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ALERT MEMORANDUM

Fourth Circuit Reverses Class Certification in *Boeing* Litigation, Establishing a High Bar Under *Comcast*

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The Fourth Circuit recently reversed a grant of class certification in a securities fraud action against Boeing, adopting a rigorous approach for establishing class-wide predominance as to damages. In *Office of General Treasurer on behalf of Employees Retirement System v. Boeing Co.* (*Boeing*), the court held that plaintiffs had failed to present a sufficiently robust and detailed method for ascertaining damages under the Supreme Court's decision in *Comcast Corp. v. Behrend* (*Comcast*). This decision reflects an application of *Comcast* that may present a significant procedural hurdle for plaintiffs seeking class certification and hints at a developing circuit split on the required level of rigor in applying *Comcast*.

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Background

Under Rule 23 of the Federal Rules of Civil Procedure, plaintiffs seeking class certification must satisfy two categories of requirements. First, Rule 23(a) sets forth four prerequisites: numerosity, commonality, typicality, and adequacy of representation.[1] Second, plaintiffs must show that their action falls into one of three categories under Rule 23(b): (1) proceeding without a class would create inconsistencies or variance, be dispositive of non-class members' interests, or impair or impede these interests; (2) injunctive or declaratory relief is appropriate on a class-wide basis; or (3) common questions of law and fact predominate over individual questions and class adjudication is superior to individual adjudication.[2]

In *Comcast Corp. v. Behrend*,[3] the Supreme Court addressed the third of these categories, Rule 23(b)(3). The Supreme Court held that a class action against Comcast on antitrust grounds had been improperly certified because plaintiffs had not satisfied the predominance requirement of Rule 23(b)(3). The Court emphasized that plaintiffs must satisfy "through evidentiary proof at least one of the provisions of Rule 23(b)"[4] and that district courts must subject this proof to "rigorous analysis."[5] To satisfy Rule 23(b)(3), plaintiffs must present evidence of a model capable of measuring damages across the entire class that is consistent with their theory of liability.[6] Applying these principles, the Court found the *Comcast* plaintiffs' model lacking because it failed to attribute damages to "the plaintiffs' only viable theory" of liability.[7]

Despite the Supreme Court's exacting language in *Comcast*, the decision has not historically been treated as a significant hurdle for plaintiffs seeking class certification, particularly in federal securities cases. The Fourth Circuit's decision in *Boeing* marks a significant departure and development.

Facts

In 2018, the Federal Aviation Administration (FAA) grounded all Boeing 737 MAX airplanes following two crashes that killed everyone on board.[8] Boeing was subsequently subject to investigations by the FAA, Congress, the Department of Justice (DOJ), and the Securities Exchange Commission (SEC).[9] In response, Boeing committed to improving airplane safety, including eliminating "traveled work"—a process under which airplanes are moved down the assembly line even when work at a particular station is incomplete.[10] During this period, Boeing's officers made numerous public statements about the company's commitment to safety, workplace culture, the rate of production, and regulatory compliance.[11]

But on January 5, 2024, Alaska Airlines Flight 1282—a Boeing 737 MAX—made an emergency landing after a plug in the plane's fuselage detached while the plane was in the air.[12] The following Monday, Boeing's stock price dropped by 8%.[13] The issue was later tied to traveled work, which had allegedly continued despite Boeing's statements to the contrary.[14]

Procedural History

In January 2024, plaintiffs brought a securities fraud suit under Sections 10(b) and 20(a) of the Securities Exchange Act, alleging Boeing deceived investors through dozens of false and misleading statements about its commitment to safety that artificially inflated or maintained Boeing's stock price.[15] All of the

[1] Fed. R. Civ. P. 23(a)(1)–(4).
[2] *Id.* (b)(1)–(3).
[3] 569 U.S. 27 (2013).
[4] *Id.* at 33.
[5] *Id.* at 35.
[6] *Id.*
[7] *Officer of Gen. Treasurer ex rel. of Emps Ret. Sys. v. Boeing Co.*, 2026 WL 2083048, at *10 (4th Cir. July 20, 2026).
[8] *Id.* at *3.
[9] *Id.*
[10] *Id.*
[11] *Id.* at *3–4.
[12] *Id.* at *4.
[13] *Id.*
[14] *Id.*
[15] *Id.* at *5.

