

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

MAR 30 2007

Civil Action No. **07 - CV - 00644 - WDM - CBS**  
GREGORY C. LANGHAM  
CLERK

EDWARD J. KERBER,  
NELSON B. PHELPS,  
JOANNE WEST,  
NANCY A. MEISTER,  
THOMAS J. INGEMANN, JR.,  
Individually, and as Representative of plan participants  
and plan beneficiaries of the QWEST GROUP LIFE INSURANCE PLAN,

Plaintiffs,

vs.

QWEST GROUP LIFE INSURANCE PLAN,  
QWEST EMPLOYEES BENEFIT COMMITTEE,  
QWEST PLAN DESIGN COMMITTEE,  
QWEST COMMUNICATIONS INTERNATIONAL, INC.,

Defendants.

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**COMPLAINT  
for PROPOSED CLASS ACTION RELIEF UNDER ERISA**

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**PLAINTIFFS EDWARD J. KERBER, NELSON B. PHELPS, JOANNE WEST,  
NANCY A. MEISTER and THOMAS J. INGEMANN, JR.,** by and through their counsel,  
Curtis L. Kennedy, file this Complaint:

**PRELIMINARY STATEMENT**

1. For over fifty years, A.T.&T. and its successor companies, including U S WEST, provided a life insurance benefit considered by the plan sponsor to be an earned entitlement payable upon the death of the retiree receiving a service pension and delivered to his or her beneficiaries or estate. U S WEST, the plan sponsor before being acquired by QWEST,

memorialized in the governing plan document an ironclad rule that the life insurance coverage could not be reduced below a certain level. The rules proclaimed an anti-amendment as follows:

“The Basic Life Coverage amount for an Eligible Retiree who retires before January 1, 1996 and dies after December 31, 1996 **shall not be reduced** below \$20,000.

The Basic Life Coverage amount for an Eligible Retiree who retires on or after January 1, 1996 **shall not be reduced** below \$30,000.”

2. Notwithstanding the clear and unambiguous rules limiting reductions in coverage, QWEST leadership decided to reduce life insurance coverage to a mere \$10,000 and apply that change to Occupational Retirees. A plan amendment adopted on December 13, 2006 was illegally applied to Occupational Retirees *retroactive* to January 1, 2006.

3. QWEST formally announced that Management Retirees would suffer the same plight as the Occupational Retirees. This change was directed against Named Plaintiffs as retribution for their legal efforts to protect class members’ entitlement to a separate survivors’ benefit, the “Pension Death Benefit,” the subject of on-going litigation in *Kerber, et al v. Qwest Pension Plan, et al*, Case No. 05-cv-00478-BNB-PAC. Shortly after formal discovery was completed in the *Kerber* case, QWEST Chief Executive Officer Richard Notebaert announced the Company had decided all retirees would suffer the same reduction of life insurance coverage to only \$10,000 effective January 1, 2007. <sup>1</sup>

4. Despite a massive outcry and QWEST’s receipt of countless written impassioned protestations from retirees, QWEST leadership, including Mr. Notebaert, have

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This *drastic* reduction affecting all retirees was announced as part of Qwest’s necessary mission to be a good steward of its resources in the same year Qwest CEO Dick Notebaert’s total compensation package had to be set at over \$25 million.

refused and will continue to refuse to do the right thing and comply with the rules which specifically forbid reductions below the stated thresholds. Thus far, hundreds if not a thousand beneficiaries and estates have already been cheated out of the proper amount of life insurance benefits payable at the deaths of retirees.

5. Therefore, Named Plaintiffs for themselves and all other Plan Participants and Beneficiaries seek a panoply of declaratory, injunctive and other equitable relief, including removal of QWEST leadership from further administration of employee benefit plans.

### **JURISDICTION AND VENUE**

6. The Court has jurisdiction of the claims for Relief based upon the civil enforcement provisions of ERISA, 29 U.S.C. §§ 1132(a)(1)(B), 1132(a)(2), 1132(a)(3), 1132(e)(1), and 1132(f), and upon 28 U.S.C. §§ 1331.

7. Relief is also sought under 28 U.S.C. §§ 2201 and 2202, granting any district court of the United States, in a case of actual controversy within its jurisdiction, the power to declare the rights and other legal relations of any interested party seeking such declaration and to grant further necessary or proper relief based upon a declaratory judgment or decree.

8. Venue of this action lies in the District of Colorado, pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 1132(e)(2), in that acts complained of herein occurred within this District and the subject employee benefit plan is administered in this District.

