

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
WICHITA DIVISION**

<p>Society of Professional Engineering Employees in Aerospace, IFPTE Local 2001; International Association of Machinists and Aerospace Workers and its District 70; David A. Harkness, William G. Hartig, Jr., David Lewandowski, Jene Lewandowski, Ronald Owens, Richard Pullen, Tomey Shabshab, Donna Zagonel, and Michael Baker, for themselves and others similarly situated; Michael McCartney, Norris Palmer, Bradley Stevens, Margaret Wieland, James Boone, Bruce Carselowey, Marsha Gray, Darlene Kerns, Randall McFarland, Larry Moore, Russell Norman, James Queen, Timothy Sanders, Marlon Stocking, William Stoner, Lisa Wright and Gary Leavell,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Boeing Co., a Delaware corporation; Boeing Company Employee Retirement Plan; Boeing Company Retiree Health and Welfare Benefit Plan; Employee Benefit Plans Committee of the Boeing Company; Spirit AeroSystems Holdings, Inc., a corporation; Sprit AeroSystems, Inc., a corporation; the Spirit AeroSystems Holdings, Inc. Retirement Plan for IBEW, WEU and WTPU Employees; the Spirit AeroSystems Holdings, Inc. Retirement Plan for IAM Employees; and Boeing Company Layoff Benefits Plan,</p> <p style="text-align: center;">Defendants.</p> <p style="text-align: right;">/</p>	<p style="text-align: center;"><b>Nos. 05-CV-1251 MLB KMH 07-CV-1043 MLB KMH</b></p> <p style="text-align: center;"><b>JUDGE BELOT</b></p> <p style="text-align: center;"><b>MAG. JUDGE HUMPHREYS</b></p> <p style="text-align: center;"><b>SECOND CONSOLIDATED AMENDED COMPLAINT</b></p> <p style="text-align: center;"><b>JURY TRIAL DEMANDED</b></p>
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For their complaint against Defendants, Plaintiffs allege as follows:

## **PARTIES**

1. Plaintiff Society of Professional Engineering Employees in Aerospace (SPEEA) is an unincorporated labor organization that represents for purposes of collective bargaining employees of employers in industries affecting commerce. SPEEA maintains offices in this District from which it serves as collective bargaining representative for thousands of employees in this District. SPEEA is a labor organization within the meaning of 29 U.S.C. §152(5).

2. Plaintiff International Association of Machinists and Aerospace Workers (IAM) is an unincorporated labor organization that represents for purposes of collective bargaining employees of employers in industries affecting commerce. IAM is a signatory to collective bargaining agreements covering thousands of employees in this District. IAM is a “labor organization” within the meaning of 29 U.S.C. §152(5).

3. Plaintiff District 70 is an unincorporated labor organization that represents for purposes of collective bargaining employees of employers in industries affecting commerce. District 70 maintains an office in this District from which it serves as collective bargaining representative for thousands of employees in this District. District 70 is a “labor organization” within the meaning of 29 U.S.C. §152(5).

4. Plaintiff David A. Harkness, born June 23, 1951, worked for Defendant Boeing from November 1978 until on or around June 16, 2005. Defendant Spirit hired him for employment and he began working there as an employee on or about June 17, 2005.

5. Plaintiff William G. Hartig Jr., born May 5, 1954, worked for Defendant Boeing from October 20, 1980, until on or around June 16, 2005. Defendant Spirit hired him for employment and he began working there as an employee on or about June 17, 2005.

6. Plaintiff David Lewandowski, born May 26, 1951, worked for Defendant Boeing from October 1978 until on or around June 16, 2005. Defendant Spirit hired him for employment and he began working there as an employee on or about June 17, 2005.

7. Plaintiff Jene Lewandowski, born August 10, 1951, worked for Defendant Boeing from October 31, 1972, until on or around June 16, 2005. Defendant Spirit hired him for employment and he began working there as an employee on or about June 17, 2005.

8. Plaintiff Ronald Owens, born August 3, 1954, worked for Defendant Boeing from April 14, 1980 until on or around June 16, 2005. Defendant Spirit hired him for employment and he began working there as an employee on or about June 17, 2005.

9. Plaintiff Richard Pullen, born October 26, 1951, worked for Defendant Boeing from February 13, 1974 until on or around June 16, 2005. Defendant Spirit hired him for employment and he began working there as an employee on or about June 17, 2005.

10. Plaintiff Tomey Shabshab, born September 18, 1951, worked for Defendant Boeing from April 9, 1982 until on or around June 16, 2005. Defendant

Spirit hired him for employment and he began working there as an employee on or about June 17, 2005.

11. Plaintiff Donna Zagonel, born August 23, 1952, worked for Defendant Boeing from January 10, 1980, until on or around June 16, 2005. Defendant Spirit hired her for employment and she began working there as an employee on or about June 17, 2005.

12. Plaintiff Michael Baker, born August 7, 1953, worked for Defendant Boeing from October 16, 1978 until on or about June 16, 2005. Defendant Spirit hired him for employment and he began working there on or about June 17, 2005.

13. Plaintiff Michael McCartney, born April 14, 1953, worked for Defendant Boeing from April 1, 1980 until on or around June 16, 2005.

14. Plaintiff Norris Palmer, born February 3, 1951, worked for Defendant Boeing from November 8, 1982 until on or around June 16, 2005.

15. Plaintiff Bradley Stevens, born January 16, 1956, worked for Defendant Boeing from April 20, 1989 until on or around June 16, 2005.

16. Plaintiff Margaret Wieland, born November 12, 1954, worked for Defendant Boeing from September 8, 1988 until on or around June 16, 2005.

17. Plaintiffs McCartney, Palmer, Stevens and Wieland are hereafter referred to as "the McCartney Plaintiffs."

18. Plaintiff James Boone, born March 15, 1951, worked for Defendant Boeing from October 17, 1978 until on or about June 16, 2005.

19. Plaintiff Bruce Carselowey, born June 8, 1956, worked for Defendant Boeing from on or about January 1981 until on or about June 16, 2005.
20. Plaintiff Marsha Gray, born February 28, 1954, worked for Defendant Boeing from November 12, 1973 until on or about June 16, 2005.
21. Plaintiff Darlene Kerns, born February 4, 1956, worked for Defendant Boeing from November 6, 1979 until on or about June 16, 2005.
22. Plaintiff Randall McFarland, born March 12, 1956, worked for Defendant Boeing from May 1974 until on or around June 16, 2005.
23. Plaintiff Larry Moore, born July 22, 1952, worked for Defendant Boeing from May 7, 1979 until on or around June 16, 2005.
24. Plaintiff Russell Norman, born July 7, 1953, worked for Defendant Boeing beginning in July 1978 until on or about June 16, 2005.
25. Plaintiff James Queen, born August 16, 1952, worked for Defendant Boeing from November 28, 1985 until on or about June 16, 2005.
26. Plaintiff Timothy Sanders, born February 6, 1956, worked for Defendant Boeing from on or about September 1981 until on or about June 16, 2005.
27. Plaintiff Marlon Stocking, born December 17, 1955, worked for Defendant Boeing beginning in July 1974 until on or about June 16, 2005.
28. Plaintiff William Stoner, born November 7, 1950, worked for Defendant Boeing from March 18, 1975 until on or about June 16, 2005.
29. Plaintiff Lisa Wright, born February 1, 1952, worked for Defendant Boeing from November 16, 1979 until on or about June 16, 2005. Plaintiff Gary

Leavell, born November 6, 1950, worked for Defendant Boeing for approximately 20 years, until on or about June 16, 2005.

