



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SEAFARERS PENSION PLAN, on behalf of itself and all other similarly situated stockholders of THE BOEING COMPANY,

Plaintiff,

vs.

ROBERT A. BRADWAY, DAVID L. CALHOUN, ARTHUR D. COLLINS, EDMUND P. GIAMBASTIANI JR., LYNN J. GOOD, AKHIL JOHRI, LAWRENCE W. KELLNER, CAROLINE B. KENNEDY, STEVEN M. MOLLENKOPF, JOHN M. RICHARDSON, SUSAN C. SCHWAB, RONALD A. WILLIAMS, and THE BOEING COMPANY,

Defendants.

C.A. No. _____ - _____

VERIFIED CLASS ACTION COMPLAINT

Plaintiff, the Seafarers Pension Plan (the “Seafarers” or “Plaintiff”), on behalf of itself and all other similarly situated stockholders of The Boeing Company (“Boeing” or the “Company”), brings this Verified Class Action Complaint (the “Complaint”) against: (a) Boeing and the current members of its board of directors (the “Board”) for declaratory relief under 10 *Del. C.* § 6501, *et seq.* relating to the Company’s violation of Sections 109(b), and 115 of the Delaware General

Corporation Law (“DGCL”); and (b) the members of the Board for breaching their fiduciary duties by maintaining a forum provision in Boeing’s bylaws, which violates Section 115’s jurisdictional requirements, and further asserting such forum provision to deprive Boeing’s stockholders, including the Seafarers, of their substantive rights to assert derivative claims based on the Securities Exchange Act of 1934 (the “Exchange Act”). The allegations of the Complaint are based on the personal knowledge of Plaintiff as to its own actions, and on information and belief, including the investigation of counsel and review of publicly available information, as to all other matters.

NATURE OF THE ACTION

1. Plaintiff brings this declaratory judgment and class action to challenge a forum selection clause in Boeing’s bylaws (the “Forum Selection Bylaw” or “Bylaw”) that violates the DGCL. The Bylaw illegally regulates and, in fact, eliminates the substantive right of Boeing’s stockholders to file an action asserting derivative claims under the Exchange Act or any other exclusively federal law claim. First, by its terms, the Bylaw violates the statutory language of Section 115 of the DGCL, which allows forum selection bylaws only to the extent they are “consistent with applicable jurisdictional requirements.” As written, Boeing’s Bylaw disregards the exclusive jurisdictional mandate of Exchange Act claims, and therefore contravenes Section 115, because it eliminates Boeing’s stockholders’ substantive

ability to file such claims in the Delaware Chancery Court. Second, the Bylaw also violates Sections 109(b) and 115 of the DGCL because it was unjustly and inequitably applied to the Seafarers' now dismissed federal claims. Third, Boeing's Board has breached their fiduciary duties by using the Bylaw to eliminate Boeing's stockholders' rights to assert exclusively federal claims, and by failing to amend the existing illegal Bylaw. As such, the Forum Selection Bylaw has served as an illegally designed mechanism for Boeing's directors and officers to escape personal liability to the Company and its stockholders for the directors' and officers' alleged wrongdoing under the Exchange Act while at the same time also harming its stockholders' interests, like Plaintiff's, by depriving them of their substantive rights to assert derivative lawsuits under those same federal securities laws.

2. Boeing's Bylaw at issue was adopted in 2011, and it designated the Delaware Court of Chancery as the sole forum for its stockholders to assert *all* derivative claims. As such, since its adoption, Boeing's Forum Selection Bylaw has eliminated the substantive rights of *all* Boeing stockholders to assert derivative claims under any federal law mandating exclusive federal jurisdiction, including the Exchange Act, because this Court does not possess jurisdiction to hear those claims. Notably, Boeing's Bylaw does not even provide the option for its stockholders to file in Delaware federal court if the Delaware Court of Chancery does not have jurisdiction over the federal derivative claims at issue.

3. In 2015, the Delaware legislature enacted Section 115 of the DGCL, which required that all forum provisions in Delaware corporations' bylaws must be "*consistent with applicable jurisdictional requirements*". All directors of Delaware corporations, like Boeing, therefore, had a duty to ensure that any forum provisions in their Company's bylaws complied with the then newly enacted Section 115 of the DGCL; which duty importantly continues to this day. Since Boeing's Forum Selection Bylaw did not (and does not) permit federal courts, including Delaware, to exercise jurisdiction over federal claims for which the Delaware Court of Chancery does not have jurisdiction, it violates the statutory mandate of Section 115. Boeing was and is required to amend or eliminate its Bylaw in order to comply with Section 115.

4. Boeing and its self-interested Board, however, have taken no steps to amend its Forum Selection Bylaw to comply with Section 115's requirements to allow its stockholders to file derivative actions in federal court, which is jurisdictionally required for certain federal claims including those under the Exchange Act. Instead, Boeing's Board has maintained Boeing's illegal Bylaw for years, presumably viewing it as a device for its directors and officers to escape personal liability for derivative claims over which the federal courts maintain exclusive jurisdiction, thereby sacrificing its stockholders' substantive rights to assert those claims.

5. Moreover, Delaware law has long recognized that stockholder derivative actions serve as an important check on directors' power. In fact, the Delaware Supreme Court has stated that "[t]he derivative action developed in equity to enable shareholders to sue in the corporation's name where those in control of the company refused to assert a claim belonging to it." *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984). In contradiction to Delaware law Boeing's directors have usurped that stockholder right. Boeing's Forum Selection Bylaw eliminates that important check on its directors' power because it prevents a court from determining those directors' liability for their potential wrongdoing under the Exchange Act (or any other federal derivative claim that the Delaware Court of Chancery cannot hear).

6. Significantly, in this action, Plaintiff's challenge to the Board's preclusive use of Boeing's Forum Selection Bylaw is not merely an abstract or hypothetical situation. Here, the Board has repeatedly demonstrated that it is using Boeing's Forum Selection Bylaw as a weapon to disenfranchise Boeing's stockholders of their sacrosanct substantive rights to assert certain federal derivative claims, and Boeing's stockholders, like Plaintiff, have already suffered harm from the Board's actions.

