

## **Boeing: Putting Profits Ahead of Safety\***

The message of Boeing is it placed profits ahead of safety and the result has been a series of crashes/mechanical problems that have led to inspections by the National Transportation Safety Board (NTSB) and litigation by the Securities and Exchange Commission (SEC). In this case we will address the following.

- The culture that created shortcuts in the production process.
- The role of whistleblowers that informed management of the problem.
- The failure of quality controls to identify the problems.
- Regulatory actions taken by the government.

An article in [Business Week](#) addresses the problems with the corporate culture at Boeing that created an environment where profit maximization was placed ahead of the safety of the 737 MAX aircraft. The article places blame on Dave Calhoun, Boeing's former chief executive officer. After 10 years on Boeing's board of directors, Calhoun took over as CEO in January 2020 for Dennis Muilenburg after the latter played down design defects that killed 346 people when the MAX's flawed software sent the plane (Lion Air) into the sea off Indonesia and into a field in Ethiopia. Calhoun often addressed how he had made safety a top priority in the wake of the crashes. His actions did not meet those words.

## **Accelerating Production at the Cost of Safety**

Perhaps the most glaring production deficiency occurred in October 2022, when Boeing provided a MAX plan for Alaska Airlines. Workers at Boeing had apparently forgotten to reinstall four bolts that keep a piece known as a door plug in place on the 737 MAX after it was removed to allow three contractors from temporary staffing companies hired by Spirit to rework defective rivets.

Later, it would be determined by investigators from the NTSB that these bolts were missing at the time of the January 5, 2024, blowout of a door on the 737 MAX on an Alaska Airlines flight, triggering a 19-day emergency grounding of all MAX 9s, and re-igniting scrutiny of Boeing following the fatal MAX 8 crashes of the Indonesia and Ethiopian planes.

Boeing acknowledged its responsibility for the blowout in a statement issued after the NTSB report and said it is working to make sure incidents like this do not reoccur. "Whatever final conclusions are reached, Boeing is accountable for what happened," said Boeing CEO Dave Calhoun in a statement. "An event like this must not happen on an airplane that leaves our factory. We simply must do better for our customers and their passengers."

Boeing said it was taking new actions to improve the way it makes the 737 MAX 9 planes, including more inspections, giving the 737 teams more time "to focus on and implement quality improvements," and bringing in outside safety experts to assess its operations.

The problems at Boeing were due to pushing through production without adequate testing of parts and other lax quality controls. Moreover, Boeing failed to replace aging 737's with new

planes. The Business Week article explains that the company “increasingly emphasized financial wizardry over manufacturing, spending \$41.5 billion on stock buybacks from 2013 to 2018 that enriched investors and management.” Muilenburg alone “made at least \$106 million from 2011 to 2018, mainly from stock grants. Boeing’s capital expenditures “plummeted to less than 2% of sales by 2018, half what European rival Airbus SE typically spends, after running as high as 7.2% in 1992.” As a board member and CEO, Calhoun participated in these decisions and “made more than \$64 million from 2020 to 2022.”

Calhoun had the opportunity to reset Boeing’s culture in the aftermath of the disasters in Indonesia and Ethiopia. Instead, he essentially doubled down on the same strategy, laying out a plan in 2022 to generate \$10 billion of annual free cash flow by 2026 and start returning some of that to shareholders.

Following the blowout, FAA inspectors found “multiple” instances where quality control procedures were not followed. Another assessment by an expert panel mandated by Congress described a “disconnect” between Boeing’s senior management and its assembly workers, some of whom feared retaliation for reporting safety issues. “Their priorities have been on production, and not on safety and quality,” according to FAA Administrator Michael Whitaker. The agency ordered Boeing to cap rates of production until it is satisfied the problems have been addressed.

Boeing was a well-respected American manufacturer whose name was once synonymous with engineering excellence. In fact, there was an expression of support for Boeing by the flying public back then: “If it’s not Boeing, I’m not going.”