30. Plaintiffs Boone, Carselowey, Gray, Kerns, McFarland, Moore, Norman, Queen, Sanders, Stocking, Stoner, Wright and Leavell are hereafter referred to as “the Boone Plaintiffs.”

31. The Harkness Plaintiffs, the McCartney Plaintiffs and the Boone Plaintiffs will be referred to collectively as “the Individual Plaintiffs.”

32. Defendant Boeing is a corporation with headquarters in the State of Illinois. For many years Boeing has transacted significant business in this District. Boeing is an “employer” within the meaning of 29 U.S.C. §152(2) and Section 3(5) of ERISA (29 U.S.C. § 1002(5)). Boeing likewise is a plan sponsor within the meaning of ERISA and, when acting as plan administrator or trustee, is a plan fiduciary under ERISA.

33. Defendant Boeing Pension Plan is a pension fund designed to provide eligible participants with periodic income and death benefit protection after retirement. Boeing is the Plan Administrator for the Boeing Pension Plan, acting through its Employee Benefit Plans Committee (“the EBP Committee”). The Boeing Pension Plan is an “employee pension benefit plan” within the meaning of Section 3(2) of ERISA, 29 U.S.C. §1002(2).

34. Defendant EBP Committee is a Boeing-related entity, which on information and belief consists of Boeing officers and/or Boeing agents, and to which Boeing has delegated its control over the employee-benefit funds for its employees.

Its members are the trustees for the Boeing Plans. The EBP Committee is sued in its capacity as trustee and plan administrator of the employee benefit plans. It is a fiduciary under ERISA.

35. Defendant Boeing Health Plan is an employee-benefit fund that pays out medical benefits to eligible participants after retirement. Boeing is the Plan Administrator for the Boeing Health Fund, acting through the EBP Committee. The Boeing Health Fund is an “employee welfare benefit plan” within the meaning of Section 3(1) of ERISA, 29 U.S.C. §1002(1).

36. Spirit AeroSystems Holdings, Inc., a Delaware corporation with its headquarters in Kansas, owns and operates a commercial-aircraft facility in Wichita that it purchased from Defendant Boeing in 2005. It is a “plan sponsor” within the meaning of ERISA, and, acting through agents, is a plan administrator and a fiduciary under ERISA.

37. Spirit AeroSystems, Inc., a Delaware corporation with its headquarters in Kansas, is a wholly-owned subsidiary of Spirit AeroSystems Holdings, Inc. It is an “employer,” within the meaning of ERISA, is a “plan sponsor”, and, acting through agents, is a plan administrator and a fiduciary under ERISA.

38. The Spirit AeroSystems Holdings, Inc. Retirement Plan for IBEW, WEU and WTPU Employees (now called Spirit AeroSystems Holdings, Inc. Pension Value Plan) is a pension fund designed to provide eligible participants with periodic income and death benefit protection after retirement. Spirit AeroSystems Holdings, Inc. Retirement Plan for IBEW, WEU and WTPU Employees is an “employee

pension benefit plan” within the meaning of Section 3(2) of ERISA, 29 U.S.C. §1002(2).

39. The Spirit AeroSystems Holdings, Inc. Retirement Plan for IAM Employees (now called Spirit AeroSystems Holdings, Inc. Pension Value Plan) is a pension fund designed to provide eligible participants with periodic income and death benefit protection after retirement. Spirit AeroSystems Holdings, Inc. Retirement Plan for IAM Employees is an “employee pension benefit plan” within the meaning of Section 3(2) of ERISA, 29 U.S.C. §1002(2).

### **JURISDICTION AND VENUE**

40. Pursuant to District of Kansas Rule 40.2, Plaintiffs hereby request that trial in this matter be held in Wichita.

41. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and under specific statutory provisions including LMRA Section 301 (29 U.S.C. §185) and ERISA Section 502 (e) and (f) (29 U.S.C. § 1132 (e) and (f)).

42. Defendants are subject to personal jurisdiction in this district based on their contacts with this district, including administration of the plans. Events giving rise to the claims occurred in this district and the Defendants may be found in this district. Venue is therefore proper in this district pursuant to 29 U.S.C. §185, 28 U.S.C. §1391, and 29 U.S.C. §§1132(e) and (f).

### **STATEMENT OF FACTS**

43. The Individual Plaintiffs all worked for Boeing at its Commercial Facility in Wichita. They worked in positions contained within bargaining units represented



by labor unions, including SPEEA, the IAM and its District 70, and the International Brotherhood of Electrical Workers Local 271, which unions engaged in ongoing collective bargaining with Boeing over the terms and conditions of the Plaintiffs' employment.

44. This collective bargaining between Boeing and its employees' unions led to promises by Boeing to provide various employee benefits for its union-represented employees, including defined-benefit pension benefits and retiree health-care benefits.

45. To help fulfill Boeing's collective-bargaining promises, the Boeing Pension Plan and the Boeing Health Plan were created and maintained to dispense the promised benefits to retirees.

46. With respect to pension benefits, the unions and Boeing agreed that the union-represented employees would participate in the Boeing Pension Plan.

47. The normal retirement age under the Pension Plan is 65. However, the Pension Plan allows employees to retire at age 55 under certain conditions (hereafter "the Early Retirement Pension Benefit").

48. The Boeing Pension Plan pays benefits under one of two formulas, either the Standard Benefit Formula or the Alternative Benefit Formula (which is composed of a "Core Benefit" and an "Excess Benefit"). Employees who elect to retire under the Early Retirement Pension Benefit receive a monthly pension benefit that is reduced from its normal amount by between 2% and 5% (depending on which formula applies) for each year retirement occurs before age 60. By

contrast, an employee who seeks to retire before age 65 -- but who does not qualify for the Early Retirement Pension Benefit -- can receive his pension benefit at age 55 but the monthly benefit is reduced by 6% for each year retirement occurs before age 65 (hereafter "the Deferred Vested Benefit"), resulting in a significantly smaller monthly benefit.

49. Another provision of the Boeing Pension Plan protects employees in the event of a "layoff." Specifically, employees who lose Boeing employment through "layoff" may take advantage of the Early Retirement Pension Benefit if they reach age 55 within six years of the termination of their Boeing employment, enabling them to avoid the higher actuarial penalty that would otherwise apply to the Deferred Vested Benefit. In the parlance of employee benefits, such employees are able to "bridge" to the early retirement age. Hereafter, this is referred to as the Early Retirement Pension Bridge Benefit.