### **THE PARTIES**

9. Named Plaintiff EDWARD J. KERBER is a United States citizen and resident of Warrenton, Oregon. He was formerly employed as a “District Manager” within the Human

Resources Department at U S WEST, Inc. He retired after at least 30 years of service from U S WEST, Inc. effective February 28, 1990. He is a retiree receiving a service pension annuity from the Qwest Pension Plan. KERBER is a "participant," as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. KERBER's beneficiaries include his spouse.

10. Named Plaintiff NELSON B. PHELPS is a United States citizen and resident of Aurora, Colorado. He was formerly employed as an "Executive Director" within the Human Resources Department at U S WEST, Inc. He retired after 24 years of service from U S WEST, Inc. effective February 28, 1990. He is a retiree receiving a service pension annuity from the Qwest Pension Plan. PHELPS is a "participant," as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. PHELPS's beneficiaries include his spouse.

11. Named Plaintiff JOANNE WEST is a United States citizen and resident of South Jordan, Utah. She was formerly employed as an "Senior Process Specialist" within the Wholesale Markets Department at QWEST. She retired after almost 35 years of service from QWEST effective February 11, 2004. She received a lump sum service pension from the Qwest Pension Plan. WEST is a "participant," as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. WEST's beneficiaries include her spouse.

12. Named Plaintiff NANCY A. MEISTER is a United States citizen and resident of Plymouth, Minnesota. She was formerly employed as an "Lead Project Analyst" at QWEST. She retired after over 25 years of service from QWEST effective February 11, 2004. She received a lump sum service pension from the Qwest Pension Plan. MEISTER is a

"participant," as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. MEISTER's beneficiaries include her two children.

13. Named Plaintiff THOMAS J. INGEMANN, Jr., is a United States citizen and resident of Newport, Minnesota. He was formerly employed as an "Account Consultant" in the National Accounts Department at QWEST. He retired after almost 40 years service from QWEST effective March 2, 2005. He is a retiree receiving a service pension annuity from the Qwest Pension Plan. INGEMANN is a "participant," as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. INGEMANN's beneficiaries include his spouse.

14. U S WEST, Inc., was at all times relevant to this complaint: an "employer" as defined by ERISA § 3(5), 29 U.S.C. § 1002(5); a "fiduciary" of the Qwest Group Life Insurance Plan (formally called U S WEST Group Life Insurance Plan), pursuant to ERISA § 3(21), 29 U.S.C. § 1002(21); a "plan administrator" and "plan sponsor" of the life insurance plan, pursuant to ERISA § 3(16)(A)(i) & (B), 29 U.S.C. § 1002(16)(A)(i) & (B); and, a corporation qualified to do business in Colorado. U S WEST, INC.'s principle place of business was within the District of Colorado.

15. In July 2000, U S WEST, Inc. merged with QWEST COMMUNICATIONS INTERNATIONAL, Inc., the surviving corporation.

16. Defendant QWEST COMMUNICATIONS INTERNATIONAL, Inc. ("QWEST") is, an "employer," as defined by ERISA § 3(5), 29 U.S.C. § 1002(5); a "fiduciary" of the Qwest Group Life Insurance Plan, pursuant to ERISA § 3(21), 29 U.S.C. § 1002(21); a "plan administrator" and "plan sponsor" of the Qwest Group Life Insurance Plan, pursuant to ERISA

§ 3(16)(A)(I) & (B), 29 U.S.C. § 1002(16)(A)( I) & (B); and a Delaware corporation qualified to do business in Colorado. QWEST's principle place of business is within the District of Colorado.

17. Defendant QWEST GROUP LIFE INSURANCE PLAN is the successor in interest to the following group life insurance plans, beginning with the plans first sponsored by AT&T before the mandated break-up of that corporation:

AT&T Group Life Insurance Plan;  
Mountain Bell Group Life Insurance Plan;  
Northwestern Bell Group Life Insurance Plan;  
Pacific Northwest Bell Group Life Insurance Plan;  
U S WEST Group Life Insurance Plan; and  
Qwest Group Life Insurance Plan.

18. QWEST GROUP LIFE INSURANCE PLAN ("PLAN") is an "employee welfare benefit plan," pursuant to ERISA § 3(1), 29 U.S.C. § 1002(1). The PLAN is named as a party defendant pursuant to Rule 19(a), Fed.R.Civ.P.

19. The PLAN provides a life insurance benefit payable to the estate or beneficiaries of PLAN participants who retired from QWEST or predecessor companies after becoming eligible for a service pension.

