

## EXPERIENCE HIGHLIGHTS



In 2005 The Boeing Company, our client, sold the assets of its commercial aircraft manufacturing facilities in Kansas and Oklahoma to Spirit AeroSystems, Inc. Boeing employment thus ended for most of the employees at these facilities. Spirit then hired most, but not all, of the former Boeing employees.

A number of the former Boeing employees that Spirit did not hire sued Boeing and Spirit, on behalf of themselves as well as on behalf of the other employees Spirit did not hire. The plaintiffs alleged individual, Rule 23 class, and collective-action causes of action for: discrimination and retaliation under Title VII of the Civil Rights Act of 1964 (race and gender); discrimination and retaliation under the Age Discrimination in Employment Act (ADEA); retaliation under the Americans with Disabilities Act (ADA); violations of and for benefits plaintiffs claimed they had accrued under the Employee Retirement Income Security Act (ERISA); and breach of a collective bargaining agreement under Section 301 of the Labor Management Relations Act. The Rule 23 classes covered the nearly 1,500 former Boeing employees that Spirit did not hire, and more than 700 individuals opted into the ADEA collective action.

Over the course of nearly a decade of litigation, our firm successfully defeated each of the plaintiffs' claims against Defendants Boeing and Spirit. In October 2007, the Court granted Defendants' motion for summary judgment as to all ADEA claims based on conduct that pre-dated the sale and as to all claims for retaliation based on plaintiffs' failure to exhaust administrative remedies. In June 2010, the Court granted Defendants' motion for summary judgment as to (1) all remaining individual and class Title VII claims; (2) all ADEA collective action claims; (3) all individual and class ERISA claims; and (4) all individual and class Section 301 claims. Foulston Siefkin successfully defended these summary judgment rulings on appeal to the Tenth Circuit, which affirmed the District Court's rulings in August 2012.

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Having prevailed on all class claims, Foulston Siefkin obtained an order, over Plaintiffs' objection and appeal to the Tenth Circuit, taxing costs to the Plaintiffs, jointly and severally, in the amount of over \$50,000. In the meantime, the only cause of action remaining in the litigation was the individual plaintiffs' claim of disparate-treatment age discrimination under the ADEA. In December 2013, Foulston Siefkin obtained a ruling that the individual claims of 700 former consent plaintiffs were not tolled and thus time-barred. In a series of subsequent orders, culminating in a final Judgment in January 2015, the claims of all remaining individual plaintiffs were dismissed voluntarily or as a sanction for failing to adequately respond to Defendants' discovery requests.

Plaintiffs appealed the Judgment to the Tenth Circuit, but Foulston Siefkin moved to dismiss it as untimely. The Tenth Circuit dismissed the appeal for lack of prosecution while the motion to dismiss was still pending. The District Court meanwhile denied Plaintiffs' motion to excuse their untimeliness. Plaintiffs have appealed this order as well, but the Tenth Circuit's dismissed the appeal for lack of prosecution.

## PRACTICE AREAS & INDUSTRIES

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- Employment & Labor