50. Ordinarily, once individuals leave Boeing employment, by retirement or otherwise, they must arrange for their own health care coverage until they reach age 65 and become eligible for Medicare. The respective unions and Boeing, however, also negotiated a special health-care provision alongside the Early Retirement Pension Benefit. Specifically, an employee who is eligible for the Early Retirement Pension Benefit also qualifies for Boeing-provided health care until he or she becomes eligible for Medicare at 65 (hereafter "the Early Retirement Health Benefit").

51. Boeing and the unions also agreed that employees who lose Boeing employment through "layoff" may take advantage of the Early Retirement Health Benefit if they reach age 55 within six years of the termination of their Boeing employment. This benefit will be referred to as the Early Retirement Health Bridge Benefit. The Boeing Health Plan dispenses these retiree-health care benefits.

52. The Individual Plaintiffs, and all of them, were and/or are participants in the Boeing Pension Plan and the Boeing Health Plan.

53. In addition, the Boeing Layoff Benefits Plan provides that in the event of an involuntary layoff, covered employees will receive one week of pay for each full year of service with Boeing. This severance benefit is not available to employees who are offered employment with a successor employer following a layoff due to sale, merger, reorganization or other transfer.

54. The Individual Plaintiffs, and all of them, were and/or are participants in the Boeing Layoff Benefits Plan.

55. In 2004 Boeing announced it was looking to sell the Commercial Facility. It subsequently found a buyer in Defendant Spirit AeroSystems, Inc. (then named Mid-Western Aircraft Systems, Inc.).

56. Spirit and Spirit Holdings do not have and have never had any corporate affiliation or other such relationship with Boeing.

57. Boeing and Spirit and/or Spirit Holdings entered into an Asset Purchase Agreement on or about February 22, 2005. This agreement provided, inter alia, that

Spirit and/or Spirit Holdings would take over the ownership and operation of the Commercial Facility from Boeing.

58. Boeing and Spirit and/or Spirit Holdings negotiated, as part of the sales agreement for the Wichita facility, provisions relating to the Boeing Pension Plan. They agreed, inter alia, that Boeing would transfer its pension liabilities, owing to its former employees who went to work for Spirit, to new pension plans that Spirit and/or Spirit Holdings would create solely for the purpose of administering those Boeing benefits.

59. Boeing and Spirit and/or Spirit Holdings further agreed, in this sales agreement, that Spirit and/or Spirit Holdings would assume Boeing's liabilities pertaining to certain pension and health care liabilities of Boeing's existing workforce.

60. On or about March 2005, Boeing announced to its employees at its Commercial Facility in Wichita that Boeing would be laying them off effective May 2005 owing to Boeing's sale of the Commercial Facility.

61. Spirit announced it planned to operate the facility and produce similar goods. Spirit did not promise to hire any particular employees.

62. The Boeing employees were then informed that, if they wanted to be considered for a job with Spirit, they were required to submit an application form and waive any privacy rights to their Boeing employment file.

63. The IAM, SPEEA and the IBEW entered negotiations with both Spirit (as the new employer of the employees) and with Boeing (over the effects of the layoffs).

64. In its effects bargaining with the unions, Boeing's representatives informed the IAM that all the employees who lost their Boeing employment would have the right to the bridge benefits. Those that had an opportunity to work for Spirit would not have a right to severance benefits, however, because of a special exclusion.

65. Boeing later changed its position, however, and informed the IAM, SPEEA and the IBEW that no employees could qualify for the bridge benefits unless they applied to work at Spirit and were refused hire. Under the relevant contracts and Plan terms, this condition was one that specifically applied to severance benefits, but it did not apply to either of the bridge benefits.

66. Boeing informed the union-represented employees that, despite the fact it would be involuntarily terminating their collective employment with Boeing, Boeing would not consider them "laid off" unless they sought a job with Spirit and did not receive an offer of employment from Spirit. Otherwise -- if these former Boeing employees did not seek a job with Spirit; or if they sought a job, received an offer but turned it down; or if they sought a job, received an offer and accepted it and began working for Spirit -- Boeing would not consider them "laid off" and they would not qualify for the "bridge" to the Early Retirement Pension Benefit and the Early Retirement Health Care Benefit. This information was misleading and intended to encourage employees to make decisions that Boeing would use to justify its plan to reduce its benefit costs.

67. Boeing also informed employees who did not sign the consent form that they risked being fired before the June 16 date. Likewise, Boeing refused to accept consent forms on which employees wrote they were being signed under duress or under protest. When one Boeing employee asked why so much pressure was being put on employees to sign, a Human Resources representative told him that Onex was “buying the employees” along with the plant. The reference to Onex is to Onex Corporation, of which Spirit and Spirit Holdings are wholly-owned subsidiaries. Representatives of Onex negotiated the terms of Spirit’s purchase of the Commercial Facility.

68. Spirit subsequently reviewed the work records of those employees who applied and conducted interviews with their Boeing managers. Spirit hired some, but not all, of those former Boeing employees who sought employment with Spirit.

69. On or about June 16, 2005, Boeing laid off the majority of the union-represented employees at the Commercial Facility. Others were laid off from Boeing employment at a later date.

70. The McCartney Plaintiffs and the Boone Plaintiffs ceased to be Boeing employees on or about June 16, 2005, when Boeing laid them off from Boeing employment. They did not apply for or otherwise accept employment with Spirit.

71. On June 17, 2005, Spirit and/or Spirit Holdings took over the operations of the Commercial Facility. Those former Boeing employees whom Spirit chose to hire started work for Spirit that day.

72. Plaintiffs Harkness, Hartig, David Lewandowski, Jene Lewandowski, Owens, Pullen, Shabshab, Zagonel and Baker ceased to be Boeing employees on June 16, 2005, when Boeing laid them off from Boeing employment. Each applied for work at Spirit, was hired by Spirit, and began work as Spirit employees on or around June 17, 2005. Hereafter we refer to these individuals, and the class of similarly situated individuals whom they seek to represent, as the “Harkness Class.”

73. Plaintiffs McCartney, Palmer and Stevens, and those of the Boone Plaintiffs, including Carselowey, Moore, Norman, Queen, Sanders, Stocking, Stoner and Leavell, who were not offered employment with Spirit, are eligible for severance benefits pursuant to the terms of the Boeing Layoff Benefits Plan.

74. None of the Plaintiffs received these severance benefits, except for Stevens.

75. Plaintiff Stevens was originally granted severance benefits, which were paid out to him for approximately 16 weeks. The EBP Committee subsequently took the position that Mr. Stevens was not entitled to these benefits and began collections proceedings to recover the benefits.

76. The terms and conditions of employment with the new employer were different than with Boeing. Spirit and/or Spirit Holdings did not assume the existing collective bargaining agreements, and indeed did not agree to continue the same employee benefits the employees had with Boeing. This is particularly true of the pension benefits. Instead, the unions were forced to negotiate different benefits

that were inferior in important ways to the Boeing benefits, including the lack of future pension accruals under the former pension plan.