20. *In general*, the PLAN provides that participants would receive life insurance coverage roughly equivalent to his or her last annual salary working for QWEST or a predecessor company, but that coverage would be reduced 10% each year starting at age 65 until age 70 after which age there would be no further reduction of coverage. U S WEST, when serving as plan sponsor, memorialized in the governing PLAN document the following anti-amendment provision limiting the right of the plan sponsor to make changes so as to reduce coverage:

“The Basic Life Coverage amount for an Eligible Retiree who retires before January 1, 1996 and dies after December 31, 1996 **shall not be reduced** below \$20,000.

The Basic Life Coverage amount for an Eligible Retiree who retires on or after January 1, 1996 **shall not be reduced** below \$30,000.”

21. Defendant QWEST EMPLOYEES’ BENEFIT COMMITTEE (hereinafter "COMMITTEE") is, pursuant to ERISA §§ 3(21) and 3(16), 29 U.S.C. §§ 1002(21) and 1002(16), a named "fiduciary" and "administrator" of the PLAN. The COMMITTEE is comprised of QWEST officers (at least one person, but not more than seven persons). The COMMITTEE's principle place of business is Denver, Colorado, the locale from which it administers the PLAN. The COMMITTEE is a body appointed by QWEST which body performs certain designated fiduciary and administrative functions under the PLAN.

22. U S WEST Employees Benefit Committee was the named fiduciary and PLAN administrator during January 1984 through June 2000.

23. The COMMITTEE is the successor named fiduciary and PLAN administrator.

24. Defendant QWEST PLAN DESIGN COMMITTEE is the entity to which the QWEST Board of Directors has delegated certain authority to amend the PLAN.

25. At all times mentioned herein, PLAN administrators were the agents of the COMMITTEE, and the COMMITTEE has ratified and approved the acts of the PLAN administrators.

## FACTS

### **A. Unavailable and Ineffective Administrative Procedures**

26. The only administrative procedure established under the PLAN is a written procedure for processing a claim for payment of benefits. There is no administrative procedure to exhaust so as to compel QWEST Defendants to remedy the wrongs alleged herein. Indeed, it would be an exercise in futility for Named Plaintiffs to follow internal claims processes in an attempt to obtain declaratory, injunctive and other class-wide equitable relief as requested herein. QWEST Defendants have steadfastly positioned themselves adverse to the rights of Named Plaintiffs and class members.

27. There is no effective internal administrative claims process to challenge the illegal PLAN amendment(s) that purport to reduce life insurance coverage to only \$10,000 and such action would be futile, a meaningless exercise. It would be folly to require any of the proposed class of PLAN participants to pursue administrative claims in order to obtain the relief requested herein, including removal of QWEST from administration of employee benefit plans and to redress any violations of ERISA's fiduciary duty provisions. *Unger v. U S WEST, Inc.*, 889 F. Supp. 419, 423 (D. Colo. Judge Babcock, 1996).

28. This action under ERISA has been timely filed.

### **B. Description and History of the Group Life Insurance Benefit**

29. For over fifty years, AT&T and successor companies, to-wit: "Mountain Bell," "Northwestern Bell," "Pacific Northwest Bell," "U S WEST," and, now, QWEST, committed to provide a basic life insurance benefit payable to the estate or beneficiaries of PLAN participants.

30. Several years before the divestiture of AT&T, the “Baby Bell” companies – Mountain Bell, Northwestern Bell and Pacific Northwest Bell – issued to their employees a PLAN publication with the following or substantially similar language:

“FAMILY PROTECTION BENEFITS – An important part of your financial security during retirement is provided by your Family Protection Benefits, which include Group Life Insurance, the Death Benefit, and the Survivor Annuity.

DEATH BENEFIT – In addition to your Group Life Insurance, your qualified beneficiary would also receive a Death Benefit following your death during retirement. This benefit equals your annual pay as of the date you leave the Company.”

31. For several decades, there was no clearly stated “reservation of rights” set forth in either the governing PLAN document or the summary plan descriptions (SPDs).

32. However, at some point in time the plan sponsor inserted into the governing PLAN document and SPDs a reservation of rights statement. The actual timing and date of notice of that reservation of rights is seriously debated by the parties to this litigation. Nevertheless, one truth is undebatable. U S WEST, as PLAN sponsor, limited the reservation of rights and inserted into the governing PLAN document an ironclad anti-amendment provision forever limiting its right to reduce coverage below certain thresholds.

**C. Language Restricting U S WEST’s Power to Amend The Plan.**

33. U S WEST memorialized the following minimum commitments for PLAN participants:

“The Basic Life Coverage amount for an Eligible Retiree who retires before January 1, 1996 and dies after December 31, 1996 **shall not be reduced** below \$20,000.

