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

IN RE; ETHIOPIAN AIRLINES FLIGHT ET 302 CRASH	Lead Case: 1:19-cv-02170 (Consolidated)
	Honorable Jorge L. Alonso
	Magistrate Judge M. David Wiseman

AMICUS CURIAE SUBMISSION OF RALPH NADER RE MOTION OF PARTIES OF RECORD TO APPROVE STIPULATION

I. INTEREST OF AMICUS CURIAE

The undersigned is the great uncle of Samya Rose Stumo, a courageous, emerging leader in global health, who with 156 other innocent and trusting passengers and crew were aboard ET 302 en route to Nairobi from Addis Ababa the morning of March 10, 2019. All were killed by the Boeing company's top management and Board of Directors through actions or omissions contemptuous of passenger safety. A stealth Boeing software, unknown to the pilots, seized control of the 737MAX aircraft, overpowering strenuous pilot efforts and drove the plane 550 mph into an Ethiopian field about 32 miles from the airport.

The undersigned's advocacy for airline and aircraft safety spans five decades, including formal petitions, testimonies, and co-authorship with Wesley J. Smith of Collision Course: The Truth About Airline Safety (1993).

II. NEED FOR COURT HEARING

The parties' motion seeks this Court's blessing of the stipulation as fair, just, and in the public interest. Accordingly, the Court should conduct a hearing to evaluate the procedural and substantive elements of the stipulation before considering judicial endorsement.

Among other things, the Court should inquire into the vast discrepancy between what the Plaintiffs' Complaint initially sought and the stipulation. The former sought compensatory and punitive damages and a public accounting of Boeing's unconscionable wrongdoing. The stipulation, in contrast, represents a substantially diminished case presented to the Plaintiffs, including the conspicuous absence of a compensatory damages floor. Plaintiffs' message conveyed to the public by the sworn Complaint drafted by the Plaintiffs' attorneys and elaborated in their bold press conference made clear their overriding deterrence objective. Subsequent Boeing disclosures, admissions, and a Justice Department criminal case in the next two years only validated their formal claims. The same operative facts can give rise to companion civil and criminal claims. How were these individual complaints by next of kin herded into a global deal, with such a vulnerable guilty defendant? This Court should take testimony on that score from a small sample of Plaintiffs.

The Court should consider the much-criticized culture of mass tort litigation involving thousands or tens of thousands of claimants that favors "convenience and efficiency" at the expense of "individual justice." Commentators have pointed out the perverse incentives that redound against the interests of plaintiffs in such cases. The pressure by their own attorneys to settle is questionable—especially because it was in response to Boeing.

In Perceptions of Justice in Multidistrict Litigation: Voices from the Crowd, Law Professor Elizabeth Burch and Margaret S. Williams write that "it's not just the settlement culture that differs in multi-district litigation, it is the settlement structure itself."

"Rather than settle directly with plaintiffs, defendants strike deals with plaintiffs' law firms that allow them to impose conditions on both plaintiffs and their counsel," they write. "Because corporate defendants want to maximize closure, the terms they insert incentivize plaintiffs' attorneys to strongly encourage their clients to take the deal."

This Boeing case is not an MDL case but a consolidated case. One hundred and fifty-seven estates are adjudicating, not many thousands. The goals of individual justice should be more pre-eminent, as plaintiffs were promised, over the matters of convenience and efficiency. This global deal of a stipulation slams down hard on the desires for individual justice through a choreographed process of negotiations, starting secretly right after the ET 302 crime in the Spring of 2019, between Boeing's attorneys and their counterparts for the plaintiffs. It was not long before Boeing's attorneys were learning far more about what was going on than were plaintiffs. Why? Boeing's corporate law firms know the self-inflicted handicaps of plaintiffs' attorneys in such cases. In quick succession, negotiating intensively, Boeing offered to admit liability (easily proven) in generalities denuded of facts, solely for these cases, and only for compensatory damages.

In return, Boeing received 1) waivers for punitive damages, 2) avoidance of noticed depositions under oath of former CEO Dennis Muilenburg and current CEO David Calhoun and other involved Boeing executives, managers and members of the Board of Directors, 3) no minimum sum certain in monetary damages guaranteed in the stipulation, 4) no freedom of

speech, only total secrecy ad infinitum over everything regarding these cases, from the media and the public, 5) no factual admission of culpability by Boeing or its executives and managers or any other sanctions such as demotions and resignations – and perhaps most consequential, Boeing secured an alliance with plaintiffs' attorneys to argue Boeing's case against their own lawsuits' complaint on behalf of their clients—including bypassing customary trials of a few flagship cases to better assess the value of the litigation.

