth Quarter of 2006.
- 6.4.4** The Mutual Fund Allocation will be divided among Class Members of the Mutual Fund Sub-Class on a pro rata basis in proportion to each Class Member’s combined average quarter-ending balance in the Plan’s mutual funds between September 30, 2000 and December 31, 2005.
- 6.4.5** The SCF Allocation will be divided among the Class Members of the Small Cap Fund Sub-Class on a pro rata basis in proportion to each Class Member’s average quarter-ending balance in the Plan’s actively-managed Small Cap Fund between September 30, 2000 and December 31, 2005.
- 6.4.6** The CSF Allocation will be divided among Class Members of the Company Stock Fund Sub-Class on a pro rata basis in proportion to each Class Member’s average quarter-ending balance in the Plan’s CSF between September 30, 2000 and December 31, 2006.
- 6.4.7** The Tech Fund Allocation will be divided among Current Participants and Authorized Former Participants of the Technology Fund Sub-Class on a pro rata basis in proportion to each Class Member’s average quarter-ending balance in the Plan’s Tech Fund between September 30, 2000 and December 31, 2006.
- 6.4.8** For each Current Participant and Authorized Former Participant, the Settlement Administrator will calculate the total amount due to each Current Participant and Authorized Former Participant by adding the amounts calculated pursuant to Paragraphs 6.4.3 through 6.4.8.

- 6.4.9** The Settlement Administrator shall utilize the calculations required to be performed herein for (a) making the required distributions to Authorized Former Participants; and (b) instructing Defendants as to the amounts to be distributed to Current Participants and calculating the total amount to deposit in the Plan to fulfill this instruction.
- 6.4.10** Unless the Settling Parties agree in writing, the total amount of all checks to be written by the Settlement Administrator plus the total amount of all credits that Defendants are instructed to make to Current Participants may not exceed the Net Settlement Amount. Nothing in this Paragraph 6.4.10 is intended to modify the requirements of Paragraph 6.8 below. In the event that the Settlement Administrator determines that the Plan of Allocation would otherwise require payments exceeding the Net Settlement Amount, the Settlement Administrator is authorized to make such changes as are necessary to the Plan of Allocation such that said totals do not exceed the Net Settlement Amount.
- 6.5** Current Participants will not be required to submit a Former Participant Claim Form to receive a settlement payment. The Settlement Administrator shall complete all payment calculations for all Current Participants and Authorized Former Participants within sixty (60) calendar days after the Settlement Effective Date. Within two (2) business days after the Settlement Administrator has completed all payment calculations for all Current Participants, the Settlement Administrator will provide Boeing with an Excel spreadsheet containing the following information: last name, first name, Social Security number, and the amount of the settlement payment (with no "\$" sign or comma) for each of the Current Participants. Thereafter, within ten (10) business days' written notice to Boeing, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the Plan's trustee of the aggregate amount of all settlement payments payable to Current Participants. Boeing (or its designee) shall direct the Plan's trustee to credit the individual Plan account of each Current Participant in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to such Current Participant. The settlement payment for each Current Participant will be invested in accordance with such Current Participant's investment elections then on file. If there is no investment election on file for any Current Participant, then such Current Participant shall be deemed to have directed such payment to be invested in the Plan's "Qualified Default Investment Alternative," as defined in 29 C.F.R. § 2550.404c-5. The Plan's current recordkeeper shall process all Current Participant transactions within thirty (30) calendar days of the later of the funds being received by the Plan's trustee and the Plan's recordkeeper receiving final direction from the EBPC (or its designee) for any Current Participant. The Plan may be amended, to the extent necessary, to reflect the settlement allocation to Current Participants' accounts in accordance with this Article 6.
- 6.6** If, as of the date when distributions pursuant to this Settlement Agreement are made, a Current Participant no longer has an Active Account, he or she will be

treated as an Authorized Former Participant for purposes of the settlement distribution only and will receive his or her payment from the Settlement Administrator in one settlement check as described in Paragraph 6.7. A Current Participant who no longer has an Active Account on the date of his or her Settlement distribution need not complete a Former Participant Claim Form. Settlement payments that cannot be made by the Plan's trustee within thirty (30) calendar days of receiving direction from Boeing (or its designee) because the Class Member no longer has an Active Account shall be returned by the Plan's trustee to the Settlement Administrator for distribution under this Paragraph 6.6 within ten (10) calendar days thereafter.

6.7 For each Authorized Former Participant, the Settlement Administrator will issue a single check from the Qualified Settlement Fund and mail it to the address of such Authorized Former Participant listed in his or her Former Participant Claim Form or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means. The Settlement Administrator shall advise Authorized Former Participants that any distribution pursuant to the Settlement is rollover eligible and of their right to roll over such an amount. The Settlement Administrator shall follow proper rollover instructions provided by an Authorized Former Participant. The Settlement Administrator shall: (i) calculate and withhold any applicable taxes from settlement payments to Authorized Former Participants; (ii) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (iii) issue appropriate tax forms to the Authorized Former Participants.

6.8 This Plan of Allocation is based upon preliminary data regarding the Class Members who may be entitled to settlement payments. If the Settlement Administrator concludes that it is impracticable to implement any provision of this Plan of Allocation, the Settling Parties will modify promptly the terms of this Plan of Allocation and present such modified terms first to the Independent Fiduciary for its review and approval and second to the Court for its approval. Direct mailed notice to Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification shall be posted on the Settlement Website within five (5) business days of the date that the proposed modification is submitted to the Court for its approval. If the proposed modification is implemented, notice of such modification shall be posted on the Settlement Website within five (5) business days of the date that the modification was implemented.

The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation.

6.9 Within ten (10) business days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel, Defense Counsel, and Defendants one or more affidavits stating the following: (a) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice or the Former Participant Claim Form, and the address of such mailing; (b) the date(s)

upon which the Settlement Administrator sent the Settlement Notice or the Former Participant Claim Form; (c) the name of each Class Member whose Settlement Notice or Former Participant Claim Form was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice or Former Participant Claim Form for each such Class Member; and (e) the name of each Class Member to whom the Settlement Administrator made a distribution from the Net Settlement Amount, together with the amount of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable. The Settling Parties shall treat the affidavit(s) as confidential.

- 6.10** The Settling Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. Defendants, Defense Counsel, Class Counsel, and Class Representatives will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be considered to be wages by the Settling Parties.
- 6.11** Each Class Member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold Defendants, Defense Counsel, Class Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.
- 6.12** All checks issued pursuant to this Plan of Allocation shall expire no later than one hundred twenty (120) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund.
- 6.13** No sooner than thirty (30) calendar days following the end of the Settlement Period, any Net Settlement Amount remaining in the Qualified Settlement Fund after distributions, including costs and taxes, shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan that would otherwise be charged to the Plan's Participants. In no event shall any part of the Settlement Fund be used to reimburse any Defendant or otherwise offset settlement-related costs incurred by any Defendant, except as to the Administrative

Expenses incurred by third-parties described herein and as would be appropriately chargeable to the Plan under applicable law.

7. Article 7 – Attorneys’ Fees and Costs

7.1 Class Counsel will seek to recover their attorneys’ fees, not to exceed nineteen million dollars (\$19,000,000), and litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation, not to exceed one million, eight hundred forty-five thousand dollars (\$1,845,000), which shall be recovered from the Gross Settlement Amount.

7.2 Class Counsel will file a motion for an award of Attorneys’ Fees and Costs and for Class Representatives’ Compensation at least thirty (30) days before the deadline set in the Preliminary Order for objections to the proposed settlement, which may be supplemented thereafter.

