Fourth Circuit Decision in *Boeing* Requires Securities Plaintiffs to Satisfy the Strict Requirements of *Comcast*

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On Monday, the Fourth Circuit reversed the district court's class certification order in *State of Rhode Island Office of the General Treasurer v. The Boeing Co.*, No. 25-1492, 2026 WL 2083048 (4th Cir. July 20, 2026) ("*Boeing*"), holding that plaintiffs failed to meet the rigorous standard articulated in *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013). The *Boeing* decision clearly and forcefully articulates that a class action plaintiff must, at the class certification stage, commit to a specific theory of liability and present a damages model that is consistent with the plaintiff's liability theory, and it signals that class action defendants may now have stronger pathways to defeating class certification.

The *Comcast* Requirement. As background, *Comcast* held that district courts have a "duty to take a close look" at class certification questions, particularly with regard to damages models. 569 U.S. at 34, 38. The critical issue in *Comcast* was whether the plaintiffs could prove damages on a class-wide basis—as opposed to an individual plaintiff-by-plaintiff assessment—consistent with their theory of liability. Absent such a showing, a plaintiff cannot demonstrate that issues common to the class predominate over individual issues, as required for class certification under Federal Rule of Civil Procedure 23(b)(3). The Supreme Court in *Comcast* emphasized that district courts must undertake "a rigorous analysis" of a proposed damages model and ensure that it is capable of establishing damages on a classwide basis and measures only those damages attributable to the plaintiff's theory of liability. *Id.* at 33, 36-38. In the years since the *Comcast* decision, however, lower courts have rarely applied it to deny class certification, even when plaintiffs fail to articulate a specific damages methodology or show that their proposed methodology is consistent with their theory of liability.

The *Boeing* Decision. The Fourth Circuit's decision in *Boeing* is a departure from this trend and may signal a substantial shift in the dynamics of class certification. On Boeing's appeal from the district court's class certification order pursuant to Rule 23(f), the Fourth Circuit held, in a strongly worded decision, that the district court failed to conduct the rigorous analysis required by *Comcast*. The Court stated that, even if the district court's approach was consistent with that of other courts, "[u]nder *Comcast*, certification orders are not like participation trophies that are handed out to everyone on the tee ball team." *Boeing*, 2026 WL 2083048, at *17. The Fourth Circuit held that plaintiffs and their expert reports fell far short of the requirements of *Comcast*, as they failed even to commit to a particular theory of liability, instead vacillating between theories that Boeing's alleged misrepresentations artificially inflated its share price or maintained an artificially inflated share price. That failure made it impossible for the district court to determine whether plaintiffs' damages methodology was connected to their theory of liability. Furthermore, plaintiffs failed to articulate a damages methodology that would allow the court to evaluate whether damages could be measured on a class-wide basis, instead offering "only a legal description of damages" – *i.e.*, that plaintiffs seek "out-of-pocket" damages—and other generalities that "would apply to any securities fraud case." 2026 WL 2083048, at *13. Plaintiffs' expert "never committed to any methodology," stating only that he "could" perform an event study, and did not say how he would "disaggregate confounding information," which refers to "culling out declines in share price not caused by the alleged misrepresentations." *Id.* Plaintiffs' expert also suggested three potential measures of "artificial inflation"—"constant-dollar inflation, constant-percentage inflation and an unidentified third way"—but declined to commit to a specific option. Without a specific methodology, "the district court has no way to rigorously evaluate whether damages are measurable on a class-wide basis, whether the damages methodology is consistent with the plaintiff's liability theory or whether the proposed methodology for measuring damages is reasonable." *Id.*

As articulated by the Fourth Circuit in *Boeing*, to comply with *Comcast*, a securities plaintiff must: (1) put forth a specific damages methodology, including a methodology for disaggregating confounding information; (2) demonstrate that the methodology can measure damages on a class-wide basis; (3) commit to a specific theory of liability and demonstrate that the proposed damages methodology is consistent with that theory of liability; (4) show that the damages methodology allows a reasonable and non-speculative measure of damages; and (5) put forth evidentiary proof that their damages model satisfies all of these requirements. *Id.* at *11-12. Each of those steps presents potential challenges for plaintiffs and opportunities for defendants. Plaintiffs can no longer keep their options open and avoid scrutiny at the class certification stage: "A menu of options that the party will decide on later is not a damages methodology." *Id.* at *11.