77. In September 2005, the trustees of the Boeing Pension Plan amended the Plan to, inter alia, transfer all assets purporting to relate to the Harkness Plaintiff Class to a pension fund or funds to be established by Spirit and/or Spirit Holdings. As a result of this amendment, employees who were offered and accepted positions at Spirit had their actuarially-determined pension accounts, or parts of them, transferred to Spirit and/or Spirit Holdings.

78. As a result of this amendment, the Boeing Pension Plan decreed that the former Boeing employees who went to work for Spirit on or about June 17, 2005 were no longer plan participants in the Boeing Pension Plan.

79. According to Defendants, the Harkness Plaintiffs were now participants in the Spirit Pension Plans.

80. All the Individual Plaintiffs had 10 or more years of seniority at the time they were laid off from their Boeing employment, on or about June 16, 2005.

81. All the Individual Plaintiffs were between 49 and 55 years of age as of June 16, 2005.

82. Because the Individual Plaintiffs all had 10 or more years of seniority and were between 49 and 55 years of age as of June 16, 2005 – when they were laid off from their Boeing employment – they should all have been entitled to the “bridge” benefit.



83. Through Boeing's EBP Committee, Boeing controls the governance and plan administration of the Boeing Plans.

84. Boeing's control is subject to the various collective bargaining agreements with its employees' unions, by the governing rules of the plans themselves and ERISA and other applicable law.

85. The Harkness Plaintiffs have requested clarification of their bridging rights, and/or sought to claim bridging benefits, from the Boeing Plans due to the 2005 layoffs. They were informed by the Pension Plan that they are no longer participants in the Plan because the EBP Committee executed the plan amendment that "transferred" them to the Spirit plans.

86. The Harkness Plaintiffs sought clarification of their rights to exercise bridging benefits under the new Spirit Plans, owing to their layoff from Boeing employment in June 2005. The Spirit Plans' Pension Oversight Committee treated the Plaintiffs' request as an appeal under the Plans' claims and appeals procedures. At its meeting on April 10, 2007, the Committee determined that the Plaintiffs "did not experience a 'layoff' within the meaning of the Plan . . . as a result of the transfer of their employment from Boeing to Spirit on June 16, 2005."

87. The McCartney Plaintiffs and some or all of the Boone Plaintiffs have requested clarification of their bridging rights, and/or sought to claim bridging benefits, from the Boeing Plans due to the 2005 layoffs. The EBP Committee or its designee has denied them these benefits by the Pension Plan, or has sent clarification they would be denied. The EBP Committee explained they were being

denied because they did not seek or accept employment with Spirit, and thus were not “laid off” from Boeing.

88. Plaintiffs McCartney, Palmer and Stevens have requested clarification as to their entitlement to severance benefits. Plaintiff Stevens has requested the EBP Committee immediately cease collections proceedings. Plaintiffs McCartney and Palmer have requested benefits. The EBP Committee has not yet responded, but based on its earlier actions, it is fully expected the request will be denied.

89. Boeing’s EBP Committee controls both the Pension Plan and the Health Plan, and Boeing itself has already stated that the Individual Plaintiffs, and those similarly situated to them, do not qualify for bridging benefits due to the June 2005 layoff.

90. All of the Individual Plaintiffs have fully exhausted their remedies under the Boeing Plans and the Spirit Plans or any attempts would be futile. The Boeing Plans and the Spirit Plans have denied benefits to all of these Plaintiffs or those similarly situated and have denied all appeals to the Plans. Plaintiffs submit that any further efforts to exhaust Plan remedies on behalf of other Plaintiffs and/or unnamed class members would be futile, and that all conditions precedent to filing suit have been performed or have occurred.

91. The IAM Representatives and SPEEA protested Boeing’s position on numerous occasions with Boeing representatives. Boeing refused to change its position.

92. The IAM Representatives attempted to pursue a protest over the issues through the grievance-arbitration process of the IAM Agreement, which is similar to that found in the SPEEA Agreements. Boeing took the position that the subject matter of the grievance is outside the contractual grievance procedure, and thus rejected efforts to pursue that route. SPEEA reasonably believes that Boeing will take the same position and refuse to arbitrate any grievance SPEEA might file over the issues raised here.

### **CLASS ACTION ALLEGATIONS**

93. The Harkness Plaintiffs bring this action pursuant to Rules 23 and 23.2 of the Federal Rules of Civil Procedure on behalf of themselves and respective class of similarly situated individuals.

94. The Harkness Class consists of those union-represented Boeing workers in Wichita who were participants in the Boeing Pension Plan as of June 2005, who had at least ten years of vesting service on that date, who were between the ages of 49 and 55 on that date, and who went to work at Spirit on or around June 17, 2005. These individuals should have all been eligible to receive the bridging benefits. On information and belief, this Class is comprised of hundreds of individuals.

95. The Harkness Plaintiffs are appropriate class representatives because they meet the above definitional criteria for the Class.

96. On information and belief, the Class, as stated above, consists of dozens or hundreds of individuals and as such, all members cannot practically be joined as named parties herein.

97. This action involves substantial questions of fact and/or law common to the claims of the Class, including but not limited to the following: whether those who lost their Boeing employment on or about June 16, 2005 due to Boeing's sale of the facility were "laid off;" whether those that did not apply for or accept work at Spirit were not "laid off" from Boeing because they did so apply or accept such work; whether those that were hired by Spirit were somehow not "laid off" from Boeing because of Spirit's decision to hire them; whether, assuming they met the age and service requirements, they were otherwise entitled to the Early Retirement Bridge benefits; whether the Boeing Plans have improperly concluded that those affected by the June 2005 layoff are not entitled to the bridge benefits; whether the Boeing Plans have acted arbitrarily and capriciously in making that improper conclusion; whether the trustees and plan administrator of the Boeing plans are interested or disinterested, thus affecting the standard of review; whether Boeing interfered with their attainment of these bridge benefits by its actions before and after the June 2005 layoff.

98. In addition, for the Harkness Plaintiffs, the following are common questions of law and fact: whether the trustees of the Boeing Plans breached their fiduciary duties by enacting a plan amendment that failed to protect and indeed sabotaged the Plaintiffs' bridge benefits; whether Boeing interfered with the ability of the Harkness Plaintiff Class to obtain the bridge benefits; whether the Boeing Pension Plan unlawfully cut back on accrued early-retirement benefits; whether Spirit and/or Spirit Holdings and the Spirit Pension Plans unlawfully cut back on

accrued early-retirement benefits; whether the acts of the Defendants violated ERISA transfer rules.

99. The claims of the Harkness Plaintiffs are typical of the claims of the Class. All the Harkness Plaintiffs have been denied “bridging benefits” to which they would otherwise be entitled based on their age and years of service upon the same grounds as all members of the Class.

100. The claims of the Harkness Plaintiffs are based on the same facts as those of the other members of the proposed Harkness Class.

101. Harkness Plaintiffs will fairly and adequately protect the interests of the class.

102. Harkness Plaintiffs have no interests that are antagonistic to the interests of the Class as a whole. They are committed to the vigorous prosecution of this action and have retained competent counsel who are experienced in federal litigation and with ERISA and federal labor law.