7. Specifically, in a derivative action filed on December 11, 2019 in the federal district court for the Northern District of Illinois, C.A. No. 19-cv-08095, Plaintiff, a long-time stockholder of Boeing, asserted federal derivative claims

against Boeing's current and former officers and directors for their repeated violations of Section 14(a) of the Exchange Act by disseminating materially false and misleading proxy statements during the period 2017 through 2019. In response, Boeing's Board moved to dismiss Plaintiff's federal derivative claims on *forum non conveniens* grounds on the ground that "Boeing's bylaws *require all* shareholder derivative actions to be filed in the Delaware Court of Chancery," and that, therefore, the Seafarers could not bring derivative Section 14(a) claims of the Exchange Act (or for that matter under the Boeing Board's invocation of the Bylaw, any other derivative claim under the Exchange Act), since the Delaware Court of Chancery does not have jurisdiction over such claims.

8. The district court in the Northern District of Illinois incorrectly accepted Boeing's directors' assertions that the Bylaw was valid under Delaware law (without deciding the issue) and dismissed the Seafarers' Section 14(a) derivative claims on *forum non conveniens* grounds. *See* Exhibit 1: Order dated June 8, 2020. Accordingly, the wrongful application of Boeing's Forum Selection Bylaw against the Seafarers' Section 14(a) claims has caused the Seafarers to suffer harm because, as the self-interested Board readily admitted, it has used Boeing's Forum Selection Bylaw to deprive Plaintiff of its substantive rights to file these federal derivative claims in any court.

9. Of note, Boeing’s directors asserted a similar *forum non conveniens* argument based on Boeing’s Forum Selection Bylaw in another derivative action filed after the Seafarers’ complaint, *Chopp v. Bradway*, C.A. No. 1:20-cv-00326, a demand refusal complaint asserting derivative claims based on Section 10(b) of the Exchange Act, among other claims. Notwithstanding that the *Chopp* action was filed in Delaware federal district court, Boeing’s Board also argued that Boeing’s Bylaw foreclosed that plaintiff’s ability to bring Section 10(b) claims under the Exchange Act in *any forum*.

10. The Seafarers, therefore, brings this action to uphold the core principle of Delaware law that Delaware corporations may only adopt forum provisions in their bylaws and governing documents to regulate “*where* stockholders may file suit, not *whether* the stockholder may file suit or the kind of remedy that the stockholder may obtain on behalf of herself or the corporation.”¹

11. Accordingly, the Seafarers seeks to: (i) invalidate Boeing’s Forum Selection Bylaw because it violates Section 115’s jurisdictional requirements; (ii) invalidate Boeing’s Forum Selection Bylaw as applied to Boeing’s stockholders’ Exchange Act claims under Sections 109(b) and 115 of the DGCL; (iii) have this Court enter an order to prohibit Boeing’s Board from enforcing the Bylaw in

¹ *Salzberg v. Sciabacucchi*, 227 A.3d 102, 136 (Del. 2020, Revised April 14, 2020) quoting *Boilermakers Local 154 Retirement Fund v. Chevron Corp.*, 73 A.3d 934, 951-952 (Del. Ch. 2013).

connection with any derivative Exchange Act claims and/or requiring Boeing's Board to promptly rescind or amend Boeing's Forum Selection Bylaw to conform with Delaware law, and (iv) hold Boeing's Board liable for its breaches of fiduciary duty related to the Forum Selection Bylaw.

PARTIES

12. Plaintiff, Seafarers Pension Plan ("Plaintiff" or the "Seafarers"), is a pension fund located in Camp Springs, Maryland. The Seafarers owns Boeing common stock and has been a stockholder at all times relevant to the claims asserted herein.

13. Defendant Boeing is an international aerospace company that manufactures commercial jetliners and other products for the airline, aerospace and defense industries. Boeing is incorporated in Delaware. Boeing's corporate offices are located in Chicago, Illinois, while its commercial airplane division is based near Seattle, Washington and North Charleston, South Carolina. Boeing's defense business is located outside of Washington, D.C., with production facilities near St. Louis and Philadelphia. Boeing's stock trades on the NASDAQ stock market under the symbol "BA".

14. Defendant Robert A. Bradway ("Bradway") joined the Board in 2016 and is a member of the Audit Committee and the Finance Committee.

15. Defendant David L. Calhoun (“Calhoun”) joined the Board in 2009 and was Lead Director, from April 30, 2018 until October 11, 2019, when he became the Board’s Chairman. Calhoun stepped down as Chairman to assume the positions as Boeing’s President and CEO in January 2020, but he remains on the Board as a director.

16. Defendant Arthur D. Collins (“Collins”) joined the Board in 2007 and is Chair of the Compensation Committee. Collins is also a member of the Governance, Organization and Nominating (“GON”) Committee.

17. Defendant Admiral Edmund P. Giambastiani Jr. (“Giambastiani”) joined the Board in 2009 and is a member of the Audit Committee. Giambastiani also is Chair of the Aerospace Safety Committee and a member of the Special Programs Committee.

18. Defendant Lynn J. Good (“Good”) joined the Board in 2015. Good is Chair of the Audit Committee and a member of the Aerospace Safety Committee.

19. Defendant Akhil Johri (“Johri”) joined the Board in 2020 and is a member of the Audit Committee and the Finance Committee.

20. Defendant Lawrence W. Kellner (“Kellner”) joined the Board in 2011 and is Non-Executive Chairman of the Board. Kellner also is Chair of the GON Committee, and a member of the Aerospace Safety Committee.

21. Defendant Caroline B. Kennedy (“Kennedy”) joined the Board in 2017 and is a member of the Compensation Committee and the GON Committee.

22. Defendant Steven M. Mollenkopf (“Mollenkopf”) joined the Board in 2020 and is a member of the Aerospace Safety Committee and the Compensation Committee.

23. Defendant John M. Richardson (“Richardson”) joined the Board in 2019 and is Chair of the Special Programs Committee. Richardson is also a member of the Aerospace Safety Committee and the Finance Committee.

24. Defendant Susan C. Schwab (“Schwab”) joined the Board in 2010 and is a member of the Compensation Committee and the GON Committee.