8. Article 8 – Release of Covenant Not to Sue

8.1 As of the Settlement Effective Date, the Plan (subject to Independent Fiduciary approval as required by Paragraph 3.1) and the Class Members (and their respective heirs, Beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plan and all Released Parties from the Released Claims, whether or not such Class Members have executed and delivered a Former Participant Claim Form, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys’ Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

8.2 As of the Settlement Effective Date, the Class Members and the Plan (subject to Independent Fiduciary approval as required by Paragraph 3.1), expressly agree that they, acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission) any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement pursuant to the procedures set forth in this Settlement Agreement.

8.3 Class Counsel, the Class Members, or the Plan, may hereafter discover facts in addition to or different from those that 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, the Plan, and the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the

foregoing, each Class Member and the Plan shall expressly, upon the entry of the Final Order, be deemed to have, and by operation of the Final Order, shall have fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Members and the Plan acknowledge and shall be deemed by operation of the Final Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part.

9. Article 9 – Representations and Warranties

9.1 The Settling Parties represent:

9.1.1 That they are voluntarily entering into this Settlement Agreement as a result of arm's length negotiations among their counsel, and that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

9.1.2 That they assume the risk of mistake as to facts or law;

9.1.3 That they recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement;

9.1.4 That they have read carefully the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Settling Parties; and

9.1.5 That they have made such investigation of the facts pertaining to the Settlement and all matters pertaining thereto, as they deem necessary.

9.2 Each individual executing this Settlement Agreement on behalf of a Settling Party does hereby personally represent and warrant to the other Settling Parties that he/she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that each such individual represents or purports to represent.

10. Article 10 – Additional Terms

10.1 Defendants agree to comply with the Additional Terms set forth in this Article 10 for the duration of the Settlement Period, unless another period is specified and the Court shall maintain jurisdiction to enforce these additional terms.

- 10.2** The Settling Parties agree that the Independent Fiduciary must determine that the Settlement meets the requirements of PTE 2003-39, as provided in Paragraph 3.1.
- 10.3** Within one year of the Settlement Effective Date, assuming a technology sector strategy fund remains as a core option in the Plan, the EBIC shall obtain an opinion and recommendation of an Independent Investment Consultant on the question of whether and how to provide participants access to a technology sector strategy as a core option. A copy of the written report and recommendation that EBIC receives from the Independent Investment Consultant shall be provided to Class Counsel within 30 days of its issuance. Class Counsel agrees that it shall keep the Independent Investment Consultant report and recommendation, and its contents, confidential.
- 11. Article 11 – Termination, Conditions of Settlement, and Effect of Disapproval, Cancellation, or Termination**
- 11.1** The Settling Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary’s determinations required by PTE 2003-39 in the event that, pursuant to Paragraph 3.1, (a) the Independent Fiduciary does not approve the Settlement Agreement or disapproves any portion of the Settlement Agreement for any reason whatsoever, or (b) the EBPC reasonably concludes that the Independent Fiduciary’s approval does not include the determinations required by PTE 2003-39.
- 11.2** The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect if:
- 11.2.1** The Preliminary Order and the Final Order are not entered by the Court in the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties;
- 11.2.2** This Settlement Agreement is disapproved by the Court or fails to become effective for any reason whatsoever; or
- 11.2.3** The Preliminary Order or Final Order is finally reversed on appeal, or is modified on appeal, and the Settling Parties do not mutually agree to any such modifications.
- 11.3** If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Class Action and the Released Claims asserted by Class Representatives shall for all purposes with respect to the Settling Parties revert to their status as though the Settling Parties never executed the Settlement Agreement. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Defendants or their agents within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void, except as provided for in Paragraph 11.5.

11.4 It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Class Counsel's request for Attorneys' Fees and Costs.

11.5 In the event that the Settlement Agreement is terminated, (i) Administrative Expenses incurred prior to the termination shall be paid first from the interest earned, if any, on the Qualified Settlement Fund; (ii) Administrative Expenses in excess of the interest earned on the Qualified Settlement Fund shall be split evenly and paid by Class Counsel, on the one hand, and Defendants, on the other hand; and (iii) any interest earned in the Qualified Settlement Fund in excess of the Administrative Expenses shall be distributed in accordance with Paragraph 11.3.

12. Article 12 – Public Comments Regarding the Class Action or Settlement Agreement

12.1 Except as set forth explicitly below, the Settling Parties, Class Counsel, and Defense Counsel agree to keep confidential all positions, assertions, and offers made during settlement negotiations relating to the Class Action and the Settlement Agreement, except that they may discuss the negotiations with the Class Members, the Independent Fiduciary and the Settling Parties' tax advisors, provided in each case that they (a) secure written agreements with such persons or entities that such information shall not be further disclosed, and (b) comply with this Article 12 in all other respects.

12.2 Class Counsel will establish a Settlement Website which shall be "VIPSettlement.com" or, in the event such domain name is not available, such other domain name mutually agreeable to Class Counsel and Defendants. On the Settlement Website established by Class Counsel, Class Counsel will post, or cause to be posted, the following documents or links to the following documents on or following the date of the Preliminary Order: the operative Complaint and Order granting Class Certification, Settlement Agreement and its Exhibits, Settlement Notice, Former Participant Claim Form, Class Representatives' Motion for Attorneys' Fees and Costs and for Class Representatives' Compensation, any Court orders related to the Settlement, any amendments or revisions to these documents, and any other documents or information mutually agreed upon by the Settling Parties ("Settlement Website Information"). No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Settling Parties in writing. Class Counsel will take down the Settlement Website no later than one year after the Settlement Effective Date or thirty (30) calendar days after the receipt of the affidavit(s) referenced in Paragraph 6.9, whichever is earlier.

12.3 Subject to Paragraph 12.1 above, and for purposes of avoiding Class Member confusion, the Settling Parties agree that nothing in this Settlement Agreement shall preclude Boeing, the Plan or their agents (which may include the current Plan recordkeeper) from providing notices to Class Members that they will receive or have received a Settlement payment or Plan contribution based upon the Settlement of this Action. No notice shall be provided pursuant to this Paragraph 12.3 without affording Class Counsel a reasonable opportunity to review and consent to the

contents of the notice in advance of its dissemination, which consent shall not be unreasonably withheld or delayed.

13. Article 13 – General Provisions

- 13.1** Defendants currently have a target for cash in the Company Stock Fund and have contracted with a fiduciary to monitor cash levels in the Company Stock Fund.
- 13.2** The undersigned counsel, on behalf of themselves and the Settling Parties, agree to cooperate fully with each other in seeking Court approvals of the Preliminary Order and the Final Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms.
- 13.3** Within sixty (60) calendar days after the Settlement Effective Date, the Settling Parties shall either return to the producing parties, or destroy, all documents produced in discovery under a claim of confidentiality pursuant to the Confidentiality Agreement, including but not limited to documents produced under a claim of privilege. The Settling Parties, Class Counsel, and Defense Counsel agree that at all times they will honor the requirements of the Confidentiality Agreement, notwithstanding Settlement of the Action.
- 13.4** This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of Defendants of any wrongdoing, fault, or liability whatsoever by any of Defendants, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Class Action or any other proceeding, and Defendants expressly deny and disclaim any such wrongdoing, fault, or liability, and deny each and every claim asserted in the Class Action. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not constitute admissions of any liability of any kind, whether legal or factual.
- 13.5** Neither the Settling Parties, Class Counsel, nor Defense Counsel shall have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise; (ii) the determination of the Independent Fiduciary; (iii) the management, investment, or distribution of the Qualified Settlement Fund; (iv) the Plan of Allocation as approved by the Court; (v) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (vi) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (vii) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendants nor Defense Counsel shall have any responsibility for, or liability whatsoever with respect to,

any act, omission, or determination of Class Counsel in connection with the administration of the Gross Settlement Amount or otherwise.