103. Rule 23(b)(1)(A). The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants.

104. Rule 23(b)(1)(B). The prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class, which would as a practical matter be dispositive of the

interest of the other members not parties to the adjudications and/or substantially impair or impede their ability to protect their interests.

105. Rule 23(b)(2). Defendants have acted on grounds generally applicable to the Class thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole.

106. Rule 23.2. The Class is comprised of members of unincorporated labor associations, including the IAM, SPEEA and IBEW. Harkness Plaintiffs, as representatives of similarly-situated union members at Boeing, will fairly and adequately protect the interests of the associations and their members.

**FIRST CLAIM FOR RELIEF: BREACH BY BOEING OF CONTRACTUAL PROMISE TO SPEEA TO PROVIDE CERTAIN PENSION BENEFITS TO LAID-OFF BOEING EMPLOYEES [29 U.S.C. §185]**

107. SPEEA incorporates the previous allegations as though set forth herein in full.

108. Boeing agreed, in contracts signed with SPEEA, that laid off employees with 10 years of vesting service who reach age 55 within 6 years of their layoff from Boeing employment, would qualify for the Early Retirement Pension Benefit, giving them a larger monthly benefit than they would otherwise receive under the Deferred Vested Benefit.

109. The SPEEA-represented employees at the Commercial Facility were laid off as of June 16 when Boeing involuntarily terminated their employment.

110. Boeing refused to classify in its employment records as “laid off” SPEEA-represented former Boeing employees who did not seek a job with Spirit; or if they

sought such a job, who received an offer but turned it down; or if they sought such job and received an offer, who accepted it and began working for Spirit, and took the position that these employees would not be considered “laid off” so as to qualify for the Early Retirement Pension Benefit.

111. By so classifying these employees and taking the position that these laid-off SPEEA-represented employees do not qualify for the Early Retirement Pension Benefit, Boeing breached its contractual promises with SPEEA.

**SECOND CLAIM FOR RELIEF: BREACH BY BOEING OF  
CONTRACTUAL PROMISE TO SPEEA PROVIDE CERTAIN HEALTH  
BENEFITS TO LAID-OFF BOEING EMPLOYEES [29 U.S.C. §185]**

112. SPEEA incorporates the previous allegations as though set forth herein in full.

113. Boeing agreed, in contracts signed with SPEEA, that laid off employees with 10 years of vesting service who reach age 55 within 6 years of the termination of their Boeing employment would be entitled to the Early Retirement Health Care Benefit that was not available to employees who were eligible only for the Deferred Vested Benefit.

114. The SPEEA-represented employees at the Commercial Facility were "laid off" as of June 16 when Boeing involuntarily terminated their employment.

115. Boeing refused to classify as “laid off” in its employment records SPEEA-represented former Boeing employees who did not seek a job with Spirit; or if they sought such a job, who received an offer but turned it down; or if they sought such job and received an offer, who accepted it and began working for Spirit, and took the

position that these employees would not be considered “laid off” and would not be eligible for the Early Retirement Health Care Benefit.

116. By so classifying these employees and taking the position that the laid-off SPEEA-represented employees do not qualify for the Early Retirement Health Care Benefit, Boeing breached its contractual promises with SPEEA.

**THIRD CLAIM FOR RELIEF: BREACH BY BOEING OF CONTRACTUAL  
PROMISE TO THE IAM REPRESENTATIVES TO PROVIDE CERTAIN  
PENSION BENEFITS TO LAID-OFF BOEING EMPLOYEES  
[29 U.S.C. §185]**

117. The IAM Representatives incorporate the previous paragraphs as though set forth herein in full.

118. Boeing agreed, in contracts signed with the IAM Representatives, that laid off employees with 10 years of vesting service who reach age 55 within 6 years of their layoff from Boeing employment, would qualify for the Early Retirement Pension Benefit, giving them a larger monthly benefit than they would otherwise receive under the Deferred Vested Benefit.

119. IAM-represented employees at the Commercial Facility were laid off as of June 16 when Boeing involuntarily terminated their employment..

120. Boeing refused to classify as “laid off” in its employment records IAM-represented former Boeing employees who did not seek a job with Spirit; or if they sought such a job, who received an offer but turned it down; or if they sought such job and received an offer, who accepted it and began working for Spirit, and took the position that these employees would not be considered “laid off” and would not qualify for the Early Retirement Pension Benefit.



121. By so classifying these employees and taking the position that the laid-off IAM-represented employees do not qualify for the Early Retirement Pension Benefit, Boeing breached its contractual promises with the IAM Representatives.

**FOURTH CLAIM FOR RELIEF: BREACH BY BOEING OF  
CONTRACTUAL PROMISE TO THE IAM REPRESENTATIVES TO  
PROVIDE CERTAIN HEALTH BENEFITS TO  
LAID-OFF BOEING EMPLOYEES [29 U.S.C. §185]**

122. The IAM Representatives incorporate the previous paragraphs as though set forth herein in full.

123. Boeing agreed, in contracts signed with the IAM Representatives, that laid off employees with 10 years of vesting service who reach age 55 within 6 years of the termination of their Boeing employment would qualify for the Early Retirement Health Care Benefit that was not available to employees who were eligible only for the Deferred Vested Benefit.

124. IAM-represented employees at the Commercial Facility were "laid off" as of June 16 when Boeing involuntarily terminated their employment.

125. Boeing refused to classify as "laid off" IAM-represented former Boeing employees who did not seek a job with Spirit; or if they sought such a job, who received an offer but turned it down; or if they sought such job and received an offer, who accepted it and began working for Spirit, and took the position that these employees would not be considered "laid off" and would not qualify for the Early Retirement Health Care Benefit.

126. By so classifying these employees and taking the position that the laid-off IAM-represented employees do not qualify for the Early Retirement Health Care Benefit, Boeing breached its contractual promises with the IAM Representatives.

**FIFTH CLAIM FOR RELIEF: DECLARATORY JUDGMENT AS TO PARTIES' RIGHTS AND RESPONSIBILITIES [28 U.S.C. §2201]**

127. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

128. IAM-represented employees and SPEEA-represented former Boeing employees who were laid off from Boeing due to their involuntary termination from Boeing employment on or about June 16 are entitled to “bridge” the Early Retirement Pension Benefit and the Early Retirement Health Care Benefit if they reach age 55 within 6 years of their layoffs.

129. As set forth in the preceding paragraphs, Boeing has, by its words and its actions, taken steps to breach its collective bargaining promises to the IAM Representatives and SPEEA and to unlawfully interfere with its former employees' right to the Early Retirement Pension Benefit and the Early Retirement Health Care Benefit.

130. [removed, per Court order]

131. Plaintiffs invoke the jurisdiction of this Court to establish and declare the legal rights and responsibilities of the IAM Representatives, SPEEA, IAM-represented former employees of Boeing, SPEEA-represented former employees of Boeing, and Boeing as to the Early Retirement Pension Benefit and the Early Retirement Health Care Benefit [under the Contracts].

