

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-CV-00644-WDM-KLM

EDWARD J. KERBER, *et al.*,

Plaintiffs,

vs.

QWEST GROUP LIFE INSURANCE PLAN, *et al.*,

Defendants.

**QWEST'S BRIEF IN OPPOSITION TO PLAINTIFFS'
AMENDED MOTION FOR A SUMMARY JUDGMENT**

July 14, 2008

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Defendants Qwest Group Life Insurance Plan (the “Plan” or “Life Plan”), Qwest Employee Benefits Committee (the “EBC”), Qwest Plan Design Committee (the “PDC”), and Qwest Communications International Inc. (together with its affiliates, “QCII”) (collectively, “Qwest”) respectfully submit this brief in opposition to Plaintiffs’ Amended Motion for a Summary Judgment (“Motion,” Doc. No. 65).

I. SUMMARY

Plaintiffs’ Motion seeks summary judgment on the First, Third, Fourth, and Fifth Claims in plaintiffs’ Second Amended Complaint (“Complaint” or “SAC”). *See* Plaintiffs’ Brief in Support of Their Motion for a Summary Judgment (“Pl. Br.,” Doc. No. 66), p. 17. Plaintiffs’ First Claim alleges that the Amended and Restated Group Life Insurance Plan dated June 12, 1998 (the “1998 Plan Document”) does not specify a procedure for amending the Plan that complies with ERISA Section 402(b)(3), 29 U.S.C. § 1102(b)(3), and that Plan amendments since that date are therefore null and void. In fact, the Plan’s amendment procedure fully complies with the requirements of Section 402(b)(3) as interpreted by the Supreme Court in *Curtiss-Wright v. Schoonejongen*, 514 U.S. 73, 75 (1995). Moreover, even if an amendment procedure violates Section 402(b)(3), an amendment is nevertheless valid unless plaintiffs prove detrimental reliance by plaintiffs or bad faith or active concealment by the plan sponsor. Plaintiffs have not even attempted to prove these things, and the facts set forth below show they cannot do so. This Court should therefore deny plaintiffs’ Motion seeking summary judgment on their First Claim.

Plaintiffs’ Third, Fourth and Fifth Claims all turn on one principal allegation—that Minutes and Resolutions executed by the PDC on October 14, 2005 (the “Oct. 2005 Resolutions”) did not effectuate a Plan amendment (the “2005 Amendment”) reducing to

\$10,000 effective January 1, 2006 the life insurance benefit for post-1990 retirees who were occupational (*i.e.*, union) employees (“Post-1990 Occupational Retirees”). But as the undisputed facts set forth below reveal, the PDC indisputably had the *authority* to amend the Plan, *intended* to amend the Plan by means of the Oct. 2005 Resolutions, and *manifested that intent* in multiple ways.

In addition, plaintiffs’ Third, Fourth and Fifth Claims seek to nullify the 2005 Amendment based on alleged technical deficiencies in the Oct. 2005 Resolutions and in December 2006 Minutes and Resolutions that restated the 2005 Amendment (the “Dec. 2006 Resolutions”). The 2005 Amendment is valid notwithstanding those alleged deficiencies if *either*: (1) Qwest ratified the amendment before its January 1, 2006 effective date, or (2) plaintiffs fail to prove detrimental reliance by plaintiffs or bad faith or active concealment by Qwest. As the undisputed facts set forth below show, Qwest *did* ratify the 2005 Amendment before its effective date. Moreover, plaintiffs have not attempted to, and cannot, prove detrimental reliance by plaintiffs or bad faith or active concealment by Qwest. For all these reasons, plaintiffs’ Motion seeking summary judgment on their Third, Fourth and Fifth Claims should be denied.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Response to Plaintiffs’ Statement of Undisputed Material Facts

Qwest admits the averments in paragraphs 4-5, 7-8 and 11, and responds as follows to the other averments in Plaintiffs’ Statement of Undisputed Material Facts:

1. Qwest admits that the quoted language appears in Section 10.1 of the 1998 Plan Document (the “Amendment Provision”).

2. Qwest admits that ERISA Section 402(b)(3) contains the quoted language. Qwest denies that the 1998 Plan Document lacks procedures either to amend the Plan or to identify persons authorized to amend the Plan, for the reasons set forth herein and in Qwest's Second Motion To Dismiss (Doc. No. 79).