25. Defendant Ronald A. Williams (“Williams”) joined the Board in 2010 and is Chair of the Finance Committee. Williams is also a member of the Audit Committee and the Special Programs Committee.

26. Defendants Bradway, Calhoun, Collins, Giambastiani, Good, Johri, Kellner, Kennedy, Mollenkopf, Richardson, Schwab, and Williams are collectively referred to as the “Individual Defendants”.² The Individual Defendants and Boeing are collectively referred to as the “Defendants”.

² Of the Individual Defendants listed above, the following defendants were named in Seafarers’ action in the Northern District of Illinois: Bradway, Calhoun, Collins, Giambastiani, Good, Kellner, Kennedy, Schwab and Williams.

BACKGROUND

27. On December 11, 2019, the Seafarers filed a derivative lawsuit on Boeing's behalf concerning, among other things, violations of Section 14(a) of the Exchange Act in the Northern District of Illinois, where Boeing is headquartered.³ The Seafarers' action alleged that from 2017 through 2019, Boeing's Board, many of whom are the same defendants here, repeatedly violated the Exchange Act by filing and disseminating materially false and misleading proxy statements when seeking Boeing's stockholders' votes to approve significant issues concerning the election of directors, executive compensation, and the appointment of an independent chairman.

28. Specifically, the Seafarers' Section 14(a) claims alleged that Boeing failed to disclose in its proxy statements, among other things, information about Boeing's inadequate internal and disclosure controls, as well as ineffective risk management systems concerning Boeing's compliance with the Federal Aviation

³ Under Section 27 of the Exchange Act, Congress has granted the federal courts exclusive jurisdiction over Plaintiff's Section 14(a) claim. *See* 15 U.S.C. § 78aa ("The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder."). Indeed, Congress provided additional protection to stockholders in the 1934 Act related to the anti-waiver provisions in the federal securities laws. The 1934 Act states, "any ... stipulation ... binding any person to waive compliance with any provision of this chapter or any rule or regulation thereunder ... shall be void." 15 U.S.C. § 78cc(a).

Administration's (the "FAA") regulations and international safety laws, which required strict compliance to ensure the safety of tens of millions of people flying in Boeing's commercial airplanes. Similarly, the allegations covered Boeing's failure to disclose the existence of Boeing's December 2015 settlement with the FAA as well as Boeing's commercial airplane unit's continuing obligations under such agreement, including annual reports to the FAA, for a period of five years.

29. The Seafarers' Section 14(a) claims further alleged that Boeing omitted information about operational and reporting failures that did not appropriately address how Boeing developed and operated its 737 MAX airplane fleet in violation of federal and international laws. Likewise, these Section 14(a) claims covered a wide range of information that Boeing failed to disclose in its 2019 proxy related to two fatal 737 MAX airplane crashes, which occurred in October 2018 and March 2019, and then the subsequent grounding of the entire 737 MAX fleet. For example, Boeing did not disclose in its 2019 proxy any information about the 2018 Department of Justice's criminal investigation concerning the certification and marketing of Boeing's 737 MAX airplane or the then-pending investigations by regulatory agencies, including the National Transportation Safety Board and the Indonesian and Ethiopian authorities, concerning Boeing's 737 MAX's contributing role in the two deadly airplane crashes that killed hundreds of people. Nor did Boeing provide its stockholders with any material information pertinent to reasons

for the grounding of the 737 MAX fleet prior to the 2019 annual stockholder meeting.

30. Plaintiff, therefore, alleged that defendants violated Section 14(a) of the Exchange Act and SEC Rule 14a-9 by causing Boeing to mislead or deceive its stockholders by making materially misleading statements about the topics summarized above, which were an essential link in its stockholders supporting Boeing's recommendations to reelect those same directors responsible for the 737 MAX disasters, approve certain executive compensation, and vote against stockholder proposals to adopt a policy to require an independent Chairman.

31. On February 13, 2020, Boeing's Board moved to dismiss Plaintiff's Section 14(a) claims based solely on *forum non conveniens* grounds by asserting Boeing's Forum Selection Bylaw. Boeing's Board admitted in that motion that it was using Boeing's Forum Selection Bylaw to deprive the Seafarers of its substantive rights to file its federal derivative claims in *any* forum. In doing so, Boeing's Board sought to extinguish the important check that derivative lawsuits have on self-interested directors' power.

32. The district court in the Northern District of Illinois accepted the Boeing Board's assertions that the Bylaw was valid under Delaware law, found that as applied (without deciding the issue), it did not violate public policy, and dismissed the Seafarers' Section 14(a) derivative claims on *forum non conveniens* grounds.

See Exhibit 1. Accordingly, the wrongful application of Boeing’s Forum Selection Bylaw against the Seafarers’ Section 14(a) claims has resulted in dismissal of Seafarers’ Exchange Act derivative claims and caused the Seafarers to suffer harm by extinguishing its right to hold Boeing’s Board accountable to the Company for issuing the false and misleading proxy statements used to secure stockholders’ votes on issues going to the heart of Boeing’s business, including entrenching and compensating the Board.⁴

33. Of note, on May 11, 2020, in *Chopp v. Bradway*, C.A. No. 1:20-cv-00326, a demand refusal derivative action, Boeing’s directors also asserted a similar *forum non conveniens* argument based on Boeing’s Forum Selection Bylaw, among others. Notwithstanding that *Chopp* was filed in federal court for the District of Delaware, Boeing’s directors still argued that the Bylaw precluded that plaintiff from asserting Section 10(b) derivative claims.⁵ The Board’s decision to seek dismissal of the *Chopp* action, which premised its federal jurisdiction on claims arising under Section 10(b) of the Exchange Act, further demonstrates Defendants unjust attempt

⁴ The Seafarers filed a Notice of Appeal in the Northern District of Illinois action on July 7, 2020.

⁵ *Chopp* was voluntarily dismissed without prejudice on June 4, 2020. Ironically, after arguing that the Northern District of Illinois was an improper forum against the Seafarers, in *Chopp*, Boeing’s Board stated that the “venue is not proper [in the Delaware federal court] under § 1391(b)(3) because there is at least one district in which venue is proper under § 1391(b)(2): the Northern District of Illinois (although the case would still not properly be filed there under Boeing’s bylaws, *infra* Part II).”

to wield the Bylaw provision against all types of federal derivative claims – not just those asserted in *Seafarers*.