- 13.6** Only Class Counsel shall have standing to seek enforcement of this Settlement Agreement on behalf of Plaintiffs and Class Members. Any individual concerned about Defendants' compliance with this Settlement Agreement may so notify Class Counsel and direct any requests for enforcement to them. Class Counsel shall have the full and sole discretion to take whatever action they deem appropriate, or to refrain from taking any action, in response to such request. Class Counsel shall provide the monitoring necessary to assure compliance with the Settlement Agreement and any action to enforce the Settlement Agreement during the Settlement Period without additional fee or reimbursement of expenses beyond the Attorneys' Fees and Costs determined by the Court.
- 13.7** This Settlement Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, Illinois law.
- 13.8** Class Counsel, Defense Counsel, and the Settling Parties agree that any and all disputes concerning compliance with the Settlement Agreement shall be exclusively resolved as follows:
- 13.8.1** If Class Counsel, Defense Counsel, or a Settling Party has reason to believe that a legitimate dispute exists concerning the Settlement Agreement, the party raising the dispute shall first promptly give written notice under the Settlement Agreement to the other party including in such notice: (a) a reference to all specific provisions of the Settlement Agreement that are involved; (b) a statement of the alleged non-compliance; (c) a statement of the remedial action sought; and (d) a brief statement of the specific facts, circumstances, and any other arguments supporting the position of the party raising the dispute;
- 13.8.2** Within twenty (20) calendar days after receiving the notice described in Paragraph 13.8.1, the receiving party shall respond in writing with its position and the facts and arguments it relies on in support of its position;
- 13.8.3** For a period of not more than twenty (20) calendar days following mailing of the response described in Paragraph 13.8.2, the Settling Parties shall undertake good-faith negotiations, which may include meeting in person or conferring by telephone, to attempt to resolve the dispute;
- 13.8.4** If the dispute is not resolved during the period described in Paragraph 13.8.3, either party may request that the Court resolve the dispute; and
- 13.8.5** In connection with any disputes concerning compliance with the Settlement Agreement, the Settling Parties agree that each party shall bear its own fees and costs unless the Court orders otherwise.

- 13.9** The Settling Parties agree that the Court has personal jurisdiction over the Class and Defendants and shall maintain that jurisdiction for purposes of resolving any disputes concerning compliance with this Settlement Agreement during the Settlement Period. Any requests for the Court's assistance to resolve any such disputes may be submitted to the Court.
- 13.10** The Settlement Agreement may be executed by exchange of executed signature pages, and any signature transmitted by facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute the same instrument.
- 13.11** Each party to this Settlement Agreement hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to that party by his, her, or its counsel.
- 13.12** The headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Paragraphs they caption. References to a person are also to the person's permitted successors and assigns, except as otherwise provided herein. Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but shall be deemed to be followed by the words "without limitation."
- 13.13** Before entry of the Preliminary Approval Order and approval of the Independent Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties. Following approval by the Independent Fiduciary, this Settlement Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Settling Parties and only if the Independent Fiduciary approves such modification or amendment in writing. Following entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Independent Fiduciary in writing and approved by the Court.
- 13.14** This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto.
- 13.15** The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any party shall not be

deemed to be or construed as a waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

- 13.16** Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter of this Settlement Agreement.
- 13.17** The provisions of this Settlement Agreement are not severable.
- 13.18** All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.
- 13.19** All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 – Former Participant Claim Form; Exhibit 2 – Preliminary Order; Exhibit 3 – Notice of Class Action Settlement and Fairness Hearing to Current Participants; Exhibit 4 – Notice of Class Action Settlement and Fairness Hearing to Former Participants; and Exhibit 5 – Final Order.
- 13.20** No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.
- 13.21** Any notice, demand, or other communication under this Settlement Agreement (other than the Settlement Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier:

IF TO THE CLASS REPRESENTATIVES:

Jerome J. Schlichter
Mark G. Boyko
Sean Soyars
SCHLICHTER, BOGARD & DENTON
100 S. Fourth St.
St. Louis, Missouri 63102
Tel: (314) 621-6115
Fax: (314) 621-7151

IF TO DEFENDANTS:

Jeffrey S. Russell
BRYAN CAVE LLP
211 N. Broadway, Ste. 3600
St. Louis, Mo 63102
Tel: (314) 259-2000
Fax: (314) 259-2020

And

Brian D. Boyle
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
Tel: (202) 383-5300
Fax: (202) 383-5414

ON BEHALF OF PLAINTIFFS Gary Spano, John Bunk, Marlene White, Kenneth Griffin,
and Douglas Peterman, Individually and as Representatives of the Class.

Dated: 11/4/2015

SCHLICHTER, BOGARD & DENTON
LLP



Jerome J. Schlichter

Michael A. Wolff

Mark G. Boyko

Sean Soyars

100 South Fourth Street

St. Louis, MO 63102

Telephone: (314) 621-6115

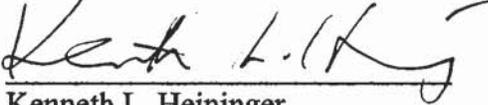
Facsimile: (314) 621-7151

Attorneys for Plaintiffs and Class
Representatives

ON BEHALF OF DEFENDANTS The Boeing Company, Boeing's Employee Benefits Plans Committee, Boeing's Employee Benefits Investment Committee, and Scott M. Buchanan.

Dated: 11-4-15

THE BOEING COMPANY


Kenneth L. Heininger

Direct Rollover to an Eligible Plan: Check only one box below and complete the Rollover Information Section below.

Direct Rollover to tax-deferred plan. (Governmental 457(b), 401(a)/ 401(k), 403(b), or traditional IRA)

Direct Rollover to a Roth IRA. (subject to ordinary income tax)

Rollover Information:

Company or Trustee's Name (to whom the check should be made payable)

Company or Trustee's Mailing Address 1

Company or Trustee's Mailing Address 2

Company or Trustee's City

State

Zip

Account Number

(_____)_____
Company or Trustee's Phone Number

PART 3: SIGNATURE AND CONSENT

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORMER PARTICIPANT CLAIM FORM IS TRUE, CORRECT AND COMPLETE AND THAT I SIGNED THIS FORMER PARTICIPANT CLAIM FORM.

Participant Signature

Date (Required)

PART 4: SUBSTITUTE IRS FORM W-9

TAXPAYER IDENTIFICATION NUMBER

Enter Your Social Security Number: - -

CERTIFICATION

Under penalties of perjury, I certify that:

1. The Social Security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. Person (including a U.S. resident alien).

W-9 Signature: _____ W-9 Date: ___/___/_____

Note: if you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

GARY SPANO, *et al.*,

Plaintiffs,

vs.

No. 06-cv-743-NJR-DGW

THE BOEING COMPANY, *et al.*,

Defendants.

[PROPOSED] MEMORANDUM AND ORDER

ROSENSTENGEL, U.S. District Court Judge:

This litigation involves claims for alleged breaches of fiduciary duties in violation of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1001 et seq., with respect to the Voluntary Investment Plan, a 401(k) plan sponsored by The Boeing Company (the “Plan”). Plaintiffs allege that during the Class Period¹, Defendants violated their duties under ERISA by, *inter alia*, allowing excessive fees, imprudently managing the Company Stock Fund, and by offering an imprudently volatile Technology Sector Fund. Defendants have denied and continue to deny the claims and contentions of the Class Representatives, deny that they are liable at all to the Class, and deny that the Class or the Plan have suffered any harm or damage for which Defendants could be held responsible.

The parties seek preliminary approval of a settlement of these claims against all Defendants (the “Settlement”). The terms of the Settlement are set out in a Class Action Settlement Agreement dated November 4, 2015 (the “Settlement Agreement”) (Doc. _____), executed by the parties and their counsel.