The Basic Life Coverage amount for an Eligible Retiree who retires on or after January 1, 1996 **shall not be reduced** below \$30,000.”

34. The aforesaid provisions were intended by U S WEST, the PLAN sponsor, to serve as private anti-cutback provisions giving PLAN participants more protections above and beyond that which ERISA affords to welfare benefits. The aforesaid provisions preclude any amendment without the consent of PLAN participants that would allow any plan sponsor to reduce coverage below the minimum thresholds. Said PLAN terms constitute an extra-ERISA contractual commitment limiting the right of the plan sponsor to make PLAN changes concerning coverage amounts. The aforesaid extra-ERISA contractual commitment is now binding upon QWEST, the successor in interest, the COMMITTEE and PLAN fiduciaries.

35. All of the written representations in PLAN publications and SPDs issued by AT&T (and Baby Bells - Mountain Bell, Northwestern Bell, Pacific Northwest Bell), U S WEST and QWEST were part of a common course of conduct designed to impress upon Named Plaintiffs and the proposed class of PLAN participants that their group life insurance coverage could not be reduced below a certain threshold, depending upon respective retirements dates.

36. Certainly, in **none** of the PLAN publications and SPDs issued to Named Plaintiffs and PLAN participants before their respective retirements were there statements and disclosures, **easily understood by a reasonable person**, to advise PLAN participants that the sponsoring company reserved the right to reduce coverage below the minimum levels established and memorialized by PLAN sponsor U S WEST.

37. To the extent that any PLAN publication or SPD issued to Named Plaintiffs and PLAN participants included any statement of “reservation of rights,” the sponsoring company could not ignore the rules and reduce coverage below the aforesaid minimum coverage levels.

**D. U S WEST Fiduciary Representations When Offering Certain Named Plaintiffs a Special Retirement Incentive.**

38. From time to time, U S WEST offered a special retirement incentive as part of an effort to reduce its workforce through voluntary retirements. For example, in 1990 U S WEST provided a special retirement incentive to at least 3,850 employees, including Named Plaintiffs KERBER and PHELPS. During the 1990 special retirement “window,” U S WEST and PLAN administrators issued a letter dated March 26, 1990 to Named Plaintiffs KERBER and PHELPS containing the following text: “*You are **entitled** to the benefits paid under the Group Life Insurance Program.*”

39. Because of the representations and provisions for the Pension Death Benefit and the Group Life Insurance Benefit, PHELPS declined the survivor annuity option for the payment of his service pension and the election became irrevocable upon retirement.

40. Because of the representations and provisions for the Pension Death Benefit and the Group Life Insurance Benefit, both KERBER and PHELPS declined the option to take a lump sum distribution of their respective service pensions and their respective elections became irrevocable upon retirement.

41. By virtue of these and other similar representations and promises, PLAN administrators, acting with the approval of the then existing COMMITTEE, effectively interpreted the minimum PLAN coverage to be a vested, protected irrevocable welfare benefit.

42. PLAN fiduciaries, including past members of the COMMITTEE have acknowledged the aforesaid representations and commitments were made to Named Plaintiffs and PLAN participants when they were making retirement decisions and choosing between receiving a lump sum distribution or monthly annuity.

43. During 1999, in prior litigation in this District, U S WEST argued its position that no PLAN “participant’s life insurance or death benefits have been reduced or diminished, nor does U S WEST claim the right to diminish those benefits after they have become ‘accrued.’” *Jarvis v. U S WEST, Inc.*, Civil Action 97-N-2189 (D. Colo., Judge Nottingham). Therefore, QWEST, as successor to U S WEST, should be judicially estopped to assert otherwise.

44. In addition, for several years *after* QWEST merged with U S WEST, QWEST and PLAN administrators sent formal notices to retirees reporting that there could be no changes of life insurance coverage for persons who retired before 1991. For at least ***four consecutive years***, QWEST sent thousands of Pre-1991 retirees a formal document containing the following text:

**Confirmation Statement  
For the 2001 [2002, 2003 and 2004] Health Care and Group Life Insurance Plans**

Although you don’t make life insurance elections during Open Enrollment, your life insurance benefit information is shown below with monthly costs, if any, as of January 1, . . . To confirm your coverage amount anytime call the Service Center at 1-800-729-7526 and speak with a Customer Service Specialist. . .

**Benefit Information**

<b>Benefit</b>	<b>Option Description</b>	<b>Coverage Level</b>	<b>Effective Date</b>	<b>Monthly Employee Cost</b>
Medical	.....	.....	01/01. . .	\$0.00
Dental	.....	.....	01/01	\$0.00
Basic Life Insurance	1 Times Annual Pay	Coverage	01/01. . .	\$0.00
.....				