SUBSTANTIVE ALLEGATIONS

A. Boeing’s Forum Selection Bylaw Violates Section 115’s Jurisdictional Requirements

34. Boeing’s Forum Selection Bylaw at issue was adopted by its Board on October 4, 2011 and provides as follows:

Forum for Adjudication of Disputes.

With respect to any action arising out of any act or omission occurring after the adoption of this By-Law, unless the Corporation consents in writing to the selection of an alternative forum, *the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these By-Laws, or (iv) any action asserting a claim governed by the internal affairs doctrine, in each case subject to the Court of Chancery of the State of Delaware having personal jurisdiction over the indispensable parties named as defendants therein.*

By-Laws of the Boeing Company (Oct. 25. <https://www.sec.gov/Archives/edgar/data/12927/000119312519274928/d813815dex32.htm>. (Emphasis added).

35. Boeing’s Forum Selection Bylaw is invalid because it directly contravenes the express jurisdictional requirement embodied in Section 115, which was enacted in 2015 by Delaware’s legislature. In this regard, Section 115 states:

The certificate of incorporation or the bylaws may require, *consistent with applicable jurisdictional requirements*, that any or all internal corporate claims shall be brought solely and exclusively in any or all of the courts in this State, and no provision of the certificate of incorporation or the bylaws may prohibit bringing such claims in the courts of this State. ‘Internal corporate claims’ means claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which this title confers jurisdiction upon the Court of Chancery.”

36. Significantly, Boeing’s Forum Selection Bylaw does not comply with Section 115’s mandate to be “consistent with applicable jurisdictional requirements”. Indeed, the Bylaw as written provides no avenue for its stockholders to assert exclusively federal derivative claims. Yet, the unequivocal legislative language accompanying Section 115 explains the limited jurisdictional scope of permissible forum selection bylaws: “Section 115 is also not intended to authorize a provision that purports to foreclose suit in a federal court based on federal jurisdiction.”⁶ Thus, the Delaware legislature clearly intended that the forum for

⁶ (Senate Bill 75, 148th Gen. Assemb. (Del. 2015-2016)).

derivative claims could be provided for in a bylaw, but federal claims could not be eliminated through this mechanism.

37. Boeing's Board also had a fiduciary duty to ensure that Boeing's Forum Selection Bylaw was amended to comply with Section 115, and that the Bylaw was not enforced as written with regard to claims exclusively within the federal courts' jurisdiction, and specifically the Exchange Act. Boeing's Board, in violation of its duties, took no steps to amend Boeing's pre-existing Forum Selection Bylaw to conform with the language of Section 115 or otherwise to allow for federal court jurisdiction for exclusively federal derivative claims. In fact, despite making other amendments to its bylaws, Boeing's Board has not made any amendments to the Forum Selection Bylaw since its adoption in 2011. Instead, Boeing's self-interested Board maintained the Forum Selection Bylaw in an effort to immunize themselves from liability, thereby depriving Boeing's stockholders of their substantive rights under certain federal securities laws, like the Exchange Act.⁷

B. The Boeing's Board Inequitable Application of the Bylaw to the Seafarers' Claims Violates Sections 109(b) and 115 of the DGCL and Renders the Bylaw Unenforceable Under Delaware Law

38. Under Delaware law, whether a specific bylaw is enforceable "depends on the manner in which it was adopted and the circumstances under which it is

⁷ Nor did the Board ever seek any stockholder vote related to the Bylaw.

invoked.”⁸ Indeed, bylaw provisions that may otherwise be facially valid will not be enforced if adopted or used for an inequitable purpose.⁹ Using such provisions for inequitable purposes, as here, violates Sections 109(b) and 115 of the DGCL, which requires all forum provisions in a Delaware corporation’s governing documents to comply with Delaware law.

39. Section 109(b) of the DGCL requires all forum provisions in a Delaware corporation’s bylaws to comply with Delaware law. Specifically, Section 109(b) provides:

(b) The bylaws [of a Delaware corporation] may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees.

40. Moreover, Section 115 requires that any forum provisions in Delaware bylaws be “consistent with applicable jurisdictional requirements”. In other words, forum selection provisions must allow a federal court to assert jurisdiction over certain claims asserted on behalf of a Delaware company and against its fiduciaries if the Delaware Court of Chancery does not possess the power to hear such claims.

⁸ See *Salzberg*, 227 A.3d at 135 (quoting *ATP Tour, Inc. v. Deutscher Tennis Bund*, 91 A.3d 554, 558 (Del. 2014)); *Boilermakers*, 73 A.3d at 941.

⁹ *Id.*

41. Here, the Board's actions and statements demonstrate that the Board adopted, maintained, and used Boeing's Forum Selection Bylaw for inequitable purposes in violation of Delaware law. Specifically, in 2011, Boeing's Board adopted a Forum Selection Bylaw that inequitably deprived Boeing's stockholders of their ability to assert derivative claims that could not be brought in the Delaware Court of Chancery, such as Exchange Act claims. By its terms, Boeing's Forum Selection Bylaw designates this Court as the sole forum for its stockholders to file derivative actions. Thus, it may be fairly inferred that at the time the provision was adopted, no reasonable Board member would have approved a bylaw for the improper (and illegal) purpose of forcing the Company's stockholders to assert federally mandated derivative claims, the Seafarers' Exchange Act claims, in Delaware Chancery Court, where they are impossible to bring.

42. Moreover, Boeing's Board, in breach of its fiduciary duties, failed to amend Boeing's Forum Selection Bylaw in 2015 after the Delaware legislature enacted Section 115. Despite making other amendments to its bylaws over the years, Boeing's Board never amended the Forum Selection Bylaw, which provides further evidence of the Board's bad faith purpose in maintaining this Bylaw.

