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4th Circ. Boeing Class Cert. Ruling May Have Limited Reach

By **Evan Kubota and David Leopard** (August 7, 2026, 1:36 PM EDT)

In Rhode Island Office of the General Treasurer v. The Boeing Co., the U.S. Court of Appeals for the Fourth Circuit on July 20 reversed and remanded a grant of class certification on the basis that the plaintiffs' proposed damages methodology did not satisfy the requirements of the U.S. Supreme Court's 2013 decision in Comcast Corp. v. Behrend.[1]

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The decision neither creates a circuit split, nor heightens the standards for achieving class certification, as it was reached under very specific circumstances. Arguments to the contrary look too much into Comcast and other authority confirming that the standard out-of-pocket damages methodology used in securities class actions satisfies the predominance requirement of Rule 23 of the Federal Rules of Civil Procedure.

Comcast and Out-of-Pocket Damages

In Comcast, an antitrust case, the Supreme Court held that Rule 23(b)(3)'s predominance element requires showing that "damages are capable of measurement on a classwide basis."[2] The Comcast plaintiffs had asserted four different theories of antitrust impact, but the U.S. District Court for the Eastern District of Pennsylvania had only accepted one theory for class treatment.[3]

Nonetheless, the plaintiffs' proposed damages model "assumed the validity of all four theories" and thus "failed to measure damages resulting from the particular antitrust injury on which petitioners' liability in this action [was] premised."[4] As a result, the Supreme Court held that the model violated the principle that "at the class-certification stage, ... any model supporting a 'plaintiff's damages case must be consistent with its liability case.'"[5]

Since Comcast, defendants in securities class actions under Section 10(b) of the Securities Exchange Act have frequently opposed class certification by arguing that the plaintiffs failed to offer a classwide damages methodology.

However, courts have repeatedly rejected those arguments because "the out-of-pocket loss damages theory is the traditional measure of damages in a 10b-5 action," as stated in the U.S. Court of Appeals for the Third Circuit's 2023 decision in University of Puerto Rico Retirement System v. Lannett Co. Inc.[6]

Specifically, the out-of-pocket approach measures damages based on the artificial inflation per share —

i.e., the amount induced or maintained by misstatements — at the time of the purchase minus the artificial inflation at the time of the sale.

Artificial inflation is typically measured through an event study, which uses statistical techniques to quantify the company-specific price decline after a corrective event, disaggregating the impact of so-called confounding information. The amount of artificial inflation is applied to the security's share price during the class period, with further adjustments if warranted.

Courts — including the U.S. District Court for the Northern District of Illinois in another pending securities class action against Boeing itself — have repeatedly held that this classwide damages methodology satisfies Comcast.[7]

The Fourth Circuit's Boeing Decision

In the Fourth Circuit's Boeing litigation, plaintiffs asserting claims under Sections 10(b) and 20(a) of the Exchange Act allege misstatements about Boeing's emphasis on safety in the aftermath of two deadly 737 MAX crashes and the Alaska Airlines door-plug blowout in January 2024.[8]

In March 2025, the U.S. Court of Appeals for the Eastern District of Virginia granted the plaintiffs' motion for class certification, holding that the "out-of-pocket methodology for calculating per-share inflation" was "widely accepted" in Section 10(b) actions and fit the plaintiffs' theory of liability.[9]

On July 20, 2026, the Fourth Circuit panel reversed and remanded, holding that the plaintiffs had not provided a damages methodology consistent with Comcast.[10] The panel focused on three issues.

First, the panel stated that "[r]ather than offering a methodology, the plaintiffs provided only a legal description of damages."[11] While the panel acknowledged the out-of-pocket approach, it reasoned that a damages methodology must also explain "how to determine the artificial inflation embedded in Boeing's stock price on any day of the class period. Comcast demands that missing step."[12]

The panel also stated that the plaintiffs' expert "never committed to any methodology," including whether and how he would perform an event study, how to disaggregate confounding information, and whether he would use constant-dollar inflation, constant-percentage inflation or another approach to measure artificial inflation.[13]

Further, the panel stated that the "plaintiffs didn't identify their theory of liability by the class-certification stage" because they did not specify whether they were asserting a price inflation or price maintenance theory — i.e., whether misstatements "inflated the share price for Boeing stock or maintained it at an artificially high level" — and as a result, the district court could not determine if the proposed damages methodology was consistent with the plaintiffs' theory.[14]

Finally — although unnecessary to the outcome — the panel briefly addressed the plaintiffs' merits expert report, submitted shortly after the district court granted class certification. The panel suggested that this report's use of constant-percentage inflation during the class period was "inconsistent with the plaintiffs' theory of liability" because it assumed that "varying statements — of different kinds, at different points in time, with different industry and macroeconomic conditions and with evolving investors' perceptions of the riskiness of a Boeing investment — would maintain the alleged fraud by an exact percentage that never changes."[15]

Recent filings indicate that the Boeing plaintiffs intend to file a petition for panel rehearing and rehearing en banc.[16]

Analysis

Securities fraud defendants will likely argue that the Fourth Circuit's decision in the Boeing case requires plaintiffs to present more details about their classwide damages methodology at class certification, including how it will address whether the amount of artificial inflation varies over time during the class period.

For procedural and substantive reasons, these arguments appear misplaced.