**The Company intends to continue these plans indefinitely; however, it reserves the right to amend, suspend, or discontinue them at any time, except for those who retired before 1991 and where prohibited by collective bargaining agreements. (emphasis added).**

45. By their reoccurring written representations and actions, the PLAN sponsor, COMMITTEE and PLAN administrators intended and interpreted minimum coverage levels of basic Group Life Insurance Benefits to be vested, protected or irrevocable welfare benefits.

46. By their reoccurring written representations and actions, the PLAN sponsor, COMMITTEE and PLAN administrators intended and interpreted the annual salary coverage level formula of basic Group Life Insurance Benefits to be a vested, protected or irrevocable welfare benefits for all Pre-1991 Retirees, even when reduced at age 70 to be in excess of minimum coverage.

**E. Action Taken in Retaliation Because Named Plaintiffs Have Exercised Their Legal Rights.**

47. In July 2000, QWEST took over as PLAN sponsor.

48. Soon after becoming PLAN sponsor, QWEST began looking for ways to decrease liabilities to Named Plaintiffs and PLAN participants.

49. On or before September 2, 2003, QWEST VP Jill Sanford signed a letter to be sent to PLAN participants which letter stated QWEST would eliminate the Pension Death Benefit as of October 1, 2003.

50. QWEST leadership shared the September 2, 2003 dated letter with Named Plaintiffs PHELPS and KERBER and other PLAN participants during a special meeting.

51. The September 2, 2003 letter which came as a surprise to those PLAN participants in attendance at the meeting was, then, shared with numerous other PLAN participants.

52. Naturally, this surprise information caused great consternation to Named Plaintiffs PHELPS and KERBER and thousands of PLAN participants and their beneficiaries, many of whom sent letters and email asking QWEST leadership to memorialize a commitment to continue the Pension Death Benefit under the PLAN.

53. Defendants refused to incorporate into the governing PLAN document and the SPD a commitment to provide Pension Death Benefits.

54. This *impasse* led to Named Plaintiffs commencing a civil action in this District for various relief concerning the Pension Death Benefit, including declaratory, injunctive and other equitable relief. Named Plaintiffs commenced *Kerber, et al v. Qwest Pension Plan*, Case No. 05-cv-00478-BNB-PAC.

55. In September 2006, formal discovery was completed in the *Kerber* case. On October 5, 2006, Judge Boland issued his Order (Docket No. 91) denying QWEST Defendants' motion to dismiss the litigation.

56. On October 14, 2006, QWEST CEO Richard Notebaert began announcing to PLAN participants that QWEST would reduce every retiree's basic life insurance coverage to a mere \$10,000.

57. Named Plaintiffs and class members earned the promised minimum life insurance coverage through their long years of employment service. Countless PLAN participants are unable to adjust their retirement plans to address the PLAN benefit as one that can be reduced below the promised minimum coverage levels.

58. Pursuant to ERISA Section 502(a)(3)(A) and (B), 29 U.S.C. Section 1132(a)(3)(A) and (B), Named Plaintiffs and the proposed class of PLAN participants are entitled to ask this Court to enjoin any act or practice which violates any provision of the terms of the PLAN and to obtain other appropriate equitable relief. Also, pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), Named Plaintiffs and the proposed class of

PLAN participants are entitled to bring this action to have this Court, *inter alia*, clarify their rights to future PLAN benefits.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty and Equitable Estoppel)**

59. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 58, inclusive (together with the Class Action Allegations, ¶s 85-99), as if they were fully set forth herein.

60. As PLAN fiduciaries, Defendants QWEST and COMMITTEE had a duty to communicate material facts affecting the interests of Named Plaintiffs and PLAN participants. Defendants disclosed to Named Plaintiffs and PLAN participants that the rules provided for minimum life insurance coverage and that there could be no reduction below those thresholds.

61. Defendants' recently announced position that PLAN benefits are reduced to \$10,000, regardless of the PLAN Participant's retirement date is completely contrary to the position taken by the COMMITTEE and PLAN administrators in the past and the written representations made to Named Plaintiffs and the proposed class of PLAN participants.

62. The COMMITTEE's and PLAN Administrator's past promises of minimum life insurance coverage were made with the intent that Named Plaintiffs and PLAN Participants act on the basis of that information when deciding survivor's pension benefits and whether or not to purchase additional life insurance on the market.

63. Named Plaintiffs and PLAN participants have been systematically tricked into believing their minimum life insurance coverage was a protected and irrevocable PLAN benefit.