The Court has considered the proposed Settlement and whether to authorize notice to members of the Class (including the sub-classes). Having reviewed the Settlement Agreement, the motion papers, and conducted a hearing in open Court on _____, 2015, it is **ORDERED** as

¹ Capitalized terms used in this Order but not defined in this Order have the meanings assigned to them in the Settlement Agreement.

follows:

1. **Preliminary Findings Regarding Proposed Settlement:** The Court preliminarily finds that:
 - A. The proposed Settlement resulted from extensive arms-length negotiations;
 - B. The Settlement was tentatively reached only moments before the trial was to commence, after nine years of vigorous litigation, including an appeal to the Seventh Circuit and an attempted second appeal, massive discovery, extensive motion practice — including not only motions to dismiss and oppositions to class certification, but also two separate motions for summary judgment filed three times each —, the use of multiple experts and trial preparation up to the literal time trial was to commence, and after negotiations had continued for several months, including multiple in-person mediation sessions, numerous teleconference mediation sessions, and telephonic and email communications with multiple skilled mediators;
 - C. Class Counsel has concluded that the Settlement Agreement is fair, reasonable and adequate; and
 - D. The Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.
2. **Fairness Hearing:** A hearing is scheduled at the United States District Court for the Southern District of Illinois, Judge Nancy J. Rosenstengel presiding, at _____ on _____, 2016, (the “Fairness Hearing”) to determine, among other issues:
 - A. Whether the Settlement Agreement should be approved as fair, reasonable, and adequate;
 - B. Whether the notice and notice methodology was performed as directed by

this Court;

C. Whether the motion for attorneys' fees and costs to be filed by Class Counsel should be approved;

D. Whether the motion for compensation to Class Representatives should be approved; and

E. Whether the Administrative Expenses specified in the Settlement Agreement and requested by the parties should be approved for payment from the Settlement Fund.

3. **Establishment of Qualified Settlement Fund:** A common fund is agreed to by the parties in the Settlement Agreement and is hereby established and shall be known as the *Spano v. Boeing* Litigation Settlement Fund (the "Settlement Fund"). The Settlement Fund shall be a "qualified settlement fund" within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. The Settlement Fund shall consist of \$57,000,000.00 (the "Gross Settlement Amount") and any interest earned thereon. The Settlement Fund shall be administered as follows:

A. The Settlement Fund is established exclusively for the purposes of: (a) making distributions to eligible claimants pursuant to the claims process described in the Settlement Agreement; (b) making distributions to Class Representatives and Class Members as specified in the Settlement Agreement and ordered by the Court; (c) making payments for all settlement administration costs and costs of notice, including payments of all Administrative Expenses specified in the Settlement Agreement; (d) making payments of all Attorneys' Fees and Costs to Class Counsel as awarded by the Court in this action; and (e) paying employment, withholding, income and other applicable taxes, all in accordance with the terms of the

Settlement Agreement and this Order. Other than the payment of Administrative Expenses or as otherwise expressly provided in the Settlement Agreement, no distribution shall be made from the Settlement Fund until after the Settlement Effective Date.

B. Within the time period set forth in the Settlement Agreement, Defendants shall cause the Gross Settlement Amount to be deposited into the Settlement Fund.

C. Defendants shall timely furnish a statement to the Settlement Administrator that complies with Treasury Regulation § 1.468B-3(e)(2), which may be a combined statement under Treasury Regulation § 1.468B-3(e)(2)(ii), and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which Defendants make a transfer to the Settlement Fund.

D. Defendants shall have no withholding, reporting or tax reporting responsibilities with regard to the Settlement Fund or its distribution, except as otherwise specifically identified herein. Moreover, Defendants shall have no liability, obligation, or responsibility for administration of the Settlement Fund or the disbursement of any monies from the Settlement Fund except for: (1) their obligation to cause the Gross Settlement Amount to be paid no later than the date specified above; and (2) their agreement to cooperate in providing information that is necessary for settlement administration set forth in the Settlement Agreement.

E. The oversight of the Settlement Fund is the responsibility of the Settlement Administrator. The status and powers of the Settlement Administrator are as defined by this Order.

F. The Gross Settlement Amount caused to be paid by Defendants into the Settlement Fund pursuant to the Settlement Agreement, and all income generated by that Amount, shall be *in custodia legis* and immune from attachment, execution, assignment,

hypothecation, transfer or similar process by any person. Once the Settlement Fund vests, it is irrevocable during its term and Defendants have divested themselves of all right, title or interest, whether legal or equitable, in the Settlement Fund, if any; provided, however, in the event the Settlement Agreement is not approved by the Court or the Settlement set forth in the Settlement Agreement is terminated or fails to become effective in accordance with its terms (or, if following approval by this Court, such approval is reversed or modified), the Parties shall be restored to their respective positions in this case as of the day prior to the Settlement Agreement Execution Date; the terms and provisions of the Settlement Agreement and this Order shall be void and have no force and effect and shall not be used in this Case or in any proceeding for any purpose; and the Settlement Fund and income earned thereon shall immediately be disposed of as set forth in the Settlement Agreement.

G. The Settlement Administrator may make disbursements out of the Settlement Fund only in accordance with this Order or any additional Orders issued by the Court.

H. The Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Settlement Fund in accordance with Article 6 of the Settlement Agreement, provided, however, that the Settlement Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges and excises of any kind, including income taxes, and any interest, penalties or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all such amounts have been paid by the Settlement Fund.

I. The Settlement Fund shall be used to make payments to Class Members under the Plan of Allocation set forth in the Settlement Agreement. Individual payments to Class Members will be subject to tax withholding as required by law and as

described in the Settlement Notice and its attachments. In addition, all Class Representatives' Compensation, Administrative Expenses, and all Attorneys' Fees and Costs of Class Counsel shall be paid from the Settlement Fund.

J. The Court and the Settlement Administrator recognize that there will be tax payments, withholding, and reporting requirements in connection with the administration of the Settlement Fund. The Settlement Administrator shall, pursuant to the Settlement Agreement, determine, withhold, and pay over to the appropriate taxing authorities any taxes due with respect to any distribution from the Settlement Fund and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of taxes.

K. The Settlement Administrator, in its discretion, may request expedited review and decision by the IRS or the applicable state or local taxing authorities, with regard to the correctness of the returns filed for the Settlement Fund and shall establish reserves to assure the availability of sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement Administrator as fiduciaries of the Settlement Fund. Reserves may be established for taxes on the Settlement Fund income or on distributions.

L. The Settlement Administrator and Defendants shall provide to and exchange with each other such information as shall be reasonably necessary to file notices, reports, and returns and to make timely determinations of withholding obligations.

M. The Settlement Administrator shall have all the necessary powers, and

take all necessary ministerial steps, to effectuate the terms of the Settlement Agreement, including the payment of all distributions. Such powers include receiving and processing information from Former Participants pertaining to their claims and investing, allocating and distributing the Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order.

N. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements, and other transactions of the Settlement Fund. All accounts, books, and records relating to the Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person; the nature and status of any payment from the Settlement Fund and other information which the Settlement Administrator considers relevant to showing that the Settlement Fund is being administered, and awards are being made, in accordance with the purposes of the Settlement Agreement, this Order, and any future orders that the Court may find it necessary to issue.

O. The Settlement Administrator may establish protective conditions concerning the disclosure of information maintained by the Settlement Administrator if publication of such information would violate any law, including rights to privacy. Any person entitled to such information who is denied access to the Settlement Fund's records may submit a request to the Court for such information. However, the Settlement Administrator shall supply such information to any claimant as may be reasonably necessary to allow him or her to accurately determine his or her federal, state and local tax liabilities. Such information shall be supplied in the form and manner prescribed by relevant law.