**SIXTH CLAIM FOR RELIEF: UNLAWFUL INTERFERENCE WITH PENSION RIGHTS [ALL INDIVIDUAL PLAINTIFFS AGAINST BOEING]**

132. The Plaintiffs incorporate by reference the preceding paragraphs as though set forth herein in full.

133. The Individual Plaintiffs are exclusively current and/or former Boeing Pension Plan participants, as defined by ERISA, and therefore, they have standing under Sections 502 and 510 of ERISA, 29 U.S.C. §§ 1132 and 1140.

134. Under the Boeing Pension Plan, the Individual Plaintiffs were entitled to the Early Retirement Pension Benefit if they were laid off. They were in fact laid off when Boeing terminated their employment upon the sale of the Commercial Facility. Despite the fact Boeing laid them off, Boeing took steps to prevent them from receiving that benefit by, inter alia, declaring them not to be laid off, pressuring them in their employment decisions and issuing false and misleading information about their ability to claim Boeing benefits.

135. Boeing's interference was motivated by a desire to prevent the participants from receiving the Early Retirement Pension Benefit, which benefit is protected by ERISA, and thus to reduce its own cost with respect to the pension plan.

136. Boeing's actions in this regard violate Section 510 of ERISA, 29 U.S.C. §1140.

**SEVENTH CLAIM FOR RELIEF: UNLAWFUL INTERFERENCE WITH  
CLASS HEALTH CARE RIGHTS  
[ALL INDIVIDUAL PLAINTIFFS AGAINST BOEING]**

137. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

138. The Individual Plaintiffs are exclusively current and/or former Boeing Health Plan participants, as defined by ERISA, and have standing under Sections 502 and 510 of ERISA, 29 U.S.C. §§ 1132 and 1140.

139. Under the Plan, Individual Plaintiffs were entitled to the Early Retirement Health Care Benefit if they were laid off. They were in fact laid off when their Boeing employment was terminated. Despite the fact they were laid off, Boeing took steps to prevent them from receiving that benefit by, inter alia, declaring them not to be laid off, pressuring them in their employment decisions and issuing false and misleading information about their ability to claim Boeing benefits.

140. Boeing's decision to pressure its employees to seek employment with Spirit, and/or not to treat them as laid off, was motivated by a desire to prevent the participants from receiving the Early Retirement Pension Benefit, which benefit is protected by ERISA, and thus reduce its own costs for those benefits.

141. Boeing's actions in this regard violate Section 510 of ERISA, 29 U.S.C. §1140.

**EIGHTH CLAIM FOR RELIEF: CLARIFICATION AND ENFORCEMENT  
OF RIGHTS UNDER BOEING PENSION PLAN  
[ALL INDIVIDUAL PLAINTIFFS]**

142. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

143. The Individual Plaintiffs are exclusively current and/or former Boeing Plan participants, as defined by ERISA, and have standing under Section 502 of ERISA, 29 U.S.C. §1132.

144. The Boeing Pension Plan has been asked in writing to clarify whether, in its opinion, Plaintiffs, who lost their Boeing employment due to the sale of the Commercial Division to Spirit, were “laid off” for purposes of the Boeing Pension Plan, and whether they are entitled to the Early Retirement Benefit. The Boeing Pension Plan has either refused to answer the question – by referring those hired by Spirit to that employer – or has stated that those who did not apply are not entitled to the benefit.

145. To the extent that the Boeing Pension Plan has articulated its position on eligibility for “bridging” benefits, Plaintiffs have been notified that they will not be permitted to receive early retirement benefits under the “bridging” provisions. Plaintiffs believe that this is a violation of their rights under the Boeing Pension Plan.

146. The decision of the Boeing Pension Plan and the Boeing EBP Committee in refusing to allow the Plaintiffs the Early Retirement Pension Benefit has been

not only incorrect, but also arbitrary and capricious and contrary to the governing terms of the plan and the law.

147. Pursuant to 29 U.S.C. §1132(a), Plaintiffs seek from the Court a clarification of rights for the Plaintiffs and the other similarly-situated participants who make up the Class. Pursuant to 29 U.S.C. §1132(a), Plaintiffs seek to enforce their rights of the Class under the Boeing Pension Plan and to recover benefits owed to the Class.

148. Some of the Plaintiffs and Class members – and more everyday – are turning 55 years of age and thus become eligible to claim the Early Retirement Pension Benefit. The Plaintiffs thus also seek the right to claim that benefit from the Pension Plan, which has wrongly denied it.

**NINTH CLAIM FOR RELIEF: CLARIFICATION AND ENFORCEMENT  
OF RIGHTS UNDER BOEING HEALTH PLAN  
[ALL INDIVIDUAL PLAINTIFFS]**

149. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

150. The Individual Plaintiffs are exclusively current and/or former Boeing Health Plan participants, as defined by ERISA, and have standing under Section 502 of ERISA, 29 U.S.C. §1132.

151. The Boeing Health Plan has been asked in writing to clarify whether, in its opinion, Plaintiffs, who lost their Boeing employment due to the sale of the Commercial Division to Spirit, were “laid off” for purposes of the Plan, and whether

they are entitled to the Early Retirement Health Benefit. The Boeing Health Plan has yet to answer that question.

152. The reasoning employed by Boeing, the Boeing Health Plan and the Boeing EBP Committee in refusing to allow the Plaintiffs the Early Retirement Health Benefit has been not only incorrect, but has been arbitrary and capricious and contrary to the governing terms of the plan and the law.

153. Pursuant to 29 U.S.C. §1132(a), Individual Plaintiffs seek from the Court a clarification of the rights of the Plaintiffs and the other similarly-situated participants who make up the Harkness Class. Pursuant to 29 U.S.C. §1132(a), Plaintiffs seek to enforce their rights under the Boeing Health Plan and to recover benefits owed to them.

154. Some of the Individual Plaintiffs – and more everyday – are turning 55 years of age and thus become eligible to claim the Early Retirement Health Benefit. The Individual Plaintiffs thus also seek to claim that benefit from the Health Plan, which has wrongly denied it.

**TENTH CLAIM FOR RELIEF: BREACH OF CONTRACT AGAINST BOEING  
[ALL INDIVIDUAL PLAINTIFFS]**

155. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein.

156. Individual Plaintiffs, and all of them, were members of collective bargaining units covered by collective bargaining agreements, wherein Boeing pledged to provide them with the Early Retirement Pension Benefit and the Early Retirement Health Benefit.

157. Boeing has acted in derogation of that promise by taking actions that have interfered with those rights. These include but are not limited to the following: announcing to all concerned that it did not believe the Individual Plaintiffs should receive the bridge benefits; pressuring the Plaintiffs to apply for work with Spirit; coding the laid-off individuals with labels other than “laid off”; applying new rules to prevent their attainment of the promised benefits; and having its officers and agents on the EBP Committee act in ways that undermined the Plaintiffs’ right to those benefits.