64. Accordingly, Named Plaintiff's and PLAN participants reasonably and detrimentally relied upon the written representations made by PLAN administrators that there

was a commitment to provide the promised PLAN benefits to their estate or beneficiaries, including surviving spouse, and Named Plaintiffs and PLAN participants did not obtain the equivalent in life insurance coverage from other sources.

65. Named Plaintiffs and PLAN participants have been prejudiced from the lack of notice of material information contrary to the written representations in PLAN publications and SPDs given to them about PLAN benefits.

66. Now, due to a combination of age, health condition, and meager financial factors, thousands of PLAN participants cannot possibly afford the cost of purchasing additional life insurance on the market so as to replace the expected minimum PLAN benefits.

67. The current cost of life insurance to replace the loss of the expected PLAN benefits makes mitigation of damages impracticable for Named Plaintiffs and the proposed class of PLAN participants.

68. Named Plaintiffs seek an order declaring that QWEST, the COMMITTEE and PLAN administrators failed to discharge duties to act solely in the interests of Named Plaintiffs, PLAN participants and beneficiaries in accordance with the rules of the governing PLAN document, as required by ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

69. Named Plaintiffs request this Court to apply principles of federal common law equitable estoppel, and grant class-wide appropriate equitable relief, including a declaration that the reduction of PLAN benefits to only \$10,000 violates the anti-amendment provisions providing for minimum coverage. This Court should apply principles of equitable estoppel, under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and issue an order nullifying any amendment in derogation of the PLAN's minimum coverage provisions. In addition, this Court should apply

principles of equitable estoppel, under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and issue an order nullifying any amendment in derogation of the plan sponsor's additional commitment to Pre-1991 Retirees.

**SECOND CLAIM FOR RELIEF**  
**(Claim to Nullify Illegal Reduction of PLAN Coverage**  
**and For Reformation of PLAN Documents)**

70. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 69, inclusive (together with the Class Action Allegations, ¶s 85-99), as if they were fully set forth herein.

71. Notwithstanding the PLAN's commitment for minimum coverage amounts, QWEST contends it amended the PLAN so as to reduce coverage to only \$10,000. Named Plaintiffs have not consented and do not consent to this illegal coverage reduction.

72. Plaintiffs seek an order reforming the PLAN, striking any PLAN amendment which purports to reduce coverage below the promised minimum coverage limits.

73. Further, Plaintiffs seek an order requiring the PLAN to notify estates and beneficiaries of PLAN Participants who have been cheated out of the minimum PLAN benefits that they are entitled to demand payment of the correct amount of PLAN benefits, together with prejudgment and post-judgment interest.

74. ERISA Section 102, 29 U.S.C. § 1022, provides in pertinent part that a summary plan description (SPD) must contain "the plan's requirements respecting eligibility for

participation and benefits . . . [and] circumstances which may result in disqualification, ineligibility, or denial or loss of benefits. . . .”<sup>2</sup>

75. Named Plaintiffs have standing to assert a claim for breach of fiduciary duty and to insure that PLAN documents are accurate.

76. There has been a breach of fiduciary duty to comply with ERISA Section 102 and applicable regulations as the current PLAN documents contain faulty language and must be reformed to accurately reflect past commitments for minimum coverage and past commitments to Pre-1991 Retirees.

77. QWEST has issued a current SPD and a Summary of Material Modifications (SMM) which documents falsely state PLAN benefits have been reduced to \$10,000 and contain language implying that QWEST or the plan sponsor has the right to further reduce coverage. Pursuant to ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), Named Plaintiffs seek equitable and remedial relief for the benefit of the PLAN as a whole including an order requiring the QWEST PLAN DESIGN COMMITTEE, COMMITTEE and PLAN administrators and QWEST, as plan sponsor, to correct the current faulty language in the PLAN and current SPD and issue a corrected SPD and SMM with language disclosing the PLAN contains protected minimum coverage, not subject to further reduction.

78. In the alternative, pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), this Court should grant appropriate equitable relief – injunctive relief requiring QWEST, as plan sponsor, and the QWEST PLAN DESIGN COMMITTEE to reform the PLAN, the SPD and

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<sup>2</sup> In addition to ERISA Section 102, there are a plethora of regulations that require the SPD, the core disclosure document, to contain correct information. *See* 29 C.F.R. § 2520.102-3.

SMM and issue to PLAN Participants documents with language disclosing the PLAN provides protected minimum coverage, not subject to further reduction.