43. The Board's recent enforcement of the Forum Selection Bylaw against the Seafarers' federal Exchange Act claims patently violates Delaware law, which prohibits Delaware corporations from dictating whether or not a stockholder has a

substantive right to assert a claim under any federal law, much less a derivative lawsuit that is intended to ensure that stockholders can police self-interested directors. Thus, regardless of whether Boeing's Forum Selection Bylaw is invalid due to its failures to comply with Section 115's jurisdictional requirements, it is not valid and enforceable against any derivative Exchange Act claims as a matter of Delaware law under Sections 109(b) and 115 because the Board has applied the Bylaw, indeed on more than one occasion, for the inequitable purpose of depriving its stockholders, the Seafarers in this case, from asserting those claims in any forum.

44. Moreover, the Seafarers has suffered specific harm because its federal claims have been dismissed based on Boeing's invalid and unjust Forum Selection Bylaw. As a result, the Seafarers are now precluded from filing any federal derivative claims in any forum because of Boeing's Board's enforcement of the Bylaw, which improperly designates this Court as the exclusive forum for such claims, notwithstanding that no jurisdiction for those claims exists.

45. Accordingly, Plaintiff seeks: (1) declaratory relief finding Boeing's Forum Selection Bylaw is invalid and unenforceable: (a) due its failure to comply with Section 115's jurisdictional requirements, and (b) as applied to derivative Exchange Act claims, including the Seafarers' Section 14(a) claims, under Sections 109(b), and 115 of the DGCL; (2) entry of an order prohibiting Boeing's Board from enforcing the Bylaw in connection with any derivative Exchange Act claims and/or

requiring Boeing's Board to promptly rescind or amend Boeing's Forum Selection Bylaw to conform with Delaware law; and (3) monetary damages related to the Individual Defendants' breaches of fiduciary duty concerning the maintenance and enforcement of the Forum Selection Bylaw against all Boeing stockholders, including the reimbursement of all attorneys' fees and expenses incurred in connection with the Seafarers' Northern District of Illinois action.

CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action pursuant to Rule 23 of the Rules of the Delaware Court of Chancery, individually and on behalf of all other holders of Boeing common stock (except Individual Defendants herein and any persons, firm, trust, corporation or other entity related to or affiliated with them and their successors in interest) who are or who will be threatened with injury arising from the Individual Defendants' wrongful actions, as more fully described herein (the "Class").

47. This action is properly maintainable as a class action.

48. The Class is so numerous that joinder of all members is impracticable. The Company has thousands of stockholders who are scattered throughout the United States. As of April 22, 2020, Boeing had 564,325,344 shares of common stock, \$5.00 par value, issued and outstanding.

49. There are questions of law and fact common to the Class including, *inter alia*, whether:

- A. Boeing's Forum Selection Bylaw violates Section 115 because it fails to comply with Section 115's jurisdictional requirements;
- B. Boeing's Forum Selection Bylaw is invalid and unenforceable as applied to Boeing's stockholders' derivative Exchange Act claims, including the Seafarers' Section 14(a) claims, under Sections 109(b) and 115 of the DGCL;
- C. The Individual Defendants breached their fiduciary duties by maintaining and using Boeing's Forum Selection Bylaw against Boeing's stockholders' derivative Exchange Act claims, including the Seafarers' Section 14(a) claims;
- D. The Individual Defendants breached their fiduciary duties by failing to rescind or amend Boeing's Forum Selection Bylaw to comply with Section 115's jurisdictional requirements; and
- E. Plaintiff and the other members of the Class will be and have been damaged by the Individual Defendants' conduct.

50. Plaintiff is committed to prosecuting the action and has retained competent counsel experience in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff will fairly and adequately protect the interests of the Class.

51. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class that would as a practical matter

be disjunctive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

52. The Individual Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, injunctive relief on behalf of the Class, as a whole, is appropriate.

COUNT I

CLAIM AGAINST ALL DEFENDANTS FOR DECLARATORY RELIEF RELATING TO VIOLATIONS OF DGCL 115

53. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

54. Under the Delaware Declaratory Judgment Act, Delaware courts “have power to declare rights, status and other legal relations, whether or not further relief is or could be claimed.” 10 *Del. C.* § 6501. According to the Act, “[a] person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” *Id.* § 6502.

55. DGCL Section 115 provides that:

The certificate of incorporation or the bylaws may require, consistent with applicable jurisdictional requirements, that any or all internal corporate claims shall be brought solely and exclusively in any or all of the courts in this State, and no provision of the certificate of incorporation or the

bylaws may prohibit bringing such claims in the courts of this State.

56. By its specific terms and as applied to the Seafarers' Section 14(a) claims, and Boeing stockholders' derivative Exchange Act claims in general, Boeing's Forum Selection Bylaw violates Section 115 because it is not "consistent with applicable jurisdictional requirements." Contrary to Section 115, Boeing's Forum Selection Bylaw does not allow its stockholders to file derivative actions asserting federal claims in federal court when the Delaware Court of Chancery lacks jurisdiction over those claims. Here, the Seafarers' Section 14(a) claims, and all other Exchange Act claims cannot be brought in Delaware Chancery Court, but jurisdictionally must be brought in federal court. But Boeing's Forum Selection Bylaw eliminates Delaware and all federal courts as a forum, contrary to Section 115. Boeing's Forum Selection Bylaw, therefore, is invalid because it fails to comply with Section 115's jurisdictional requirements.

57. Plaintiff and the Class are entitled to an order declaring that Boeing's Forum Selection Bylaw is invalid, unlawful, null, void, and of no further effect against Boeing's stockholders' derivative Exchange Act claims.

COUNT II

CLAIM AGAINST ALL DEFENDANTS FOR DECLARATORY RELIEF RELATING TO VIOLATIONS OF DGCL 109(b)

58. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

59. Under the Delaware Declaratory Judgment Act, Delaware courts “have power to declare rights, status and other legal relations, whether or not further relief is or could be claimed.” 10 *Del. C.* § 6501. According to the Act, “[a] person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” *Id.* § 6502.

60. DGCL Section 109(b) provides that:

(b) The bylaws [of a Delaware corporation] may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees.