158. By failing to abide by contractual promises to the Plaintiffs, Boeing breached its collective-bargaining promises to them, in violation of 29 U.S.C. §185.

**ELEVENTH CLAIM FOR RELIEF: UNLAWFUL REDUCTION OF EARLY RETIREMENT BENEFIT BY BOEING, THE EBP COMMITTEE and THE BOEING PENSION PLAN [HARKNESS PLAINTIFFS]**

159. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

160. The Early Retirement Pension Benefit constitutes “an early retirement benefit” and/or “a retirement-type subsidy” for purposes of 29 U.S.C. § 1054(g). Under the Boeing Plan, as soon as they reached 10 years of vesting service and were within six years of age 55, Class members were entitled to the “bridging” benefits in the event of a layoff.

161. The amendment of the Boeing Plan transferring certain Plan assets to Spirit and/or Spirit Holdings, and the actual transfer of those assets and responsibilities, has had the effect of eliminating the “bridging” provision of the



Early Retirement Benefit for the Harkness Plaintiffs, thereby decreasing the accrued benefits of the Harkness Plaintiffs and other persons similarly situated, in contravention of 29 U.S.C. § 1054(g).

162. The Harkness Plaintiffs and the similarly situated Class members are entitled to “bridging” benefits and have been injured by the foregoing conduct of Defendants.

**TWELFTH CLAIM FOR RELIEF: CLARIFICATION AND ENFORCEMENT OF RIGHTS UNDER SPIRIT PENSION PLANS [HARKNESS PLAINTIFFS]**

163. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

164. The Harkness Class is made up exclusively of current and/or former Boeing Plan participants, as defined by ERISA, and the Harkness Plaintiffs have standing under Section 502 of ERISA, 29 U.S.C. §1132.

165. The Spirit Pension Plans were asked in writing to clarify whether the Harkness Plaintiffs, who went to work at Spirit after being laid off from Boeing, are entitled to exercise the Early Retirement Pension Bridge Benefit due to the sale of the Commercial Division to Spirit.

166. The Spirit Pension Plans’ Pension Oversight Committee determined that the Plaintiffs “did not experience a ‘layoff’ within the meaning of the Plan . . . as a result of the transfer of their employment from Boeing to Spirit on June 16, 2005.”,

167. Any and all exhaustion requirements under the Boeing Pension Plan and the Spirit Pension Plans have been fulfilled.

168. Pursuant to 29 U.S.C. §1132(a), Plaintiffs seek from the Court a clarification of rights for the Plaintiffs and the other similarly-situated participants who make up the Harkness Class. Pursuant to 29 U.S.C. §1132(a), the Harkness Plaintiffs seek to enforce the rights of the Class under the Boeing Pension Plan and the Spirit Pension Plans and to recover benefits owed to that Class.

169. Some of the Harkness Plaintiffs – and more everyday – are turning 55 years of age, and thus eligible to claim the Early Retirement Pension Bridge Benefit. The Plaintiffs thus also seek to claim that benefit from the Spirit Pension Plans, which have wrongly denied it.

**THIRTEENTH CLAIM FOR RELIEF: CLARIFICATION AND  
ENFORCEMENT OF RIGHTS FOR HEALTH BENEFITS FROM SPIRIT  
AND/OR SPIRIT HOLDINGS [HARKNESS PLAINTIFFS]**

170. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

171. The Harkness Class is made up exclusively of current and former Boeing Plan participants, as defined by ERISA, and the Harkness Plaintiffs have standing under Section 502 of ERISA, 29 U.S.C. §1132.

172. Spirit and Spirit Holdings have refused to acknowledge any responsibility for providing retiree health benefits to the members of the Harkness Class pursuant to the Early Retirement Health Benefit. They have claimed that they never assumed any such responsibility to provide such retiree-health benefits at age 55.

173. Pursuant to its Asset Purchase Agreement with Boeing, Spirit and/or Spirit Holdings assumed liability from Boeing for certain pension and health care

obligations arising from the sale of the facility. This assumption of liability may include all or some of the benefits referenced in this suit, including retiree health benefits.

174. There are no exhaustion requirements to request access for these benefits because Spirit has never established any plan apparatus to administer them.

175. Pursuant to 29 U.S.C. §1132(a), Plaintiffs seek from the Court a clarification of rights for the Plaintiffs and the other similarly-situated participants who make up the Harkness Class for these health benefits from Spirit and Spirit Holdings. Pursuant to 29 U.S.C. §1132(a), the Harkness Plaintiffs seek to enforce the rights of the Class to the health benefits required to be provided upon their layoff from employment on or about June 16, 2005.

176. Some of the Harkness Plaintiffs – and more everyday – are turning 55 years of age, and are thus eligible to claim the Early Retirement Pension Bridge Benefit. The Plaintiffs seek to claim that benefit from the Spirit Pension Plans, which have wrongly denied it.

**FOURTEENTH CLAIM FOR RELIEF: UNLAWFUL REDUCTION OF  
EARLY RETIREMENT BENEFIT BY SPIRIT AND SPIRIT PENSION  
PLANS [HARKNESS PLAINTIFFS]**

177. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

178. The Early Retirement Pension Benefit constitutes “an early retirement benefit” and/or “a retirement-type subsidy” for purposes of 29 U.S.C. § 1054(g).

Under the Boeing Plan, as soon as they reached 10 years of vesting service and were

within six years of age 55, Class members were entitled to the “bridging” benefits in the event of a layoff.

179. The creation and adoption of the Spirit Pension Plans, and the terms thereof, that did not account for bridge benefits generally or in this situation, and the acceptance of the transferred rights and responsibilities and assets from the Boeing Pension Plan, has apparently had the effect of eliminating the “bridging” rights of the Early Retirement Benefits for the Harkness Plaintiffs, thereby decreasing the accrued benefits of the Harkness Plaintiffs and other persons similarly situated, in contravention of 29 U.S.C. § 1054(g).

180. The Harkness Plaintiffs and the similarly situated Class members are entitled to those “bridging” benefits and have been injured by the foregoing conduct of the Defendant Spirit Pension Plans.

**FIFTEENTH CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTIES BY  
BOEING AND BOEING EBP COMMITTEE  
[ALL INDIVIDUAL PLAINTIFFS]**

181. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

182. Boeing, acting as plan administrator and trustee, and Boeing’s EBP Committee have fiduciary responsibilities to the Boeing Pension Plan and Boeing Health Plan and to the participants and beneficiaries in those plans.

183. As fiduciaries, Boeing and the Boeing EBP Committee are required to discharge their duties solely in the interest of the participants and beneficiaries of the Plans. 29 U.S.C. §1104(a)(1)(A).

184. As fiduciaries, Boeing and the Boeing EBP Committee have a duty to exercise care, prudence, and diligence in the performance of its responsibilities. 29 U.S.C. §1104(a)(1)(B).

185. As fiduciaries, Boeing and the Boeing EBP Committee have a duty to administer the Plans in accordance with the documents and instruments governing the Plans and in accordance with ERISA. 29 U.S.C. §1104(a)(1)(D).