P. This Order will bind any successor Settlement Administrator. The successor Settlement Administrator(s) shall have, without further act on the part of anyone, all the duties, powers, functions, immunities, and discretion granted to the original Settlement Administrator. Any Settlement Administrator(s) who is replaced (by reason other than death) shall execute all instruments, and do all acts, that may be necessary or that may be ordered or requested in writing by the Court or by any successor Settlement Administrator(s), to transfer administrative powers over the Settlement Fund to the successor Settlement Administrator(s). The appointment of a successor Settlement Administrator(s), if any, shall not under any circumstances require any Defendant to make any further payment of any nature into the Settlement Fund or otherwise.

4. **Settlement Notice:** The Settling Parties have presented to the Court proposed forms of Settlement Notice, which are appended hereto as Exhibits 1 and Exhibit 2.

A. The Court finds that the proposed forms and the Settlement Website referenced in the Settlement Notice fairly and adequately:

- i. Describe the terms and effect of the Settlement Agreement and of the Settlement;
- ii. Notify the Class concerning the proposed Plan of Allocation;
- iii. Notify the Class that Class Counsel will seek compensation from the Settlement Fund for the Class Representatives and for Attorneys' Fees and Costs;
- iv. Notify the Class that Administrative Expenses related to the implementation of the Settlement will be paid from the Settlement Fund;
- v. Notify the Class that amendments to the Settlement Agreement, including amendments to the Plan of Allocation, or changes to filed documents concerning the

settlement, including this Order, or the time and location of the Fairness Hearing, will be posted on the Settlement Website without additional mailed notice;

vi. Give notice to the Class of the time and place of the Fairness Hearing; and

vii. Describe how the recipients of the Settlement Notice may object to any of the relief requested.

B. The Settling Parties have proposed the following manner of communicating the notice to members of the Class, and the Court finds that such proposed manner is the best notice practicable under the circumstances, and directs that the Settlement Administrator shall, by no later than sixty (60) days before the Fairness Hearing, cause the Settlement Notice, with such non-substantive modifications thereto as may be agreed upon by the Settling Parties, to be mailed, by first-class mail, postage prepaid, to the last known address of each member of the Settlement Class who can be identified through commercially reasonable means. Defendants shall cooperate with the Settlement Administrator by providing, in electronic format, the names, addresses and Social Security numbers of members of the Class. The names, addresses, and Social Security numbers obtained pursuant to this Order shall be used solely for the purpose of providing notice of this Settlement and as required for purposes of tax withholding and reporting, and for no other purpose.

C. For any Settlement Notice returned as undeliverable, the Settlement Administrator shall utilize the provided Social Security number to attempt to determine the current address of the person and shall mail the Settlement Notice to that address.

D. At or before the Fairness Hearing, Class Counsel or the Settlement Administrator shall file with the Court a proof of timely compliance with the foregoing

requirements.

E. The Court directs Class Counsel, no later than 60 days before the Fairness Hearing, to cause the Settlement Notice to be published on the Settlement Website identified in the Settlement Notice.

5. **Objections to Settlement:** Any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of Attorneys' Fees and Costs, or to any request for compensation for the Class Representatives must file an objection in the manner set out in this Order.

A. A member of the Settlement Class wishing to raise an objection to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of Attorneys' Fees and Costs, or to any request for compensation for the Class Representatives must do the following: (A) file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection; and (B) serve copies of the objection and all supporting authorities or evidence to Class Counsel and Defense Counsel. The addresses for filing objections with the Court and for service of such objections on counsel for the parties to this matter are as follows:

Clerk of the Court
United States District Courthouse
750 Missouri Avenue
East St. Louis, IL 62201

SCHLICHTER, BOGARD & DENTON, LLP
Attn: Boeing ERISA Settlement
100 S. 4th Street
St. Louis, MO 63102

BRYAN CAVE LLP
Attn: Jeffrey S. Russell
One Metropolitan Square
211 N. Broadway, Suite 3600
St. Louis, MO 63102

B. For the objection to be considered by the Court, the objector or his, her, or its counsel (if any) must serve of copies of the objection(s) on the attorneys listed above and file it with the Court by no later than thirty (30) days before the date of the Fairness Hearing.

C. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must serve a notice of appearance on the attorneys listed above and file it with the Court by no later than thirty (30) days before the date of the Fairness Hearing.

D. Failure to serve timely objections(s) on either the Court or counsel for the parties shall constitute a waiver of the objection(s). Any Class Member or other person who does not timely file and serve a written objection complying with the terms of this Order shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

E. The parties may, but are not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two (2) hours in length, on any objector within ten (10) days of receipt of the objection and any responses to discovery or depositions must be completed within ten (10) days of the request being served on the objector.

F. Any party wishing to file a response to an objection must do so, and serve the response on all parties, no later than five (5) days before the Fairness Hearing.

6. **Appearance at Fairness Hearing:** Any objector who files and serves a timely, written objection in accordance with the terms of this Order as set out in Paragraph 8 above may also appear at the Fairness Hearing either in person or through counsel retained at the objector's

expense. Objectors or their attorneys intending to speak at the Fairness Hearing must serve a notice of intention to speak setting forth, among other things, the name, address, and telephone number of the objector (and, if applicable, the name, address, and telephone number of the objector's attorney) on Class Counsel and Defense Counsel (at the addresses set out above) and file it with the Court by no later than thirty (30) days before the date of the Fairness Hearing. Any objector (or objector's attorney) who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing.

7. **Claim Form Deadline:** All valid claim forms must be received by the Settlement Administrator by ___ p.m. Central Standard Time on _____, 2016.

8. **Service of Papers:** Defense Counsel and Class Counsel shall promptly furnish each other with copies of all objections that come into their possession.

9. **Termination of Settlement:** This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing the day before the Settlement Agreement Execution Date, if the Settlement is terminated in accordance with the Settlement Agreement.

10. **Use of Order:** This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability or a waiver of any claims or defenses. This Order shall not be construed or used as an admission, concession, or declaration by or against Class Representatives or the Settlement Class that their claims lack merit, or that the relief requested in the action is inappropriate, improper or unavailable. This Order shall not be construed or used as a waiver by any party of any arguments, defenses, or claims he, she, or it may have.

11. **Continuance of Hearing:** The Court will not continue the Fairness Hearing

without a showing of good cause. If the Court does find good cause to continue the Fairness Hearing, the Class shall be notified of the continuance by publication of the Court's order on the Settlement Website. No other notice shall be required.

IT IS SO ORDERED.

DATED: _____, 2015

Nancy J. Rosenstengel
United States District Court Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

Gary Spano, *et al.*,
Plaintiffs,

The Boeing Company, *et al.*,
Defendants.

Case No. 06-cv-743-NJR-DGW

Judge Nancy J. Rosenstengel

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

Your legal rights might be affected if you are a member of the following Class or Sub-Classes:

Recordkeeping Class:

All participants or beneficiaries of the Boeing Voluntary Investment Plan (the "Plan"), excluding the Defendants, members of the Defendant committees, and the Boeing directors, who had an account balance at any time between September 28, 2000 and December 31, 2006, as all participants during that time paid recordkeeping fees.

Mutual Fund Sub-Class:

All participants or beneficiaries of the Plan, excluding the Defendants, members of the Defendant committees, and the Boeing directors, who, between September 28, 2000 and December 31, 2005, invested in any of the Plan's mutual funds, since each mutual fund during this time was laden with imprudently excessive fees.

Small Cap Fund Sub-Class:

All participants or beneficiaries of the Plan, excluding the Defendants, members of the Defendant committees, and the Boeing directors, who, between September 28, 2000 and December 31, 2005, invested in the Small Cap mutual fund in the Plan.

Technology Fund Sub-Class:

All participant or beneficiaries of the Plan, excluding the Defendants, members of the Defendant committees, and the Boeing directors, who, between September 28, 2000 and December 31, 2005, invested in the Plan's Technology Fund and whose investment in the Technology Fund underperformed that of the diversified domestic equity markets as represented by the Standard and Poor's 500 Index Fund minus 5 basis points for investment management.