## **Whistleblower Claims**

Boeing has been hit with [32 whistleblower complaints](#) with the Occupational Safety and Health Administration (OSHA) since 2020. The figures shed light on the extent of alleged retaliation by Boeing against whistleblowers. OSHA handles complaints of retaliation against workers who blow the whistle on the employer, under the Sarbanes-Oxley Act (SOX). The complaints were filed under different statutes, the majority under aviation safety. Two were filed under the category of fraud.

The documents also show that OSHA launched a review of the case of [John Barnett](#), a former Boeing employee and whistleblower, after he was found dead in March 2024, from a suspected self-inflicted gunshot wound. Barnett’s death was ruled a suicide. Barnett was supposed to answer questions as part of a deposition resulting from a legal dispute with Boeing, his former employer. Barnett was to offer evidence for legal proceedings linked to a defamation lawsuit against Boeing, which he claimed deliberately hurt his career and reputation because of allegations he had made of grave safety breaches on the aircraft company’s production line. He did not show up.

Barnett, a 62-year-old quality control engineer and manager at Boeing, who had worked for Boeing for over three decades until his retirement in 2017, was outspoken about his skepticism of the company’s safety standards. Following the Ethiopian Airlines 737 MAX 8 and a Lion Air

737 MAX crashes minutes after takeoff, killing everyone on board, Barnett told the British Broadcasting Corporation (BBC) that workers at one Boeing factory had been deliberately fitting faulty parts to planes to meet production deadlines, and that oxygen masks on the 787 Dreamliner had a 1-in-4 chance of failing during an emergency. Barnett said he had alerted Boeing managers as well as the FAA to the concerns but that no action had been taken. Boeing denied his allegations, though it acknowledged that an inspection in 2017 found that some oxygen bottles were in fact not deploying properly.

Barnett also told the [New York Times](#) in 2019 that he was once reprimanded for documenting “process violations” via email instead of face to face, which he took to mean the company didn’t want him putting problems in writing. In a 2014 performance review seen by the *Times*, Barnett’s manager told him that he had to improve at “working in the gray areas and help find a way while maintaining compliance.”

In a [U.S. Senate Hearing](#) on April 17, 2024, Boeing engineer Sam Salehpour testified that he had been threatened for raising concerns about gaps between key sections of the 787 Dreamliner. “They are putting out defective airplanes,” he said. “I have serious concerns about the safety of the 787 and 777 aircraft, and I am willing to take on professional risk to talk about them.” Salehpour claimed that Boeing hid problems during its production of its Boeing 787 Dreamliner aircraft when it started pushing pieces together with “excessive force” to try to close the gaps, which he said did not end up going away. As a result, Salehpour said that debris ended up in the gaps 80% of the time. “Effectively, they are putting out defective airplanes,” he said during the hearing. Salehpour also revealed that after he raised concerns over the issues he witnessed with manufacturing, he was moved out of the Boeing 787 Dreamliner program. I have raised these issues over 3 years, I was ignored, I was told not to create delays, I was told frankly to “shut up,” said Salehpour.

When he was moved to the program that assembled 777 aircraft, Salehpour said he witnessed “severe misalignment” when the airplanes were being put together. “Boeing manufacturing used (an) unmeasured and unlimited amount of force to correct the misalignment, and this also weakens the airplane in the long run,” he said. “I literally saw people jumping on the pieces of the airplane to get them to align. I call it the Tarzan effect, among other improper methods.”

Salehpour said that he once again raised concerns internally and received physical threats as a result. “I was silenced, I was told to shut up, I received physical threats.” My boss said, “I would have killed someone who said what you said in a meeting.” He also claimed that his boss called him on a personal phone, despite having a work phone, where he was “berated” and “chewed” out for 40 minutes for raising concerns over production issues.

[Joshua Dean](#), a former quality auditor at Boeing supplier Spirit AeroSystems, had accused the supplier of ignoring defects in the production of the 737 MAX planes, which have been under scrutiny following a series of plane crashes and other safety issues. Dean gave statements as part of a shareholder lawsuit. He was fired in April 2023, and told NPR that it was in response to him flagging improperly drilled holes in fuselages. “I think they were sending out a message to anybody else,” Dean claimed. “If you are too loud, we will silence you.”