A hearing is appropriate to determine whether plaintiffs were fully and accurately informed to secure their consent, or whether the pressures of a consolidated matter led to misinformation, receipt of misleading risk assessments, or misguided assurances such as the prospective use of the Crime Victims' Rights Act before the Justice Department, a specious substitution for abandoning pursuit of punitive damages.

Most coercive were Boeing's intimations or tactical threats to request this Court to send cases back to the domicile of plaintiffs, including to foreign countries, some convulsed by civil war and turmoil, for purposes of determining compensatory damages under laws offering a fraction of potential recoveries under Illinois law. Imagine the effrontery of a proven criminal corporation asking this Court to approve such reassignments to foreign jurisdictions notoriously contemptuous of human rights, heedless of the constitutional guarantees of "equal protection and due process" under our U.S. Constitution accorded to "persons" regardless of citizenship. Further, the non-foreign Plaintiffs were made to feel guilty if they resisted Boeing's requirement of Plaintiff stipulation unanimity and forfeited their right to individual justice.

Speculation as to what this Court would decide were plaintiffs determined to proceed to trial was transmitted repeatedly by plaintiffs' attorneys and became the most crucial intimidating factor in plaintiffs folding their individual cases into a global deal under seal.

The stipulation submitted for your approval and public interest endorsement vitiates the three purposes of the plaintiffs' original complaint. Plaintiffs receive speculative, not certain, compensatory damages. The evidence unearthed by discovery will remain secret in perpetuity. And Boeing escapes the deterrence of punitive damages and a court record that could provoke remedial legislation. The stipulation delivers to plaintiffs merely an indefinite sum expected from mediations (many plaintiffs' attorneys are discouraging trials) that is insurable, deductible and probably would amount to a mere ten percent of what Boeing wanted to spend in a single $20 billion stock buyback approved by the Board of Directors in December,2018, following the Lion Air disaster. The massive buyback was later withdrawn after a public uproar.

The urgency of deterrence and comprehensive discovery has been underscored by recent strong FAA warnings against Boeing's pressuring their inspectors to accelerate the production line for the aerodynamically troubled 737 MAX aircraft and other Boeing models. Additionally, earlier this month, the FAA sent Boeing another warning letter charging management with selecting inadequately trained inspectors working under the ODA arrangement with the FAA.

Your Honor, there is an adage in ancient Roman Law that states – "Out of the facts, come the law." Let not, without an inquiry, this stipulation be approved and go down in history as a capitulation to the criminal and tortious acts by Boeing that admittedly took the lives of 157 human beings. They are the real plaintiffs in this litigation.

Boeing has essentially escaped appropriate legal accountabilities from all previous efforts by the Federal Aviation Administration, the Congress, and the Justice Department.

The civil justice system, and trial by jury, originally conceived in Medieval England to further individual justice, is the "last clear chance," for the outcomes urgently desired by all the plaintiffs in this Court. Relying on their lawyers' original assurances, that is where, one by one, they put their faith. The tort law system should not be a delivery van to carry Boeing to optimal immunity while evading punitive tort sanctions for their criminal homicide of 157 people.

A renowned tort lawyer, Shanin Specter, has written as follows about provisions that should be prohibited in MDL settlements in Proposed Amendments to the Federal Rules of Civil Procedure on Multi District Litigation (December 18, 2020), which are equally applicable to settlements in sizable consolidated cases like Boeing's:

> Plaintiffs' counsel, defense counsel, and judges may oppose a rule that requires settlement approval by judges or any additional judicial involvement in multidistrict litigation settlements. Plaintiffs' counsel may oppose such oversight as it would prevent the nefarious conduct described above. Defense counsel may oppose such oversight because its absence allows them to settle their clients' cases for amounts significantly lower than what is fair to the plaintiffs. Some judges may oppose such oversight in a misguided effort to ease settlement – even settlement that contravenes notions of justice and fairness – or to avoid the additional work involved in assessing the reasonability of those settlements. All those reasons are bad.
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> A disciplined process with reasonable oversight is necessary to correct current abuses and to serve the integrity of the judicial system and its tenets of fairness to all parties.
> https://d11upr8lrcn9x7.cloudfront.net/www.klinespecter.com/s3fs-public/2021-02/FILE_8275.pdf

To the same effect are the views of James C. Sturdevant:https://www.plaintiffmagazine.com/recent-issues/item/provisions-that-should-be-prohibited-in-settlement-agreements

III. CONCLUSION

For the reasons set forth above, this Court should hold a hearing with a sample of plaintiffs and other witnesses to determine whether movants have satisfied their burden of proving the proposed stipulation is fair, just, and otherwise in the public interest.

Respectfully submitted,

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