61. As applied to the Seafarers’ Section 14(a) claims, and Boeing stockholders’ derivative Exchange Act claims in general, Boeing’s Forum Selection Bylaw violates Section 109(b) because such Bylaw eliminates its stockholders’ substantive rights to assert derivative claims arising under such federal securities law

by effectively barring these claims rather than simply designating where they can be brought as permitted under Delaware law. In addition, as applied to the Seafarers' Section 14(a) claims, and Boeing stockholders' derivative Exchange Act claims in general, Boeing's Forum Selection Bylaw further violates Section 109(b) because it extinguishes the important check that derivative actions create on directors' power, which is recognized as an important substantive right of Delaware companies' stockholders under Delaware law.

62. Plaintiff and the Class are entitled to an order declaring that Boeing's Forum Selection Bylaw is invalid, unlawful, null, void, and of no further effect against Boeing's stockholders' derivative Exchange Act claims.

COUNT III

CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE INDIVIDUAL DEFENDANTS

63. Plaintiff repeats and realleges all of the allegations above as though fully set forth herein.

64. The Individual Defendants, as Boeing directors and/or officers, owe the Class a fiduciary duty of utmost care and loyalty. By virtue of their positions as directors and/or officers of Boeing and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Individual Defendants have, and at all relevant times had, the power to control and influence, and did control and influence and cause the Company to engage in practices complained of

herein. Each of the Individual Defendants was required to, *inter alia*: (a) use their ability to control and manage Boeing in a fair, just, equitable, and legal manner; and (b) act in the furtherance of the best interests of Boeing and its stockholders.

65. Acting in bad faith and in their own interest, the Individual Defendants failed to fulfill their fiduciary duties by, *inter alia*, (i) maintaining and invoking Boeing's unlawful Forum Selection Bylaw to protect themselves while depriving Boeing's stockholders of their substantive rights to file derivative claims under the Exchange Act, (ii) failing to correct and/or rescind Boeing's Forum Selection Bylaw to be consistent with Section 115 after its adoption in 2015 and while making other amendments to Boeing's bylaws after 2015; and (iii) affirmatively asserting Boeing's Forum Selection Bylaw to deprive Boeing's stockholders, including the Seafarers, from asserting derivative claims based on the Exchange Act, in order to escape liability for violations of the Exchange Act.

66. By using Boeing's Forum Selection Bylaw against the Seafarers to deprive the Plan of its substantive rights to assert Exchange Act securities claims derivatively on Boeing's behalf, Defendants are causing the Seafarers and class members to suffer harm. In addition, Plaintiff is suffering a specific harm because the Northern District of Illinois Court improperly dismissed the Seafarer's Section 14(a) claims based solely on Boeing's Forum Selection Bylaw, and now the Seafarers cannot assert those claims or any other Exchange Act claims in any forum.

In this regard, Boeing's Bylaw designates the Delaware Court of Chancery as the exclusive forum, which cannot hear any jurisdictionally barred claims such as Seafarers' Exchange Act claims.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- A. Declaring Boeing's Forum Selection Bylaw invalid, unlawful, null, void, and of no further effect against Boeing's stockholders' derivative Exchange Act claims;
- B. Finding the Individual Defendants liable for breaching their fiduciary duties owed to the Class;
- C. Prohibiting Boeing's Board from enforcing its Bylaw against derivative Exchange Act claims; and/or ordering Boeing's Board to rescind or amend Boeing's Forum Selection Bylaw to conform with Delaware law;
- D. Certifying the proposed Class;
- E. Ordering Defendants to reimburse Plaintiff for damages, including reasonable attorneys' fees and costs it incurred in the Northern District of Illinois action.
- F. Awarding Plaintiff the costs and disbursements of this Action, including reasonable attorneys' fees and experts' fees; and
- G. Awarding such other and further relief as is just and equitable.

Dated: July 8, 2020

OFFIT KURMAN, P.A.

/s/ Jonathan Kass

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SEAFARERS PENSION PLAN
derivatively on behalf of
THE BOEING COMPANY,

Plaintiff,

v.

ROBERT A. BRADWAY, *et al.*,

Defendants,

and

THE BOEING COMPANY,

Nominal Defendant.

Case No. 19 C 8095

Judge Harry D. Leinenweber

ORDER

This Motion asks whether a shareholder can file a derivative lawsuit in federal court in contravention of a defendant Delaware corporation's bylaws. Plaintiff Seafarers Pension Plan, a shareholder of the Boeing Company, filed suit pursuant to Section 14(a) of the Securities and Exchange Act of 1934, alleging the dissemination of materially false and misleading proxy statements. Boeing moved to dismiss for *forum non conveniens* based on a bylaw it adopted that restricts the filing of derivative suits in any court but a Delaware state court. Plaintiff contends, however, that Boeing's forum selection clause is unenforceable under both Delaware and federal law because it allegedly eliminates

a substantive right of Boeing's shareholders to file a derivative suit in federal court, which in turn violates federal securities law.

I. Facts

Boeing is an international aerospace company incorporated under Delaware law. The Plaintiff is a Boeing shareholder. Plaintiff filed this action pursuant to the Securities and Exchange Act of 1934 (the "1934 Act"), alleging the dissemination of materially false and misleading proxy statements. The 1934 Act gives federal courts exclusive jurisdiction over derivative suits filed under the Act. The bylaw in question adopted by Boeing prohibits the filing of derivative suits in any court other than a Delaware state court.

A corporate bylaw constitutes a binding contract between a shareholder and the corporation. Boeing moves to dismiss pursuant to *forum non conveniens* because a Boeing shareholder, such as Plaintiff, may not file a derivative suit in federal court and a state court does not have jurisdiction to hear a federal derivative suit. Plaintiff contends that because the 1934 Act prohibits the filing of a suit in Delaware state court and the bylaw prohibits the shareholder from filing in federal court, the bylaw denies Boeing shareholders the substantive right to maintain a derivative suit under the 1934 Act, violating both federal and Delaware law.