alleged misstatements survived Boeing's motion to dismiss.[16]

Plaintiffs moved to certify a class, supported by an expert report from economist Chad Coffman. Coffman's report briefly addressed the issue of damages under *Comcast* in only a few pages, contending that plaintiffs would rely on the out-of-pocket methodology—measuring damages as the difference between artificial inflation per share at the time of purchase and artificial inflation per share at the time of sale.[17] As to the calculation of artificial inflation itself, Coffman suggested a number of potential approaches, but did not settle on a final method.[18] Boeing opposed class certification, arguing that Coffman had not provided a definitive methodology as required by *Comcast*.[19] Coffman's rebuttal report, while longer, still failed to commit to a methodology.[20]

The district court granted class certification, noting the broad acceptance of the out-of-pocket methodology and reasoning that it fit plaintiffs' theory of liability—that investors were damaged by purchasing Boeing stock at inflated prices.[21] Less than a week later, Coffman submitted a merits report settling on a particular methodology for calculating artificial inflation.[22]

The Fourth Circuit's Decision

Boeing appealed under Rule 23(f), arguing that plaintiffs' expert reports failed to set forth a class-wide, case-specific damages methodology consistent with their theory of liability as required by *Comcast*.[23] The Fourth Circuit agreed and reversed.

Lessons Drawn From *Comcast*

The Fourth Circuit began by outlining *Comcast*'s instructions for plaintiffs and district courts.

For plaintiffs, the court outlined five requirements:

- Plaintiffs must present a damages methodology explaining "how damages will be measured in a specific case."[24] It is not enough for plaintiffs to present "[a] menu of options that the party will decide on later"; plaintiffs must "tell the district court what their actual methodology is and how it resolves the predominance inquiry."[25]
- Plaintiffs must demonstrate how damages can be measured on a class-wide basis so the court can determine whether class-wide issues predominate.[26]
- The proposed methodology must be consistent with plaintiffs' theory of liability. That means that plaintiffs must identify "their theory or theories of liability to compare against their identified damages methodology."[27] It is not enough for plaintiffs to identify various theories of liability upon which they may rely.
- The methodology "must allow a just and reasonable inference of damages"[28] and cannot "be speculative."[29]
- Plaintiffs must submit evidence "that their damages methodology satisfies all of the above requirements."[30]

For district courts, the Fourth Circuit reaffirmed that they must "conduct a rigorous analysis to determine

[16] *Id.* at *6.
[17] *Id.*
[18] *Id.* at *7.
[19] *Id.*
[20] *Id.* at *8.
[21] *Id.*
[22] *Id.* at *8–9.
[23] *Id.* at *9.
[24] *Id.* at *11.
[25] *Id.*
[26] *Id.* at *12.
[27] *Id.*
[28] *Id.* (quoting *Comcast*, 569 U.S. at 35).
[29] *Id.* (quoting *Comcast*, 569 U.S. at 35).
[30] *Id.*

whether the plaintiffs' damages methodology satisfies Rule 23" under *Comcast*.[31]

Considering the District Court's Decision Under Rigid *Comcast* Framework

Applying this framework, the Fourth Circuit found plaintiffs' class-certification motion and Coffman's reports lacking. The court criticized plaintiffs for relying on the out-of-pocket methodology, which the court saw not as a damages methodology under *Comcast* but instead just "a legal description of damages."[32] *Comcast* requires a methodology that explains "how to determine the artificial inflation embedded in Boeing's stock price on any day of the class period."[33] Instead, Coffman provided "a series of maybes, perhapses and what ifs."[34] While Coffman recognized the need to disaggregate stock price declines to isolate the effects of Boeing's alleged misrepresentations and to measure artificial inflation,[35] he never committed to specific means for doing so, instead simply listing possible methodologies in both his initial and rebuttal reports.[36]

The court also criticized plaintiffs' failure to commit to a specific theory of liability, which deprived the court of the required comparison to ensure consistency between that theory and plaintiffs' damages methodology. The Court observed that plaintiffs had posited different theories of liability at various points and, while it acknowledged that "litigants sometimes don't want to tip their hand," it reasoned that plaintiffs must do so at the class-certification stage, under *Comcast*.[37]

