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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARLENE M. BROWN,

 Plaintiff,

 v.

THE BOEING COMPANY, EMPLOYEE
BENEFIT PLANS COMMITTEE,

 Defendants.

Case No. 2:17-cv-01354-RSM

STIPULATED MOTION AND ORDER
TO STAY CASE PENDING REMAND
TO EMPLOYEE BENEFIT PLANS
COMMITTEE

**STIPULATED MOTION TO STAY CASE PENDING REMAND TO EMPLOYEE
BENEFIT PLANS COMMITTEE**

The Parties hereby file this stipulated motion pursuant to LCR 7(d)(1) and 10(g) to request that the Court stay this matter during the pendency of a remand of Plaintiff’s claim for benefits to Defendant the Employee Benefit Plans Committee (“Committee”). In support of their Stipulated Motion, the Parties state as follows:

1. Plaintiff is a former employee of The Boeing Company (“Boeing”) who claims that her entire pension from Boeing should be calculated under The Boeing Company Employee Retirement Plan (“BCERP”), a pension plan that Boeing sponsors. Plaintiff filed an internal claim to this effect, which the Committee denied on or around March 14, 2017. It did so on the basis of its finding that, because Plaintiff was in a non-union position on December 31, 1998, her pension benefits accrued through that date transferred to The Boeing Company Pension Value

1 Plan (“PVP,” and, with the BCERP, the “Plans”), on January 1, 1999.

2 2. Plaintiff filed this lawsuit *pro se* on September 8, 2017, challenging the denial of
3 her claim for benefits and alleging various other claims for relief under the Employee Retirement
4 Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 *et seq.*, and common law. (Dkt. # 1.)

5 3. After completion of discovery, Defendants moved for summary judgment on
6 August 23, 2018. (Dkt. # 37.) The Court held oral argument on Defendants’ motion on January
7 15, 2019, after which the Court appointed Plaintiff the undersigned pro bono counsel. (Dkt.
8 # 60.)

9 4. Plaintiff moved to reopen discovery on March 14, 2019. (Dkt. # 67.) In her
10 motion to reopen discovery, Plaintiff argued that discovery should be reopened for the limited
11 purpose of obtaining discovery related to Plaintiff’s equitable claims and damages. (*See*
12 *generally id.*) In so doing, Plaintiff presented arguments that had not been put before the
13 Committee when Plaintiff filed her internal claim for benefits. (*See* Dkt. # 38-9, Plaintiff’s
14 November 7, 2016 Appeal to the Committee.)

15 5. In light of these new arguments, the Committee, as Administrator and a named
16 fiduciary of the Plans, has determined that it is appropriate for Plaintiff’s administrative claim to
17 be remanded to the Committee. On remand, the Committee will consider the additional
18 arguments made by Plaintiff, in addition to any other arguments or evidence that Plaintiff or her
19 counsel submit for consideration in accordance with the regulations governing the claim and
20 appeals process under ERISA. *See* 29 C.F.R. § 2560.503-1.

21 6. In connection with the remand, the Parties agree that Defendants will conduct a
22 reasonable search for, and provide to Plaintiff, certain information that Plaintiff has requested.
23 Namely, within 45 days of the Court staying this matter, Defendants shall either: (a) state that the
24 following information does not exist or that they were not able to locate such information as the
25 result of a reasonable search; or (b) provide Plaintiff with the following information:

- 26 a. Written communications issued collectively or made available to union-
represented Boeing employees from January 1, 1998 to January 31, 1999

1 concerning or referring to any changes (or lack thereof) to pension or other
2 retirement benefit plans (excluding communications Boeing had with its
3 employees on an individual basis related to an employee's individual pension
4 or other retirement benefit plan).

- 5 b. A statement regarding the manner used to identify intended recipients of PVP-
6 related notices;
- 7 c. A statement regarding the retention policies, if any, related to records
8 identifying individuals who are sent PVP-related notices; and
- 9 d. Records referring to, concerning, or evidencing PVP-related notices being
10 sent to Plaintiff from January 1, 1999 to the present.

11 7. At the conclusion of this 45-day period, in accordance with 29 C.F.R. § 2560.503-
12 1(h)(2)(i) and (ii), Plaintiff (through her counsel) shall, within 60 days, submit any comments,
13 documents, records, or other information she so chooses to the Committee for its review. The
14 Committee shall then have 60 days to render its determination on Plaintiff's claim, which may be
15 extended an additional 60 days pursuant to 29 C.F.R. § 2560.503-1(i)(1)(i).

16 8. The Parties agree that the Court will retain jurisdiction over this action until such
17 time as the Court determines that all matters arising out of this action have been fully disposed
18 of.

19 9. Staying the pending litigation to allow the Committee to consider the additional
20 arguments made by Plaintiff will conserve the Parties' time and resources, as the remand could
21 obviate the need for certain motion practice. The Parties also respectfully submit that staying the
22 litigation pending the remand to the Committee would conserve judicial resources, as it would
23 relieve the Court of any obligation to rule on issues that may be rendered moot by the
24 Committee's decision.

25 10. There is currently no trial or other schedule set in this matter. As noted, Plaintiff
26 filed a motion to reopen discovery, which is currently noted for June 14, 2019. (Dkt. # 75.)

Defendants have not yet filed a response to that motion.

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2 11. The Parties respectfully propose filing a joint status report with the Court within
3 180 days of the Court's order staying this litigation.

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5 WHEREFORE, the Parties jointly ask the Court to stay this litigation during the
6 pendency of the remand to the Committee.

7 IT IS SO STIPULATED.

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9 DATED this 3rd day of June, 2019.

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11 By: /s/ Deborah S. Davidson

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*Attorneys for Defendants The Boeing Company
and The Boeing Company Employee Benefit
Plans Committee*

1 **ORDER**

2 The Court hereby grants the Parties' Stipulated Motion to Stay the Case Pending Remand
3 to the Employee Benefit Plans Committee. The Parties are directed to file a joint status report
4 within 180 days.

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6 IT IS SO ORDERED this 4 day of June 2019.

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8 RICARDO S. MARTINEZ
9 CHIEF UNITED STATES DISTRICT JUDGE

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13 Presented by:

14 MORGAN, LEWIS & BOCKIUS LLP

15 /s/ Deborah S. Davidson

16 Deborah S. Davidson (*pro hac vice*)

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