**THIRD CLAIM FOR RELIEF**  
**(ERISA Section 502(a)(1)(B) Claim to Clarify Future Rights to PLAN Benefits**

79. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 78, inclusive (together with the Class Action Allegations, ¶s 85-99), as if they were fully set forth herein.

80. Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), Named Plaintiffs and the proposed class of PLAN participants are entitled to bring this action and they request this Court to clarify their rights to future PLAN benefits under the terms of the PLAN.

81. Named Plaintiffs seek a declaration that those PLAN Participants who retired before January 1, 1991 are entitled to have paid out upon their death the full amount of promised PLAN benefits. Also, Named Plaintiffs seek a declaration that those PLAN Participants who retired before January 1, 2006 are entitled to have paid out upon their death, at the very least, \$20,000 in PLAN benefits. In addition, Named Plaintiffs seek a declaration that those PLAN Participants who retired on or after January 1, 2006 are entitled to have paid out upon their death, at the very least, \$30,000 in PLAN benefits.

**FOURTH CLAIM FOR RELIEF**  
**(Breach of Fiduciary Duty and ERISA Section 510 Claim Based Upon Retaliation)**

82. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 81, inclusive (together with the Class Action Allegations, ¶s 85-99), as if they were fully set forth herein.

83. QWEST, COMMITTEE and PLAN Administrators did not prudently investigate and allow PLAN participants the simple courtesy of a choice of carrying out insurance conversion privileges so that they could maintain their expected level of PLAN benefits. Said Defendants acted selfishly and failed to act in the best interests of PLAN participants and beneficiaries, thereby further breaching their duties under ERISA Section 404(a)(1), 29 U.S.C. Section 1104(a)(1).

84. QWEST retaliated against Named Plaintiffs and Management Retiree class members, all done in violation of ERISA Section 510, 29 U.S.C. Section 1140, with the intent to discriminate and interfere with their protected rights.

**CLASS ACTION ALLEGATIONS**

85. **Class Definition.** Named Plaintiffs bring this action on behalf of all PLAN participants (and beneficiaries thereof).

86. This action is maintainable as a class action under Federal Rule of Civil Procedure Rule 23, subsections (a), (b)(2), and (b)(3).

87. **Class Size.** The precise size of the class is presently unknown and will be determined through discovery. However, there can be no dispute that the size of the class is well

over forty thousand persons. The class is so numerous that joinder of all the members of the class is impractical.

88. **Questions of Law and Fact Common to the Class.** This suit poses questions of law and fact which are common to and affect the rights of all putative class members. The questions presented include, but are not limited to: A) whether Defendants violated their fiduciary duties under ERISA Section 404 when making representations and providing PLAN publications and SPDs that led reasonable PLAN participants to conclude that PLAN benefits for Pre-1991 Retirees were protected; B) whether Defendants' and predecessor's actions interpreted minimum PLAN benefits to be an entitlement, not subject to further reduction; C) whether Defendants are judicially or equitably estopped to reduce the PLAN benefits; D) whether purported PLAN amendments reducing coverage to \$10,000 for all retirees violate the terms and conditions of the PLAN and other provisions of ERISA; and E) whether PLAN participants are entitled to declaratory and injunctive relief and the form and extent of the relief to which they should receive.

89. **Typicality of the Claims of the Representatives.** The claims of Named Plaintiffs are typical of the claims of the proposed class of PLAN participants and beneficiaries as a whole.

90. **Adequacy of Representation.** Named Plaintiffs have no interest antagonistic to or in conflict with the interests of the proposed class of participants and beneficiaries. Indeed, Named Plaintiffs have the support of thousands of PLAN participants.

91. Plaintiffs' counsel Curtis L. Kennedy is experienced counsel who has served as Class counsel in ERISA cases successfully litigated in the District of Colorado, including multi-plaintiff civil actions involving the Defendants and their predecessors.

92. Defendants' issuance of faulty PLAN documents, including the current SPD, and refusal to abide by the private anti-cutback provisions and acknowledge the PLAN provides for minimum coverage and further protected coverage for Pre-1991 Retirees makes appropriate an award of final injunctive and declaratory plan-wide and class-wide relief.

93. The PLAN sponsor's violations of the PLAN's rules providing minimum coverage makes appropriate an award of final injunctive and declaratory plan-wide and class-wide relief.

94. Questions of law or fact common to the members of the proposed class predominate over any questions affecting only individual participants and beneficiaries. The predominant questions in this litigation concern the rights of proposed class members to receive declaratory, injunctive and equitable relief, and whether Defendants should be required to memorialize in the governing PLAN documents and a revised SMM to be issued to PLAN Participants that the PLAN provides minimum coverage, not subject to further reduction.

95. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

96. Members of the proposed class have little interest in individually controlling the prosecution of separate actions.

97. Named Plaintiffs know of no other litigation concerning this controversy which has previously been commenced by members of the proposed class.

98. In the interests of judicial efficiency, the claims arising out of this controversy should be consolidated in this proposed class action before this Court.

99. No undue difficulties are anticipated to result from the prosecution of this proceeding as a class action.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs EDWARD J. KERBER, NELSON B. PHELPS, JOANNE WEST, NANCY A. MEISTER and THOMAS J. INGEMANN, Jr., Individually and on behalf of the proposed class of PLAN participants and beneficiaries and for the benefit of the QWEST GROUP LIFE INSURANCE PLAN, seek orders and judgments against Defendants as follows:

A. Order this action be maintained as a class action under Fed.R.Civ.P., Rule 23(a), (b)(2) and (b)(3), that Named Plaintiffs' counsel be appointed class counsel, and require QWEST at company expense to publish and mail notification of this action to all members of the proposed class of PLAN participants and beneficiaries;

B. Declare that Defendants, when acting as PLAN fiduciaries, failed to discharge duties to act solely in the interests of the participants and beneficiaries, as required by ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1);

C. Declare that Defendants, when acting as PLAN fiduciaries, failed to discharge duties to act in accordance with PLAN documents, as required by ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D);

D. Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), declare the Named Plaintiffs' and PLAN participants' rights to future PLAN benefits and that, pursuant to the

private anti-cutback provisions enacted by PLAN sponsor U S WEST, the minimum coverage levels cannot be reduced by QWEST Defendants;

E. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), apply principles of federal common law equitable estoppel, and rule that in as much as the PLAN publications and SPDs contained representations about minimum coverage that could not be reduced and declare that Named Plaintiffs and the proposed class of PLAN participants and beneficiaries have an “entitlement” to the minimum coverage amounts;

F. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), apply principles of federal common law equitable estoppel, and rule that in as much as the plan sponsor has made repeated representations about protected coverage for Pre-1991 Retirees, that coverage could not be reduced and declare that Pre-1991 Retirees have an “entitlement” to the coverage promised upon their respective retirements;

G. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), enter an order removing from PLAN administration all those persons who supported, assisted and acquiesced in and defended the PLAN sponsor’s efforts to flout the private anti-cutback rules of the PLAN and, thereby, reduce PLAN coverage to \$10,000, and appoint an independent fiduciary at the expense of QWEST;

H. Pursuant to ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), grant equitable and remedial relief for the benefit of the PLAN as a whole including an order requiring the QWEST PLAN DESIGN COMMITTEE, COMMITTEE, PLAN administrators and QWEST, as PLAN sponsor, to correct faulty language in the PLAN and SPD and issue a corrected SPD and SMM with language disclosing the PLAN provides minimum coverage not subject to further reduction

and language disclosing the PLAN provides protected coverage to Pre-1991 Retirees not subject to further reduction;

I. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), grant equitable and remedial relief ordering either Defendants or an appointed independent fiduciary at Defendants' expense to distribute a revised SPD and SMM to all PLAN participants which documents correctly disclose the PLAN provides for minimum coverage not subject to further reduction;

J. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), enter an order requiring either the PLAN administrators or an appointed independent fiduciary to notify those PLAN Participants' estates and beneficiaries cheated out of payment of the minimum coverage that they are entitled to demand and receive a corrected payment of PLAN benefits, together with prejudgment and post-judgment interest;

K. Pursuant to ERISA § 502(a)(3)(A) and(B), 29 U.S.C. § 1132(a)(3)(A) and (B), grant temporary, preliminary and permanent injunctive relief, during the pendency of this litigation, prohibiting QWEST and successor PLAN sponsors from eliminating or reducing PLAN benefits or other employee benefits, with respect to Named Plaintiffs and the proposed class of retired PLAN participants;

L. Grant Plaintiffs and the proposed class members such other and further class-wide and plan-wide relief, including appropriate equitable relief allowable under ERISA § 502(a)(3), as the Court deems just and proper;

M. Order QWEST's officers, employees and agents not to retaliate against Named Plaintiffs (and their relatives) and the proposed class of PLAN participants and beneficiaries on the basis of the filing or prosecution of this action; and

N. Pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1), order Defendants to pay the reasonable value of Plaintiffs' interim and final attorney's fees for services performed, expert witness fees, accounting fees, necessary expenses of litigation, and costs of this action.

DATED this 30<sup>th</sup> day of March, 2007.

Respectfully submitted,



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