

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GERAUD DARNIS, et al.,

Plaintiffs,

v.

RAYTHEON TECHNOLOGIES
CORPORATION, et al.,

Defendants.

Civil Action No.: 3:20-cv-01171 (VLB)

November 20, 2020

**THE OTIS DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Defendants Otis Worldwide Corporation (“Otis”), Otis Worldwide Corporation 2020 Long-Term Incentive Plan (“Otis LTIP”), Otis Worldwide Savings Restoration Plan (“Otis SRP”), Otis Worldwide Corporation LTIP Performance Share Unit Deferral Plan (“Otis PSU Deferral Plan”), Otis Worldwide Corporation Deferred Compensation Plan (“Otis DC Plan”), Otis Worldwide Corporation Automatic Contribution Excess Plan (Otis “CACEP”), Jeffrey H. Black, Kathy Hopinkah Hannan, Shailesh G. Jejurikar, Christopher J. Kearney, Judith F. Marks, Harold McGraw III, Margaret M. Preston, Shelley Stewart Jr., and John H. Walker by their undersigned counsel, respectfully move this Court to dismiss all of the claims asserted against them in the Class Action Complaint in the above-captioned action (Dkt. No. 1) for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), and pursuant to *forum non conveniens* for the sixth cause of action.

ORAL ARGUMENT REQUESTED

For the reasons explained in more detail in the accompanying Memorandum of Law:

(i) the claim for breach of contract in Count I should be dismissed because Plaintiffs have failed to plead that any Defendant breached any express contractual obligation; Plaintiffs cannot state a claim against the Otis LTIP, as the Otis LTIP is not a legal entity that can sue or be sued; and Otis and the Otis LTIP were not parties to the UTC LTIPs, the contracts that were allegedly breached, and Plaintiffs are not third-party beneficiaries of the Employee Matters Agreement, which contains the challenged formula;

(ii) the claim for breach of the implied covenant of good faith and fair dealing in Count II should be dismissed because the claim is duplicative of Plaintiffs' contract claim; Plaintiffs fail to plead that any Defendants exercised their discretion unreasonably or in bad faith; Plaintiffs cannot state a claim against the Otis LTIP, as the Otis LTIP is not a legal entity that can sue or be sued; and Otis and the Otis LTIP were not parties to the UTC LTIPs, the contracts that were allegedly breached, and Plaintiffs are not third-party beneficiaries of the Employee Matters Agreement, which contains the challenged formula;

(iii) the claim for breach of fiduciary duty in Count III should be dismissed because the Plaintiffs have failed to plead facts upon which any Defendants owed Plaintiffs fiduciary duties; the named Director Defendants were exculpated from liability for breaches of the duty of care; Plaintiffs fail to plead any non-exculpated breach of fiduciary duty; and Plaintiffs' claim in Count III is duplicative of Plaintiffs' claims in Counts I and II;

(iv) the claims under the Employee Retirement Income Security Act (“ERISA”) in Counts IV and V should be dismissed because the Plaintiffs have failed to plead that they exhausted their administrative remedies; the Otis ERISA Defendants did not devise the conversion formula for the UTC ERISA Plans; no Plaintiff is a participant in the Otis PSU Deferral Plan, Otis DC Plan, or Otis CACEP; and Plaintiffs fail to state a claim under ERISA § 502(a)(3) because Plaintiffs are seeking legal and not equitable relief;

(v) the claims for breach of fiduciary duty in Count VI should be dismissed because the Plaintiffs have failed to plead facts upon which any Defendants owed Plaintiffs fiduciary duties; the named Director Defendants were exculpated from liability for breaches of the duty of care; Plaintiffs fail to plead any non-exculpated breach of fiduciary duty; and Delaware state courts have exclusive jurisdiction for the adjudication of any breach of fiduciary duty claims against Otis’s Directors.

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***Performance Share Unit Deferral
Plan; Otis Worldwide Corporation
Deferred Compensation Plan; and
Otis Worldwide Corporation
Company Automatic Contribution
Excess Plan***

CERTIFICATION

I hereby certify that on November 20, 2020, a copy of the foregoing Motion to Dismiss was filed electronically through the Court's electronic filing system and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF System.

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