First, because the Boeing case was remanded, the plaintiffs will presumably seek class certification again with a revised damages methodology to address the Fourth Circuit's criticisms. Until the district and circuit courts have evaluated that revised methodology, arguments that the Boeing decision changes the class certification landscape would be premature.

Second, Boeing's demands for additional detail on how to measure artificial inflation are not grounded in Comcast itself. Unlike in Comcast — where a flawed antitrust damages model included damages from theories the district court had rejected — no such issue arises in Section 10(b) cases, where the out-of-pocket approach ensures that damages are limited to price declines after corrective events.

Thus, courts around the country have recognized that Comcast does not require securities plaintiffs to identify every detail of their damages methodology at class certification.[17] In the Second Circuit's words from its 2017 decision in Waggoner v. Barclays PLC, Comcast does not require that a damages model "must be so precise" at class certification as to "account for variations in inflation over time."[18]

Given this established precedent, Boeing's impact is likely to be limited outside the Fourth Circuit.

Third, the Boeing decision sidesteps the purpose of describing a damages methodology at class certification, which is simply to ensure that it can be applied classwide.

That does not require detailing every aspect of how to measure artificial inflation. Indeed, developing and applying a complete damages model often depends on the factual record amassed during discovery, including the defendants' internal documents and data, while class certification often occurs well before discovery is complete.

At the merits stage, established valuation techniques can — if warranted on the facts — adjust the amount of inflation over time to account for "different industry and macroeconomic conditions" and "evolving ... perceptions" of risk.[19] But because such adjustments raise classwide issues and yield classwide results, they do not affect Rule 23 predominance, and addressing them at class certification is premature.[20]

Fourth, requiring every detail of the classwide methodology to be specified at class certification raises significant practical and doctrinal concerns.

For practitioners, the decision does not explain how an expert report at class certification would be any different from a damages report at the merits stage (other than omitting actual damages numbers).[21] And it would effectively double the work for district courts, which would arguably need to analyze the nuances of damages issues once at class certification — without the full factual record — then again at the merits stage.

Further, demanding an overly detailed, "case-specific damages methodology" — including how to disaggregate confounding information and determine the amount of inflation "on any day of the class period" — is functionally identical to a loss causation analysis.[22]

Demanding such detail at class certification also implicates the Supreme Court's 2011 decision in Erica P. John Fund Inc. v. Halliburton Co., which held that securities fraud plaintiffs need not prove loss causation to obtain class certification. Notably, the Fourth Circuit's Boeing decision does not discuss this holding.

Finally, the Fourth Circuit's Boeing decision should not be interpreted to create a circuit split regarding the application of Comcast in securities cases, especially given the panel's remand to the district court and case-specific factors, such as the Boeing plaintiffs' lack of "commit[ment] to any specific methodology."[23] The Boeing panel itself denied creating a circuit split and held Waggoner to be "distinguishable," since the plaintiff there had "pressed a single, committed theory" based on price maintenance and "one corrective disclosure [that] revealed the truth."[24]

Thus, while the effects of the Boeing decision remain to be seen, the idea that it creates a circuit split or significantly raises the bar for securities plaintiffs to achieve class certification is overstated.

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[1] Off. of Gen. Treasurer on behalf of Emps. Ret. Sys. v. Boeing Co., 2026 WL 2083048, No. 25-1492 (4th Cir. July 20, 2026).

[2] Comcast Corp. v. Behrend, 569 U.S. 27, 34 (2013).

[3] Id. at 35-36.

[4] Id. at 36.

[5] Id. at 35.

[6] Univ. of Puerto Rico Ret. Sys. v. Lannett Co. Inc., No. 21-3150, 2023 WL 2985120, at *4 (3d Cir. Apr. 18, 2023).

[7] In re: Boeing Co. Aircraft Sec. Litig., 351 F.R.D. 108, 127 (N.D. Ill. 2026), on reconsideration in part sub nom. In re: The Boeing Company Aircraft Securities Litigation, No. 19-CV-02394, 2026 WL 2098125 (N.D. Ill. June 18, 2026) ("[Plaintiffs' Expert] proposes using an event study and out-of-pocket methodology to measure damages. That is all Rule 23(b)(3) and Comcast requires.").

[8] Boeing, 2026 WL 2083048, at *1, 4.

[9] Id. at *8.

[10] Id. at *1.

[11] Id. at *13.

[12] Id.

[13] Id.

[14] Id. at *13-14.

[15] Id. at *18.

[16] In re: The Boeing Company, No. 25-1492, ECF 91 (4th Cir. July 27, 2026).

[17] See, e.g., Forsythe v. Teva Pharm. Indus. Ltd., 102 F.4th 152, 159 (3d Cir. 2024) ("Comcast poses a low bar to class certification" in Section 10(b) cases).

[18] Waggoner v. Barclays PLC, 875 F.3d 79, 106 (2d Cir. 2017).

[19] Boeing, 2026 WL 2083048, at *18.

[20] Plymouth Cnty. Ret. Sys. v. Patterson Companies Inc., No. CV 18-871, 2020 WL 5757695, at *15 (D. Minn. Sept. 28, 2020) (holding that such criticisms "do not prevent class certification because all of these alleged obstacles for accurate calculation of the damages are the same if there is one plaintiff or one million plaintiffs.").

[21] Boeing, 2026 WL 2083048, at *13.

[22] Id. at *9, 13.

[23] Id. at *14.

[24] Id. at *15.