II. DISCUSSION

Boeing initially points out that the appropriate way to enforce a forum selection clause is under the doctrine of *forum non conveniens*. *Atl. Marine Constr. Co., Inc. v. U.S. Dist. Court for W. Dist. Tex.*, 571 U.S. 49, 60 (2013). It further argues that certain Delaware cases foreclose Plaintiff's suit. Boeing cites *Salzberg v. Sciabacucchi*, 2020 WL 1280785 (Del. Mar. 18, 2020) and *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934 (Del Ch. 2013) for the propositions that forum selection provisions involving the Securities Act of 1933 (the "1933 Act") (*Salzberg*) and the 1934 Act (*Boilermakers*) are valid and enforceable.

However, an analysis of these decisions show that they do not foreclose Plaintiff's case. *Salzberg* involved the 1933 Act which, unlike the 1934 Act, grants jurisdiction to both state and federal courts. *See generally Salzberg*, 2020 WL 1280785. Therefore, unlike here, a plaintiff may maintain a suit pursuant to the 1933 Act in both a federal and a state court, but only in Delaware. *Boilermakers*, like this case, involved the 1934 Act. 73 A.3d at 962. The bylaw provision in *Boilermakers* provided that a derivative action, such as the one Plaintiff brings here, can be filed in "a state or federal court located within the state of Delaware." *Id.* at 942. Therefore, neither *Salzburg* nor *Boilermakers* involved a situation where a plaintiff was denied the right to bring a federal

securities case in a federal court. Consequently, neither of these cases dictate a result favoring Boeing. Thus, the validity of the bylaws is subject to further analysis.

Plaintiff places much emphasis on the statements in *Salzberg* and other cases that forum selection clauses are meant to protect procedural rights and not to impose substantive injury to the shareholders through enforcement. It specifically cites *M/S Bremen v. Zapata Off-Shore Co.*, for the proposition that forum selection clauses should not be enforced where enforcement would be "unreasonable under the circumstances." 407 U.S. 1, 10 (1972). *Bremen* identifies three grounds on which forum selection clauses may be invalidated "as applied": 1) if enforcement would be "unreasonable and unjust;" 2) where the clause was procured through fraud or overreaching; or 3) "where enforcement would contravene strong public policy." *Id.* at 15.

Generally, the first provision is related to logistics, *i.e.*, whether the venue demanded would deprive a litigant of the opportunity to present its case in court and the normal questions arising in a motion for change of venue such as difficulty of enforcing subpoenas, facing greatly increased costs, etc. The Court does not understand Plaintiff to argue that it would be at a logistic disadvantage as a result of being forced to litigate in Delaware. The Court also does not understand Plaintiff to argue

that the bylaw was procured by fraud or overreaching. Thus, we are left with the question of whether the bylaw that denies a shareholder of a Delaware corporation the right to bring a cause of action for violating a securities law enacted by Congress violates public policy.

Boeing argues that because Delaware securities law provides for a derivative cause of action similar to that provided by the 1934 Act, the bylaw does not deprive Plaintiff of a remedy and Plaintiff is not harmed substantively. In support, it cites *Bonny v. Society of Lloyd's*, 3 F.3d 156 (7th Cir. 1993). In that case, Bonny sued to prevent Lloyd's from enforcing an arbitration award Lloyd's obtained in England under British law that was reduced to judgments against Bonny. *Id.* at 157-59. Bonny contended that British law denied plaintiffs many of the rights that they would have been able to assert had Lloyd's been required to obtain its judgments in United States courts under United States law, including the provisions of the 1933 and 1934 Acts. *Id.* at 159.

Bonny appealed both the district court's denial of a preliminary injunction that would prevent the enforcement of the arbitration award in a United States court and the dismissal. *Id.* at 157. In analyzing the case, the Seventh Circuit noted that the plaintiffs had entered into general undertakings with Lloyd's, a form of contractual agreement that included both forum selection

and choice of law clauses. *Id.* at 158. The court further noted that prospective waivers of the protections of the United States securities laws could contravene important public policies if the selected forum, here Great Britain, did not provide similar protections. *Id.* at 160-61. While not identical, the court felt the remedies that British law provided were sufficient to satisfy the United States public policy of providing protections to the investing public. *Id.* at 161-62. The court also pointed out that Bonny had entered into international agreements in a foreign country, which were specifically subject to a foreign law clause. *Id.* at 162.

Boeing argues that Delaware law provides for a cause of action that is "substantially similar" to a federal derivative cause of action against corporate directors for failing to do exactly what Plaintiff contends that the Defendant directors failed to do. (Reply at 7, Dkt. No. 25.) Plaintiff contends, however, that the elements of a Delaware derivative claim against a director for misrepresentation are "very different" from those provided by the 1934 Act. (Resp. at 19, Dkt. No. 22.) Examples cited by Plaintiff include that the standard of proof required under the 1934 Act is negligence while the standard of proof for a director's non-disclosure under Delaware law is "bad faith" and that the Delaware common law of candor does not regulate the same misconduct as the

does the 1934 Act. (*Id.* at 19-20.) Boeing points out however that Delaware law permits shareholders to bring a derivative claim against their corporate directors for failing "to disclose fully and fairly all material information within the board's control when it seeks shareholder action." (Reply at 7 (citing *Stroud v. Grace*, 606 A.2d 75, 84 (Del. 1992)).) This is precisely what Plaintiff complains here.

As stated previously, Boeing relies upon *Bonny* to explain why such differences that may exist between federal and Delaware law do not provide a basis for finding a public policy violation when a litigant is forced to litigate under foreign law. However, there is a distinction between the forum selection clauses in *Bonny* and those in this case: the general undertakings entered into by the plaintiffs in *Bonny* included forum selection clauses and choice of law provisions, while the Boeing bylaw does not contain a choice of law provision. In other words, the plaintiffs in *Bonny* had specifically agreed that they would be bound to litigate in England under British law. Here the bylaw says nothing about choice of law, although it would logically follow that a litigant be subject to jurisdictional limitations.

There certainly are good reasons for a Delaware corporation to adopt such a bylaw. A corporation would undoubtedly prefer to have its directors' conduct regulated by a single law subject to

enforcement in a single forum, rather than subject to multiple laws in different jurisdictions. Forum selection clauses have as their main benefit the avoidance of multi-forum litigation. It is obvious that consolidation of litigation, either direct or derivative, in a single forum would be a cost benefit. Many major corporations have headquarters in states other than the one whose laws incorporated them. Thus, without a forum selection clause, a corporation might have to defend its directors in multiple forums, such as the state of its incorporation, the state where its headquarters is, and in federal court. Multi-forum litigation could also lead to inconsistent verdicts. *See Boilermakers*, 73 A.3d at 943-44.