Company Stock Fund Sub-Class:

All participants or beneficiaries of the Boeing Voluntary Investment Plan, excluding the Defendants, members of the Defendants committees, and the Boeing directors, who, between September 28, 2000 and December 31, 2006, invested in the Plan's Boeing Company Stock Fund and whose investment in the Boeing Company Stock Fund underperformed that of Boeing Company Stock.

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan against The Boeing Company (“Boeing”), Employee Benefits Plans Committee, Employee Benefits Investment Committee and Scott M. Buchanan (collectively, “Defendants”), alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide, among other things, for the allocation of monies directly into the individual accounts of Class Members who had accounts with a positive balance (an “Active Account”) in the Plan as of September 30, 2015 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had Active Accounts as of September 30, 2015 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated November 4, 2015. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.VIPSettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any possible amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.
- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on XXXXXX, 2016, at XXXX_p.m., before Judge Nancy J. Rosenstengel in Courtroom 3, United States Courthouse, 750 Old Missouri Ave., East St. Louis, IL 62201.
- Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation must be served in writing on Class Counsel and Defense Counsel as identified on page 5 of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.VIPSettlement.com.

According to the Plan’s records, you are a Current Participant. If you are a Current Participant, you do not need to do anything if you wish to participate in this Settlement. If you believe that you meet the definition of a Former Participant, please contact the Settlement Administrator. Current Participants include both participants currently employed at Boeing and participants who are no longer employed by Boeing but continue to have an account balance in the Plan on September 30, 2015.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT

Our records indicate that you are a Current Participant; you do not need to do anything to participate in the settlement. If, however, you are a “Former Participant” who participated in the Plan during the Class Period and on September 30, 2015 did not have an Active Account in the Plan, or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form by XXXXXX to receive a check for your share of the Net Settlement Amount. If you are a Former Participant and you do not return the Former Participant Claim Form by XXXXXX, you will forfeit your share of the Net Settlement Amount. We have not included a claim form in your notice because Current Participants do not need to submit a claim form, and our records indicate that you are a Current Participant. If you believe you are a Former Participant, a claim form may be obtained by accessing www.VIPSettlement.com.

<p>YOU CAN OBJECT (NO LATER THAN XXXXX, 2016)</p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.</p>
<p>YOU CAN ATTEND A HEARING ON XXXX</p>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel of your intention to appear at the hearing by XXXXX, 2016.</p>

The Class Action

The case is called *Gary Spano, et. al. v. The Boeing Company, et al.*, Case No. 06-743 (the “Class Action”). It has been pending since September 2006. The Court supervising the case is the U.S. District Court for the Southern District of Illinois. The individuals who brought this suit are called Class Representatives, and the entities they sued are called Defendants. The Class Representatives are participants in the Plan. The Defendants are Boeing and certain alleged fiduciaries to the Plan. The Class Representatives’ claims are described below, and additional information about them is available at www.VIPSettlement.com.

The Settlement

After nine years of litigation, the Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$57,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$57,000,000 minus: (a) all Attorneys’ Fees and Costs paid to Class Counsel; (b) all Administrative Expenses; (c) any and all Class Representatives’ Compensation; and (d) a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period, and (3) an amount estimated to account for adjustments of data or calculation errors.

Additional Benefits to the Plan

Over the nine years since this case was filed, the Plan has changed in many respects, which have lowered fees and improved plan options. The Plan no longer includes mutual funds, which Plaintiffs alleged were excessively expensive prior to their removal. In addition, the Plan’s recordkeeping services have been competitively bid twice, each time significantly lowering the recordkeeping fees paid by plan participants. Plaintiffs’ had alleged Boeing had not had competitive bidding and should have done this during the Class Period. Boeing has also taken steps to reduce the need for cash instead of Boeing Stock in the Company Stock Fund. By doing so, the Company Stock Fund’s returns can more closely mirror the returns of Boeing common stock (BA). In addition to these Plan improvements, as part of the settlement, the Defendants have agreed to retain an Independent Investment Consultant to review whether and how to provide participants access to a technology sector strategy as a core option in the Plan. Further, the Court will retain jurisdiction to enforce the Settlement Agreement for a period of three years following final approval. Class Counsel has also agreed to bring an enforcement action in Court, if needed, at no cost to the Class. The terms of the Settlement will be reviewed by an Independent Fiduciary.

Statement of Attorneys’ Fees and Costs and Class Representatives’ Compensation Sought in the Class Action

Class Counsel have devoted many hours to investigating the Plan, bringing this case, and pursuing it for nine years successfully opposing a motion to dismiss, multiple motions for summary judgment, handling an appeal of Class Certification and getting the Class and Sub-Classes certified, and having the case ready for a planned one-month trial. During that time, Class Counsel advanced substantial costs for expert witnesses, document review, depositions, and other costs necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending before the District Court and the Seventh Circuit Court of Appeals. Class Counsel also has agreed to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not

approved. In addition, Class Counsel has agreed to monitor Defendants' performance of their obligations under the Settlement Agreement over a three-year period, including any necessary Court proceedings, without seeking additional payment from the Settlement Fund.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$19,000,000, in addition to no more than \$1,845,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments of \$25,000 for Class Representatives Spano, White, and Bunk, and \$10,000 for Class Representatives Griffin and Peterman. These representatives took on the risk of litigation, sat for depositions, responded to discovery, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel, reviewing settlement negotiations, preparing for depositions, and giving overall support to the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full and formal application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.VIPSettlement.com.

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because Boeing's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

2. What Is The Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, Defendants violated federal law by allowing the Plan's recordkeeper to receive excessive fees from the Plan and by imprudently including excessively-expensive mutual funds, including the Small Cap Fund, as well as including the excessively-volatile Technology Sector Fund and by holding excessive cash positions within the Company Stock Fund, reducing the returns of the Fund.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defense Counsel and multiple all-day sessions with a private mediator and with multiple judges from the Southern District of Illinois. The Settlement was reached at the courthouse at the time trial was set to begin, and the parties were ready to proceed with a month-long trial. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are experienced in this kind of matter, believe that the Settlement is best for all Class Members.

4. What Does The Settlement Provide?

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants.

Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

As discussed above, the Settlement Agreement also provides for non-monetary benefits to the Plan, and changes were made to the Plan, benefitting Class Members, during the nine years of litigation.

All Class Members and anyone claiming through them will fully release Defendants and their “Released Parties” from “Released Claims.” The Released Parties include Defendants and any past, present, and future related entities, and all of their past, present, and future officers, directors, employees, attorneys, and agents. The Released Claims include all claims that were asserted in the Class Action, that arise out of the conduct alleged in the Complaint, or 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; (3) disclosures or failures to disclose information regarding the Plan’s investment options or service providers; and (4) all claims relating to the implementation of the Settlement. This is only a summary of the Released Parties and Released Claims and not a binding description of the Released Parties or Released Claims. The actual governing release is found within the Settlement Agreement at www.VIPSettlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants or the Related Parties for conduct during the Class Period arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is available at www.VIPSettlement.com.

5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan’s recordkeeper, or, if on September 30, 2015, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) “Current Participant” as defined on page 1 or (2) an “Authorized Former Participant” (a “Former Participant” as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Net Settlement Amount will be divided between the Recordkeeping Class and the Mutual Fund, Small-Cap Fund, Technology Fund, and Company Stock Fund Sub-Classes in proportions that have been ordered by the Court under the Plan of Allocation. 50% of the Net Settlement Amount will be allocated to the Recordkeeping Class, 20% will be allocated to the Mutual Fund Sub-Class, 15% will be allocated to the Technology Fund Sub-Class, 10% will be allocated to the Company Stock Fund Sub-Class, and 5% will be allocated to the Small Cap Fund Sub-Class.