The tone at the top at Boeing contributed to the production failures and crashes. The culture at Boeing did not foster honesty, integrity, and transparency in financial reporting. Instead, it promoted a profit at any cost environment that led to ignoring serious product flaws and deficiencies in the manufacturing process. Ask yourself: Knowing what you know now, would you fly on a Boeing-manufactured plane?

### **Ignoring Quality Controls**

The internal controls should have led to full disclosure of the production flaws. There were many failures that could be attributable to lax management and inaction by the board of directors including:

- Failure to implement priority safety oversight. None of the Board's committees were specifically assigned responsibility for overseeing airplane safety.
- Failure to properly train pilots on the airplane control system--the Maneuvering Characteristics Augmentation System (MCAS).
- Failure to formally monitor or discuss safety on a regular basis.
- Management's periodic reports to the Board did not include safety information related to overall product safety issues.
- The board did not have a mechanism for receiving internal complaints about airplane safety and it never learned about any employee or whistleblower safety complaints.
- Absent controls on airplane safety, the Board pushed for meeting production deadlines and remaining competitive with its chief rival, Airbus.
- Boeing adopted an aggressive schedule to develop the 737 MAX in response to Airbus competition thereby glossing over significant re-engineering issues.

Boeing engineers became concerned about safety and manufacturing concerns. In the summer of 2018, an engineer raised safety concerns with the 737 MAX general manager and factory leaders, stating in a written communication, "And for the first time in my life, I'm sorry to say that I'm hesitant about putting my family on a Boeing airplane."

### **SEC Rulings**

On September 22, 2022, the [SEC charged Boeing and its former CEO, Dennis A. Muilenburg](#) with making materially misleading public statements following crashes of Boeing airplanes in 2018 and 2019. The crashes involved Boeing's 737 MAX airplane and a its flight control function. MCAS. According to the SEC's order, after the first crash, Boeing and Dennis Muilenburg knew that MCAS posed an ongoing airplane safety issue, but nevertheless assured the public that the 737 MAX airplane was "as safe as any airplane that has ever flown the skies." Later, following the second crash, Boeing and Muilenburg assured the public that there were no slips or gaps in the certification process with respect to MCAS, despite being aware of contrary information.

"There are no words to describe the tragic loss of life brought about by these two airplane crashes," said SEC Chair Gary Gensler. "In times of crisis and tragedy, it is especially important that public companies and executives provide full, fair, and truthful disclosures to the markets. The Boeing Company and its CEO, Muilenburg, failed in this most basic obligation. They misled investors by providing assurances about the safety of the 737 MAX, despite knowing about serious safety concerns. The SEC remains committed to rooting out misconduct when public companies and their executives fail to fulfill their fundamental obligations to the investing public."

According to the SEC's order, one month after the Lion Air flight, a 737 MAX airplane, crashed in Indonesia in October 2018, Boeing issued a press release, edited and approved by Muilenburg, that selectively highlighted certain facts from an official report of the Indonesian government suggesting that pilot error and poor aircraft maintenance contributed to the crash. The press release also gave assurances of the airplane's safety, failing to disclose that an internal safety review had determined that MCAS posed an ongoing "airplane safety issue" and that Boeing had already begun redesigning MCAS to address that issue, according to the SEC's orders.

Approximately six weeks after the crash of the Ethiopian plane, another 737 MAX, and the grounding by international regulators of the entire 737 MAX fleet, Muilenburg, though aware of information calling into question certain aspects of the certification process relating to MCAS, told analysts and reporters that "there was no surprise or gap . . . that somehow slipped through [the] certification process" for the 737 MAX and that Boeing had "gone back and confirmed again . . . that we followed exactly the steps in our design and certification processes that consistently produce safe airplanes."

"Boeing and Muilenburg put profits over people by misleading investors about the safety of the 737 MAX all in an effort to rehabilitate Boeing's image following two tragic accidents that resulted in the loss of 346 lives and incalculable grief to so many families," said Gurbir S. Grewal, Director of the SEC's Enforcement Division. "But public companies and their executives must provide accurate and complete information when they make disclosures to investors, no matter the circumstances. When they don't, we will hold them accountable, as we did here."