Plaintiff's last major argument is that applying the forum selection clause to force a shareholder to file a state derivative action as opposed to a federal derivative action violates the anti-waiver provision contained in the 1934 Act. Section 78 cc(a) provides that "[a]ny condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule or regulation thereunder, or of any rule of a self-regulatory organization, shall be void." 15 U.S.C. § 78cc(a). Plaintiff contends that enforcing the bylaw as written acts as a waiver of a shareholder's right to file a federal derivative suit under the 1934 Act, which violates this waiver provision. In

response, Boeing cites *Bonny* where the plaintiffs presented the same argument that the forum selection provision constituted a waiver of the protections of the 1933 Act. (Reply at 8.)

In *Bonny*, the Seventh Circuit stated that the inclusion of anti-waiver provisions made clear that Congress intended that the public policy espoused by these acts "should not be thwarted." *Bonny*, 3 F.3d at 160. However, the court analyzed the laws available in England and found, although certain of the protections provided by the federal securities law were not available under English law, what was available was sufficient so that the plaintiffs' substantive rights were not violated and the entering into the general undertakings did not constitute a waiver of any substantive rights provided by the federal securities laws. *Id.* at 160-61.

While *Bonny* involved an international agreement, the same reasoning was extended to domestic agreements in *Spenta Enterprises, Ltd. v. Coleman*, 574 F. Supp. 2d 851 (N.D. Ill. 2008). *Spenta* involved a contract that required a securities case be filed in Illinois state court. *Id.* at 853. The court said that the reasoning in *Bonny* applied equally to domestic agreements and, specifically, the availability of the Illinois securities law and Illinois common law fraud were more than adequate substitutes to federal securities laws to vindicate shareholders' substantive

rights. *Id.* at 857. The court also cited *Pong v. American Capital Holdings, Inc.*, 2007 WL 657790 (E.D. Cal. Feb. 28, 2007), which collected cases rejecting plaintiff's waiver argument. *Spenta*, 574 F. Supp. 2d at 857.

Ultimately, the Court is sympathetic to Plaintiff's arguments because it is denied the right to proceed in federal court under a duly enacted federal law. But, the weight of authority backs Boeing's position. Therefore, the Court grants Boeing's Motion to dismiss for *forum non conveniens*.

III. CONCLUSION

For the reasons stated herein, Defendant Boeing's Motion to Dismiss (Dkt. No. 11) is granted.

IT IS SO ORDERED.



Harry D. Leinenweber, Judge
United States District Court

Dated: 6/8/2020

2. The Seafarers Pension Plan is and was during all relevant times alleged in the Verified Class Action Complaint (the “Complaint”), a holder of common stock of The Boeing Company (“Boeing”).

3. I have read the Complaint, consulted with counsel, and authorized the Complaint’s filing.

4. The facts alleged in the Complaint are true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

5. In accordance with Delaware Court of Chancery Rule 23(aa), The Seafarers Pension Plan has not received, been promised, or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative party in this action except: (i) such damages or other relief as the Court may award to members of the class; (ii) such fees, costs or other payments as the Court expressly approves to be paid to or on behalf of the Seafarers Pension Plan; or (iii) reimbursement, paid by attorneys for the Seafarers Pension Plan, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.

Maggie Bowen

Maggie Bowen, Fund Administrator for the
Seafarers Pension Plan

SWORN TO AND SUBSCRIBED before me this 8th day of July, 2020.

Leslie Tarantola

Notary Public

My Commission Expires:

LESLIE TARANTOLA
Notary Public
Montgomery County, MD
My Commission Expires 11/19/2023

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(A)
OF THE RULES OF THE COURT OF CHANCERY

EFiled: Jul 08 2020 01:50PM EDT
Transaction ID 65746585
Case No. 2020-0556-



The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case: Seafarers Pension Plan, on behalf of itself and all other similarly situated stockholders of the Boeing Company, Plaintiffs, v. Robert A. Bradway, David L. Calhoun, Arthur D. Collins, Edmund P. Giambastiani, Jr., Lynn J. Good, Akhil Johri, Lawrence W. Kellner, Caroline B. Kennedy, Steven M. Mollenkopf, John M. Richardson, Susan C. Schwab, Ronald A. Williams and the Boeing Company, Defendants.

2. Date Filed: July 8, 2020

3. Name and address of counsel for plaintiff(s): Jonathan Kass, Esquire (ID 6003)
Offit Kurman, PA
222 Delaware Avenue, Suite 1105
Wilmington, DE 19801

4. Short statement and nature of claim asserted: Complaint for breach of fiduciary duties

5. Substantive field of law involved (check one):

<input type="checkbox"/> Administrative law	<input type="checkbox"/> Labor law	<input type="checkbox"/> Trusts, Wills and Estates
<input type="checkbox"/> Commercial law	<input type="checkbox"/> Real Property	<input type="checkbox"/> Consent trust petitions
<input type="checkbox"/> Constitutional law	<input type="checkbox"/> 348 Deed Restriction	<input type="checkbox"/> Partition
<input checked="" type="checkbox"/> Corporation law	<input type="checkbox"/> Zoning	<input type="checkbox"/> Rapid Arbitration (Rules 96,97)
<input type="checkbox"/> Trade secrets/trade mark/or other intellectual property		<input type="checkbox"/> Other

6. Related cases, including any Register of Wills matters (this requires copies of all documents in this matter to be filed with the Register of Wills): N/A

7. Basis of court's jurisdiction (including the citation of any statute(s) conferring jurisdiction):

10 Del. C. § 341, 10 Del. C. § 3114 and 10 Del. C. § 3104

8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought.

9. If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceedings, check here _____. (If #9 is checked, a Motion to Expedite must accompany the transaction.)

10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause. _____

/s/ Jonathan Kass (ID No. 6003)
Signature of Attorney of Record & Bar ID