The portion allocated to the Recordkeeping Class will be divided among all Class Members pro rata based on their average quarter-end account balances during the Class Period, since all participants in the Plan who had an account balance during the Class Period paid recordkeeping fees. The portions allocated to the sub-classes will be allocated pro rata based on the average quarter-end balances of participants in those funds during the Class Period. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at www.VIPSettlement.com.

There are approximately _____ Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, your portion of the Settlement will be distributed pursuant to the terms of that order.

6. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to Boeing’s records, you are a Current Participant. Therefore, you do not need to do anything to receive your share of the Settlement.**

7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur during the XXXX quarter of 2016.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

8. Can I Get Out Of The Settlement?

No. The Class and all Sub-Classes were certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

9. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$19,000,000 in fees and \$1,845,000 in costs. An Independent Fiduciary will provide an opinion on the reasonableness of Class Counsel’s requested fee and cost reimbursement. The Court will determine what fees and costs will be approved.

11. How Do I Tell The Court If I Don’t Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Gary Spano, et al. v. The Boeing Company, et al.*, Case No. 06-743. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than XXXXXX, 2016. The Court’s address is Clerk of the Court, U.S. District Court, Southern District of Illinois, 750 Missouri Ave., East St. Louis, IL 62201. Your written objection also must be mailed to the lawyers listed below, **no later than XXXXXX, 2016**. Please note that the Court’s Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector within ten days of receipt of the objection. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENSE COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Boeing 401(k) Settlement 100 S. Fourth St., Suite 900 St. Louis, MO 63102 VIPSettlement@uselaws.com Tel: (314) 621-6115 Fax: (314) 621-7151	BRYAN CAVE LLP Attn: Jeffrey S. Russell One Metropolitan Square 211 N. Broadway, Suite 3600 St. Louis, MO 63102

12. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at XXX p.m. on XXXX, 2016, at the United States District Court for the Southern District of Illinois, Courtroom 3, 750 Missouri Ave., East St. Louis, IL 62201.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

13. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

14. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Gary Spano, et al. v. The Boeing Company, et al.*, Case No. 06-734." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 11, **no later than XXXXX, 2016.**

15. What Happens If I Do Nothing At All?

If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY.**

16. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www.VIPSettlement.com, call 1-XXXXXXX, or write to the Settlement Administrator at Boeing 401(k) Settlement Administrator,

_____.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

Gary Spano, *et al.*,
Plaintiffs,

The Boeing Company, *et al.*,
Defendants.

Case No. 06-cv-743-NJR-DGW

Judge Nancy J. Rosenstengel

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

Your legal rights might be affected if you are a member of the following Class or Sub-Classes:

Recordkeeping Class:

All participants or beneficiaries of the Boeing Voluntary Investment Plan (the "Plan"), excluding the Defendants, members of the Defendant committees, and the Boeing directors, who had an account balance at any time between September 28, 2000 and December 31, 2006, as all participants during that time paid recordkeeping fees.

Mutual Fund Sub-Class:

All participants or beneficiaries of the Plan, excluding the Defendants, members of the Defendant committees, and the Boeing directors, who, between September 28, 2000 and December 31, 2005, invested in any of the Plan's mutual funds, since each mutual fund during this time was laden with imprudently excessive fees.

Small Cap Fund Sub-Class:

All participants or beneficiaries of the Plan, excluding the Defendants, members of the Defendant committees, and the Boeing directors, who, between September 28, 2000 and December 31, 2005, invested in the Small Cap mutual fund in the Plan.

Technology Fund Sub-Class:

All participant or beneficiaries of the Plan, excluding the Defendants, members of the Defendant committees, and the Boeing directors, who, between September 28, 2000 and December 31, 2005, invested in the Plan's Technology Fund and whose investment in the Technology Fund underperformed that of the diversified domestic equity markets as represented by the Standard and Poor's 500 Index Fund minus 5 basis points for investment management.

Company Stock Fund Sub-Class:

All participants or beneficiaries of the Boeing Voluntary Investment Plan, excluding the Defendants, members of the Defendants committees, and the Boeing directors, who, between September 28, 2000 and December 31, 2006, invested in the Plan's Boeing Company Stock Fund and whose investment in the Boeing Company Stock Fund underperformed that of Boeing Company Stock.

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

- The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plan against The Boeing Company (“Boeing”), Employee Benefits Plans Committee, Employee Benefits Investment Committee and Scott M. Buchanan (collectively, “Defendants”), alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide, among other things, for the allocation of monies directly into the individual accounts of Class Members who had accounts with a positive balance (an “Active Account”) in the Plan as of September 30, 2015 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had Active Accounts as of September 30, 2015 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated November 4, 2015. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at www.VIPSettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any possible amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.
- Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on XXXXXX, 2016, at XXXX_p.m., before Judge Nancy J. Rosenstengel in Courtroom 3, United States Courthouse, 750 Old Missouri Ave., East St. Louis, IL 62201.
- Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation must be served in writing on Class Counsel and Defense Counsel as identified on page 5 of this Settlement Notice.
- Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at www.VIPSettlement.com.

According to the Plan’s records, you are a Former Participant. As a Former Participant, you MUST complete and return the enclosed claim form in order to be eligible for a payment from the Settlement Fund.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. YOU MUST SUBMIT A CLAIM FORM TO PARTICIPATE IN THE SETTLEMENT	Our records indicate that you are a Former Participant who may be eligible to receive a <u>portion of the Settlement Fund</u> . As a Former Participant who participated in the Plan during the Class Period and on September 30, 2015 did not have an Active Account in the Plan, or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form by XXXXXX to receive a check for your share of the Net Settlement Amount. If you are a Former Participant and you do not return the Former Participant Claim Form by XXXXXXXX, you will forfeit your share of the Net Settlement Amount.
YOU CAN OBJECT (NO LATER THAN XXXXX, 2016)	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.

YOU CAN ATTEND A HEARING ON XXXX

If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel of your intention to appear at the hearing by XXXXX, 2016.

The Class Action

The case is called *Gary Spano, et. al. v. The Boeing Company, et al.*, Case No. 06-743 (the “Class Action”). It has been pending since September 2006. The Court supervising the case is the U.S. District Court for the Southern District of Illinois. The individuals who brought this suit are called Class Representatives, and the entities they sued are called Defendants. The Class Representatives are participants in the Plan. The Defendants are Boeing and certain alleged fiduciaries to the Plan. The Class Representatives’ claims are described below, and additional information about them is available at www.VIPSettlement.com.

The Settlement

After nine years of litigation, the Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$57,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$57,000,000 minus: (a) all Attorneys’ Fees and Costs paid to Class Counsel; (b) all Administrative Expenses; (c) any and all Class Representatives’ Compensation; and (d) a contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period, and (3) an amount estimated to account for adjustments of data or calculation errors.

Additional Benefits to the Plan

Over the nine years since this case was filed, the Plan has changed in many respects, which have lowered fees and improved plan options. The Plan no longer includes mutual funds, which Plaintiffs alleged were excessively expensive prior to their removal. In addition, the Plan’s recordkeeping services have been competitively bid twice, each time significantly lowering the recordkeeping fees paid by plan participants. Plaintiffs’ had alleged Boeing had not had competitive bidding and should have done this during the Class Period. Boeing has also taken steps to reduce the need for cash instead of Boeing Stock in the Company Stock Fund. By doing so, the Company Stock Fund’s returns can more closely mirror the returns of Boeing common stock (BA). In addition to these Plan improvements, as part of the settlement, the Defendants have agreed to retain an Independent Investment Consultant to review whether and how to provide participants access to a technology sector strategy as a core option in the Plan. Further, the Court will retain jurisdiction to enforce the Settlement Agreement for a period of three years following final approval. Class Counsel has also agreed to bring an enforcement action in Court, if needed, at no cost to the Class. The terms of the Settlement will be reviewed by an Independent Fiduciary.