The SEC's orders against Boeing and Muilenburg found that they negligently violated the antifraud provisions of federal securities laws. Without admitting or denying the SEC's findings, Boeing and Muilenburg consented to cease-and-desist orders that include penalties of \$200 million and \$1 million, respectively. A Fair Fund was to be established for the benefit of harmed investors pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002.

## **Deferred Prosecution**

On January 7, 2021, a decision was agreed to between the U.S. and Boeing to defer prosecution of the company pending the completion of additional events surrounding the crashes of 737 MAX planes and manufacturing flaws. The agreement stipulates that Boeing is being charged with Conspiracy to Defraud the U.S., in violation of Title 18, U.S. Code, Section 37 ("the Information"). By agreeing to the deferred prosecution, Boeing waived its rights to indictment, a speedy trial, and any change of venue. The company also consented to the Statement of Facts and filing of "the Information." Moreover, Boeing accepted responsibility for the actions of its

officers, directors, employees, and agents as charged in “the Information.” The agreement initially was for three years but extended for one more year on January 7, 2024.

The settlement results from serious problems with two of Boeing’s 737 MAX Flight Technical Pilots (Ethiopian and Indonesian crashes) and the company’s deception of the FAA about the planes MCAS that impacted the flight control system of the plane. Through its deception, Boeing interfered with the FAA’s evaluation of the MCAS and its failure to include information about the system in the 737 MAX report. The company also fraudulently obtained from the FAA a differences-training determination for the 737 MAX that was based on incomplete and inaccurate information about MCAS.

The Fraud Section set forth the resolution of the case in the Deferred Prosecution Agreement as follows:

- A criminal monetary penalty in the amount of \$243.6 million, and
- Compensation to airline customers of \$177.0 million, and
- Additional compensation to the heirs, relatives, and/or legal beneficiaries of the crash victims of Lion Air Flight 610 and Ethiopian Airlines Flight 302, and
- Agreement of the company to meet with and report to the Fraud Section as set forth in the agreement.

Upon request of the Fraud Section, Boeing agreed to truthfully disclose all factual information with respect to its activities and those of their present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal and external investigations, about which the company is aware or about which the Fraud Section requests, including documents, records, or other tangible evidence requested.

On May 15, 2024, the U.S. Department of Justice (DOJ) notified a federal court in Texas that it has determined Boeing breached a non-prosecution agreement that allowed the company to escape criminal prosecution over two fatal crashes of 737 Max airplanes in 2018 and 2019, according to a newly filed letter. The DOJ stated in the letter that based on the breaches of the agreement identified by the government, Boeing is now subject to prosecution, though the department is "still determining how it will proceed in this matter." In the letter, federal prosecutors said the aerospace giant failed "to design, implement, and enforce a compliance and ethics program to prevent and detect violations of the U.S. fraud laws throughout its operations." The DOJ has given Boeing until June 13 to respond to their determination.

### **Final Thoughts**

Boeing is a case study in what can happen when the very controls that have been put in place to prevent disasters are ignored. When it comes to airplanes, the result can have deadly consequences for families of those whose lives were taken because of faulty decision-making made top management that ignored the red flags and risk assessment, and, instead, put profits above all else.

As we reflect on the Boeing incident at least four questions should be considered.

- (1) What motivated the company to ignore the warning signs that there were problems with the manufacturing and production processes?
- (2) What deficiencies in the internal control systems contributed to the failure to act even after whistleblowers came forward with their concerns?
- (3) Did the regulators meet their regulatory burden and ethical obligations to ensure the planes are safe and defects were corrected?
- (4) Knowing what you know now, would you fly on a Boeing-manufactured plane?

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**\*This case will appear in the 7<sup>th</sup> edition of *Ethical Obligations and Decision Making: Text & Cases*. Please do not use other than for classroom purposes without the expressed agreement of the authors.**