A Developing Circuit Split. Although the Fourth Circuit carefully distinguished its application of *Comcast* from the Second Circuit's decision in *Waggoner v. Barclays PLC*, 875 F.3d 79 (2d Cir. 2017), which rejected a *Comcast* challenge to a district court's certification decision in a securities class action, the Fourth Circuit's decisive ruling on Comcast's requirements contrasts sharply with the approach routinely taken by district courts across the country and lays the groundwork, at a minimum, for a circuit split. The question of *Comcast's* requirements in the securities litigation context is presently pending or teed up in Rule 23(f) petitions before multiple circuits, creating the potential for further Supreme Court review. The Fourth Circuit's decision in *Boeing* is consistent with the Sixth Circuit's decision last year in *In re FirstEnergy Corp. Securities Litigation*, which held, among other things, that the district court had "overlooked *Comcast*'s classwide-damages requirement." 149 F.4th 587, 620 (6th Cir. 2025). On remand, the district court certified a class, and defendants subsequently filed a renewed Rule 23(f) petition focused on *Comcast* issues. *In re FirstEnergy Corp. Sec. Litig.*, 2026 WL 1179398 (S.D. Ohio Apr. 30, 2026), petition for review filed, No. 26-0303 (6th Cir. May 15, 2026). The Ninth Circuit recently denied a Rule 23(f) petition raising substantially identical issues. *See SEB Inv. Mgmt. AB v. Wells Fargo & Co.*, 2025 WL 1243818, at *7 (N.D. Cal. Apr. 25, 2025), leave to appeal denied, No. 25-3021, 2025 WL 2028400 (9th Cir. July 17, 2025). In the Seventh Circuit, a Rule 23(f) petition for review, also from Boeing, raised *Comcast* arguments and was granted, although the court then suspended appellate proceedings pending the district court's resolution of a motion for reconsideration. *See In re Boeing Co. Aircraft Sec. Litig.*, 351 F.R.D. 108, 124 (N.D. Ill. 2026), leave to appeal granted, No. 26-8007 (7th Cir. May 7, 2026); *In re Boeing Co. Aircraft Sec. Litig.*, No. 26-2018, 2026 WL 1416377 (7th Cir. May 11, 2026) (suspending proceedings). The renewed judicial attention on *Comcast*'s requirements across multiple circuits may create an opportunity further down the line for the Supreme Court to further explain *Comcast*'s requirements, particularly in the context of securities lawsuits.

Impact and Takeaways. The Fourth Circuit's decision in *Boeing* has significant implications for class certification in securities litigation and beyond. Historically, district courts evaluating certification motions in securities litigation have not seen *Comcast* as a meaningful hurdle. In the aftermath of the Supreme Court's 2021 decision in *Goldman Sachs v. Arkansas Teacher Retirement System*, however, which reinforced the analytical rigor required of district courts at the class certification stage, *Comcast* arguments have started to gain traction. The Fourth Circuit's decision provides a powerful set of arguments for defendants at the class certification stage. Practitioners should keep a close eye on the evolving landscape as *Comcast* arguments are addressed in district and circuit courts across the country.

Key Takeaways:

- The Fourth Circuit's *Boeing* decision lays out the "rigorous analysis" required by *Comcast* at the class certification stage and provides a powerful tool for securities litigation defendants.

- Although the Fourth Circuit took pains to distinguish its application of *Comcast* from the Second Circuit's *Waggoner* decision, the Fourth Circuit's decisive ruling contrasts sharply with the approach taken by many district courts around the country and lays the groundwork, at a minimum, for a circuit split.

- The decision has implications beyond the securities space for any class action in which the plaintiff arguably fails to identify a damages methodology capable of measurement on a classwide basis and tied to the theory of liability.

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Please do not hesitate to contact us with any questions.

Elliot Greenfield
Partner, New York
+1 212 909 6772
egreenfield@debevoise.com

Maeve O'Connor
Partner, New York
+1 212 909 6315
mloconnor@debevoise.com

Brandon Fetzer
Counsel, New York
+1 212 909 6880
bfetzer@debevoise.com

Cara Ortiz
Associate, New York
+1 212 909 6723
cortiz@debevoise.com