Statement of Attorneys' Fees and Costs and Class Representatives' Compensation Sought in the Class Action

Class Counsel have devoted many hours to investigating the Plan, bringing this case, and pursuing it for nine years successfully opposing a motion to dismiss, multiple motions for summary judgment, handling an appeal of Class Certification and getting the Class and Sub-Classes certified, and having the case ready for a planned one-month trial. During that time, Class Counsel advanced substantial costs for expert witnesses, document review, depositions, and other costs necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending before the District Court and the Seventh Circuit Court of Appeals. Class Counsel also has agreed to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved. In addition, Class Counsel has agreed to monitor Defendants' performance of their obligations under the Settlement Agreement over a three-year period, including any necessary Court proceedings, without seeking additional payment from the Settlement Fund.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$19,000,000, in addition to no more than \$1,845,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments of \$25,000 for Class Representatives Spano, White, and Bunk, and \$10,000 for Class Representatives Griffin and Peterman. These representatives took on the risk of litigation, sat for depositions, responded to discovery, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel, reviewing settlement negotiations, preparing for depositions, and giving overall support to the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full and formal application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.VIPSettlement.com.

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because Boeing's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

2. What Is The Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, Defendants violated federal law by allowing the Plan's recordkeeper to receive excessive fees from the Plan and by imprudently including excessively-expensive mutual funds, including the Small Cap Fund, as well as including the excessively-volatile Technology Sector Fund and by holding excessive cash positions within the Company Stock Fund, reducing the returns of the Fund.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defense Counsel and multiple all-day sessions with a private mediator

and with multiple judges from the Southern District of Illinois. The Settlement was reached at the courthouse at the time trial was set to begin, and the parties were ready to proceed with a month-long trial. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are experienced in this kind of matter, believe that the Settlement is best for all Class Members.

4. What Does The Settlement Provide?

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts. Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

As discussed above, the Settlement Agreement also provides for non-monetary benefits to the Plan, and changes were made to the Plan, benefitting Class Members, during the nine years of litigation.

All Class Members and anyone claiming through them will fully release Defendants and their “Released Parties” from “Released Claims.” The Released Parties include Defendants and any past, present, and future related entities, and all of their past, present, and future officers, directors, employees, attorneys, and agents. The Released Claims include all claims that were asserted in the Class Action, that arise out of the conduct alleged in the Complaint, or 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; (3) disclosures or failures to disclose information regarding the Plan’s investment options or service providers; and (4) all claims relating to the implementation of the Settlement. This is only a summary of the Released Parties and Released Claims and not a binding description of the Released Parties or Released Claims. The actual governing release is found within the Settlement Agreement at www.VIPSettlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants or the Related Parties for conduct during the Class Period arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is available at www.VIPSettlement.com.

5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan’s recordkeeper, or, if on September 30, 2015, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) “Current Participant” as defined on page 1 or (2) an “Authorized Former Participant” (a “Former Participant” as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Net Settlement Amount will be divided between the Recordkeeping Class and the Mutual Fund, Small-Cap Fund, Technology Fund, and Company Stock Fund Sub-Classes in proportions that have been ordered by the Court under the Plan of Allocation. 50% of the Net Settlement Amount will be allocated to the Recordkeeping Class, 20% will be allocated to the Mutual Fund Sub-Class, 15% will be allocated to the Technology Fund Sub-Class, 10% will be allocated to the Company Stock Fund Sub-Class, and 5% will be allocated to the Small Cap Fund Sub-Class.

The portion allocated to the Recordkeeping Class will be divided among all Class Members pro rata based on their average quarter-end account balances during the Class Period, since all participants in the Plan who had

an account balance during the Class Period paid recordkeeping fees. The portions allocated to the sub-classes will be allocated pro rata based on the average quarter-end balances of participants in those funds during the Class Period. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at www.VIPSettlement.com.

There are approximately _____ Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, your portion of the Settlement will be distributed pursuant to the terms of that order.

6. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to Boeing’s records, you are a Former Participant. Therefore, you must return a claim form to be eligible to receive your share of the Settlement.**

7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur during the XXXX quarter of 2016.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

8. Can I Get Out Of The Settlement?

No. The Class and all Sub-Classes were certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

9. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$19,000,000 in fees and \$1,845,000 in costs. An Independent Fiduciary will provide an opinion on the reasonableness of Class Counsel’s requested fee and cost reimbursement. The Court will determine what fees and costs will be approved.

11. How Do I Tell The Court If I Don’t Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Gary Spano, et al. v. The Boeing Company, et al.*, Case No. 06-743. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than XXXXXX, 2016. The Court’s address is Clerk of the Court, U.S. District Court, Southern District of Illinois, 750 Missouri Ave., East St. Louis, IL 62201. Your written objection also must be mailed to the lawyers listed below, **no later than XXXXXX, 2016**. Please note that the Court’s Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector within ten days of receipt of the objection. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENSE COUNSEL
SCHLICHTER, BOGARD & DENTON Attn: Boeing 401(k) Settlement 100 S. Fourth St., Suite 900 St. Louis, MO 63102 VIPSettlement@uselaws.com Tel: (314) 621-6115 Fax: (314) 621-7151	BRYAN CAVE LLP Attn: Jeffrey S. Russell One Metropolitan Square 211 N. Broadway, Suite 3600 St. Louis, MO 63102

12. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at XXX p.m. on XXXX, 2016, at the United States District Court for the Southern District of Illinois, Courtroom 3, 750 Missouri Ave., East St. Louis, IL 62201.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

13. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

14. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Gary Spano, et al. v. The Boeing Company, et al.*, Case No. 06-734." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 11, **no later than XXXXX, 2016.**

15. What Happens If I Do Nothing At All?

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY.**

16. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: www.VIPSettlement.com, call 1-XXXXXXX, or write to the Settlement Administrator at Boeing 401(k) Settlement Administrator,

_____.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

GARY SPANO, <i>et al.</i> ,)	
)	Cause No: 06-743-NJR-DGW
Plaintiffs,)	
)	
v.)	
)	
THE BOEING COMPANY, <i>et al.</i> ,)	
)	
Defendants.)	

[PROPOSED] FINAL ORDER AND JUDGMENT

ROSENSTENGEL, U.S. District Court Judge:

Wherefore, this ___ day of _____, 2016, upon consideration of the Settling Parties’ joint motion for final approval of the settlement of this action (the “Class Action”) pursuant to the terms of a Class Action Settlement Agreement dated November 4, 2015, (the “Settlement Agreement”), the Court hereby orders and adjudges as follows:

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

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

1.2 “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.

1.3 “Released Claims” means, as defined in Section 2.38 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 that:

(a) Were asserted in the Class Action, or that arise out of the conduct alleged in the Complaint whether or not pleaded in the Second Amended Complaint;

(b) 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) Would be barred by the principle of res judicata based on the entry of the Final Order;

(d) 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 Class pursuant to the Plan of Allocation; or

(e) 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.

1.4 “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 Order (Doc. ____), notice was timely distributed by first-class mail to all Class Members who could be identified with reasonable effort, and notice was 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 Attorneys 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 Fed. R. Civ. P. 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 Fairness Hearing and the rights of all Class Members have been provided to all people, powers and entities entitled thereto.

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. Each and every objection to the settlement is overruled with prejudice.

7. The motion for final approval of the Settlement Agreement is hereby 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 hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

8. The operative complaint and all claims asserted therein are hereby 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, hereby 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 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 hereby 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 herein and personal jurisdiction over Class Members herein pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing this Final Order and the Settlement Agreement. Any motion to enforce paragraphs 8 through 12 of this Final 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 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 Order.

SO ORDERED:

DATED: _____, 2016

Nancy J. Rosenstengel
United States District Court Judge