186. The conduct of Boeing and the Boeing EBP Committee in denying the Early Retirement Benefit and the Early Retirement Health Care Benefit to otherwise qualified participants, by passing and incorporating the September 2005 amendment which had the effect of damaging the rights of the Harkness Plaintiffs to the bridge benefit, and by structuring the transfer of certain plan assets and liabilities to the Spirit Plans, all had the effect of breaching their fiduciaries duties to the Plans and to the Plans' participants and beneficiaries, all in violation of ERISA.

**SIXTEENTH CLAIM FOR RELIEF: UNLAWFUL TRANSFER OF PLAN ASSETS AND RESPONSIBILITIES BY ALL DEFENDANTS EXCEPT BOEING HEALTH PLAN [HARKNESS PLAINTIFFS]**

187. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

188. Sometime in 2005, Boeing and Spirit and/or Spirit Holdings agreed to a transfer of certain benefits and liabilities from the Boeing Pension Plan to the Spirit Pension Plans.

189. Boeing hoped thereby to rid itself of any responsibilities to the members of the Harkness Class and to all former participants who were hired by Spirit on or around June 17, 2005.

190. Under the law, ERISA Section 208, 29 U.S.C. § 1058, the parties were required to make sure that the plan participants had, inter alia, the same benefits after the transfer that they had before the transfer.

191. In fact, however, the members of the Harkness Class do not have the same benefits after the transfer, in particular they have lost their bridging benefits.

192. By arranging for such a transfer, and by agreeing to such a transfer under terms where not all rights were maintained, Boeing, the Boeing Pension Plan, the Boeing EBP Committee, Spirit Holdings, Spirit and the Spirit Pension Plans have violated their obligations to the Harkness Plaintiff participants, as set by ERISA.

**SEVENTEENTH CLAIM FOR RELIEF: THIRD-PARTY BENEFICIARY  
CLAIM AGAINST SPIRIT AND/OR SPIRIT HOLDING FOR LIABILITIES  
ASSUMED IN SALES AGREEMENT [HARKNESS PLAINTIFFS]**

193. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

194. In the sales agreement between Boeing and Spirit and/or Spirit Holdings, the parties made provision for the various employee-benefit issues involved in the transaction.

195. Some issues were inserted into that agreement that need not have been inserted under ERISA or other law.

196. Spirit and/or Spirit Holdings assumed liability from Boeing for certain pension and health care obligations arising from the sale of the facility. This assumption of liability may include all or some of the benefits referenced in this suit.

197. Plaintiffs seek to enforce their rights as third-party beneficiaries of that promise to ensure that someone provides them with the benefits that they were promised.

**EIGHTEENTH CLAIM FOR RELIEF: CLARIFICATION AND  
ENFORCEMENT OF RIGHTS UNDER BOEING LAYOFF BENEFITS PLAN  
[ELIGIBLE McARTNEY AND BOONE PLAINTIFFS]**

198. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

199. Plaintiffs McCartney, Palmer and Stevens – and in fact, all Individual Plaintiffs – are participants in the Boeing Layoff Benefits Plan, as “participant” is defined by ERISA, and they have standing under Section 502 of ERISA 29 U.S.C. § 1132.

200. The Boeing Layoff Benefits Plan has been asked in writing to clarify whether Plaintiffs McCartney, Palmer and Stevens are entitled to severance benefits due to their involuntary termination from Boeing employment upon the sale of the Commercial Facility to Spirit. While the Boeing Layoff Benefits Plan has not yet responded, the Plan has attempted to collect severance benefits it paid out to Plaintiff Stevens, claiming that he is not entitled to the benefits.

201. The reasoning employed by Boeing, the Boeing Layoff Benefits Plan and the EBP Committee in denying that Plaintiff Stevens -- and all those similarly situated who did not receive an offer of employment from Spirit -- are not entitled to severance benefits is incorrect, arbitrary and capricious and contrary to the governing terms of the plan and the law.

202. Pursuant to 29 U.S.C. § 1132(a), eligible McCartney and Boone Plaintiffs (those who did not receive an offer of employment from Spirit) seek from the Court clarification of their rights. Pursuant to 29 U.S.C. § 1132(a), Plaintiffs seek to enforce their rights to recover benefits under the Boeing Layoff Benefits Plan.

203. Eligible McCartney and Boone Plaintiffs (those who did not receive an offer of employment from Spirit) seek to claim the benefit from the Layoff Benefits Plan, which has wrongfully denied it.

**NINETEENTH CLAIM FOR RELIEF: DECLARATORY JUDGMENT AS TO PARTIES' RIGHTS AND RESPONSIBILITIES**

204. Plaintiffs incorporate by reference the previous paragraphs as though set forth herein in full.

205. Plaintiffs invoke the jurisdiction of this Court to establish and declare the legal rights and responsibilities of the Plaintiffs and all similarly-situated members of the Classes, Boeing, the Boeing Pension Plan, the Boeing Health Plan, the Boeing Layoff Benefits Plan, Spirit Holdings, Spirit and the Spirit Pension Plans as to the Early Retirement Pension Benefit and the Early Retirement Health Care Benefit and the bridge benefits thereunder.



## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs request that this Court:

- (A) Certify the Harkness claims as a class action, and appoint Harkness Plaintiffs as the representatives for the class and the undersigned attorneys as Class counsel;
- (B) Declare the rights of the Individual Plaintiffs to the Early Retirement Pension Benefit and the Early Retirement Health Care Benefit;
- (C) Declare the rights of the eligible McCartney and Boone Plaintiffs to severance benefits under the Boeing Layoff Benefits Plan.
- (D) Declare the rights of the Plaintiffs under the applicable laws and governing documents;
- (E) Require specific performance of Boeing's contractual promises to the Plaintiffs;
- (F) Award, pursuant to the breach-of-contract claims, damages to the Plaintiffs in an amount to be proved at trial;
- (G) Enjoin the Defendants, as proves appropriate during the course of the litigation, to take whatever steps are necessary to provide the Plaintiffs with Early Retirement Pension Benefit and the Early Retirement Health Care Benefit pursuant to the bridging provisions, and the Boeing Layoff Benefits Plan, and to restore to the appropriate plans the needed language, rights, responsibilities and funds necessary to pay the proper benefits to the Plaintiffs.

(H) Order appropriate equitable relief, pursuant to ERISA and the contracts, to make the Plaintiffs whole for any losses that may be remedied equitably.

(I) Award the Plaintiffs their reasonable attorneys' fees and costs.

(J) Order such other relief as the Court deems just and proper.

Dated: June 16, 2010

Respectfully submitted,

s/ Tom E. Hammond  
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Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand jury trial on all issues herein triable to a jury.

Dated: June 16, 2010

Respectfully submitted,

s/ Tom E. Hammond  
Tom E. Hammond, #10242

### CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June 2010 I electronically filed the foregoing with the clerk of court via the ECF system which will send a notice of electronic filing to the following:

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/s Tom E. Hammond  
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