The court concluded that plaintiffs "necessarily prevented the district court from conducting the required rigorous analysis."[38] By failing "to properly identify the two comparators—the damages methodology and the legal liability theory—the district court's certification order necessarily failed to perform a rigorous consistency comparison."[39] The lack of a robust methodology also made it impossible for the district court to address *Comcast*'s other requirements.[40]

Finally, the court addressed plaintiffs' harmless-error argument—that Coffman had since filed a merits report with greater detail. Noting that plaintiffs had disclaimed a harmless-error argument at oral argument, the court in any event found it "inappropriate to let a class-certification decision stand based on a report which the district court didn't even consider" and observed that the Supreme Court has emphasized that the rigorous analysis required must be performed *before* a class is certified under Rule 23.[41] The court also questioned whether the merits report was sufficient because Coffman's methodology was premised on the argument that all challenged statements fundamentally concealed "the same underlying truth"—that Boeing was taking shortcuts with respect to safety and quality control.[42] In the court's view, this could not be consistent with plaintiffs' theory of liability, which relied on misstatements describing different types of information over a three-year period.[43] Having chosen to "base their claim" on such a variety of statements, "[plaintiffs] are stuck with those allegations when applying Rule 23(b)(3)."[44]

Key Takeaways

The Fourth Circuit's decision provides public companies and their officers with an arsenal of powerful arguments to defeat class certification. Historically, *Comcast* has not been treated by district courts as a significant test for plaintiffs seeking class certification in securities class actions. Should the

31 *Id.*
32 *Id.* at *13.
33 *Id.*
34 *Id.* (quoting *Speerly v. Gen. Motors, LLC*, 143 F.4th 306, 342 (6th Cir. 2025) (citation modified)).
35 *Id.*
36 *Id.*
37 *Id.* at *14.
38 *Id.* at *16.
39 *Id.*
40 *Id.* at *15.
41 *Id.* at *17.
42 *Id.*
43 *Id.* at *18.
44 *Id.*

Fourth Circuit's approach gain traction, it will join a growing chorus requiring greater analytical rigor at class certification, including recent rulings applying the Supreme Court's 2021 decision in *Goldman Sachs v. Arkansas Teacher Retirement Systems*.[45]

This increased rigor poses several challenges for plaintiffs. First, plaintiffs must identify a detailed damages methodology at an early stage and cannot defer implementation issues to later phases. Second, plaintiffs must "tip their hand" and settle on a theory of liability,[46] making reliance on generic or aspirational misstatements with weaker links to the ultimate loss-causing event more difficult. Third, plaintiffs who plead numerous alleged misstatements, hoping some will survive a defendant's motion to dismiss, face increased risks because they may struggle to fit a multitude of disparate statements within their proposed theory of liability at the class-certification stage.

Notably, the Fourth Circuit's opinion is unlikely to be the final word on this issue. The court's attempt to sidestep plaintiffs' counterargument that its reasoning was inconsistent with the Second Circuit's decision in *Waggoner v. Barclays PLC*[47] hints at a possible circuit split, particularly given the district court's statement that its reasoning was consistent with *Waggoner* and that of other district courts.[48] Also, the Fourth Circuit is not alone in requiring greater rigor under *Comcast*—the Sixth Circuit recently reversed and remanded class certification partly on a similar basis.[49] But decisions such as *Waggoner* and a recent Ninth Circuit order denying leave to appeal on *Comcast* grounds[50] suggest that other circuits may favor a more flexible and less demanding approach. In time, therefore, the Supreme Court may be asked to return to its ruling in *Comcast* and clarify how significant a hurdle it presents to plaintiffs in securities class actions.

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[45] 594 U.S. 113 (2021).
[46] *Boeing Co.*, 2026 WL 2083048, at *14.
[47] 875 F.3d 79 (2d Cir. 2017).
[48] *Boeing Co.*, 2026 WL 2083048 at *17.
[49] *In re FirstEnergy Sec. Litig.*, 149 F.4th 587 (6th Cir. 2025).
[50] *SEB Inv. Mgmt. AB v. Wells Fargo & Co.*, 2025 WL 1243818, at *7 (N.D. Cal. Apr. 25, 2025), *leave to appeal denied*, No. 25-3021, 2025 WL 2028400 (9th Cir. July 17, 2025).