3. Qwest admits that: (a) in December 2003, the PDC approved resolutions entitled "Resolutions of the Qwest Plan Design Committee—Qwest Group Life Insurance Plan—Amendment 2003-1," an incomplete copy of which is attached to plaintiffs' Motion as Exhibit 1; and (b) in April 2004, the PDC approved resolutions entitled "Resolutions of the Qwest Plan Design Committee—Qwest Group Life Insurance Plan—Amendment 2004-1," an incomplete copy of which is attached to plaintiffs' Motion as Exhibit 2.

6. Qwest admits, but affirmatively asserts that the Dec. 2006 Resolutions state that the Plan "*was amended* to incorporate changes to retiree coverage which are effective January 1, 2006" (emphasis added).

9. Qwest admits that the document includes the quoted language, but affirmatively asserts that the quoted Resolutions restated the amendment that was effectuated by means of the Oct. 2005 Resolutions.

10. Qwest denies that either the Oct. 2005 Resolutions, which amended the Plan to reduce the life insurance benefit for Post-1990 Occupational Retirees to \$10,000 effective January 1, 2006, or the Dec. 2006 Resolutions, which restated this Plan amendment, left intact provisions in the 1998 Plan Document stating that such retirees would receive a minimum life insurance benefit of either \$20,000 or \$30,000 depending on their retirement

date. Qwest denies this averment because it is nonsensical, and for the additional reasons set forth below.

12. Qwest admits, except Qwest states that the Plan benefits Mrs. Lensink would have received upon her husband's death prior to the 2005 Amendment would have been approximately \$41,000 rather than \$42,000.

B. Statement of Additional Undisputed Material Facts

13. Defendant Plan is a "welfare" benefit plan within the meaning of ERISA. The Plan provides a life insurance benefit payable to the estate or beneficiaries of Plan participants who retired from QCII or predecessor companies after becoming eligible for a service or disability pension. (SAC ¶ 13 & Answer to Second Amended Complaint ("SAA") ¶ 13; Scheduling Order (Doc. No. 77) § 4 ¶ 4.)

14. Defendant QCII is the Plan "sponsor" and (to the extent authority has not been delegated) a Plan "fiduciary" within the meaning of ERISA. (SAC ¶ 15 & SAA ¶ 15.)

15. Defendant EBC is a Plan "fiduciary" and "administrator" within the meaning of ERISA. (SAC ¶ 17 & SAA ¶ 17.)

16. Defendant PDC, which is comprised of QCII officers and/or director-level management employees, is the entity to which QCII's Board of Directors has delegated authority to amend the Plan. (Scheduling Order § 4 ¶ 5.)

17. Plan participants, including plaintiffs or their deceased spouses, were either "Occupational" (*i.e.* union) or "Management" (*i.e.*, salaried) Employees of QCII or predecessor companies prior to their retirement. (Ex. A-1 ¶ 3.)

18. Five of the seven named plaintiffs were Management Employees who retired from QCII or its predecessor U S WEST Communications, Inc. (“US West”) between 1990 and 2005. A sixth plaintiff, Samuel Strizich, is the surviving spouse of Plan participant Sharon Strizich, a Management Employee who retired from US West in February 1990 and died on March 20, 2007. These six plaintiffs were affected, not by the 2005 Amendment, but by a Plan amendment (the “2006 Amendment”) reducing the life insurance benefit to \$10,000 effective January 1, 2007 for management retirees and pre-1991 occupational retirees. (SAC ¶¶ 10-14 & 16 & SAA ¶¶ 10-14 & 16.)

19. Plaintiff Martha Lensink is the surviving spouse of Plan participant Joseph Lensink, an Occupational Employee who retired from US West in March 1997 and died on January 5, 2006. Because Joseph Lensink is the only one of the seven Plan participants identified above who was a Post-1990 Occupational Retiree, Martha Lensink is the only plaintiff affected by the 2005 Amendment. (SAC ¶ 15 & SAA ¶ 15.)

20. A resolution that the Executive Committee of QCII’s Board of Directors approved on August 10, 2000 stated that “a Plan Design Committee is hereby established and given full power in a non-fiduciary capacity to amend and/or terminate each of the employee benefit plans . . . of the Corporation.” (Ex. A-1 ¶ 2.) Between July 2005 and the present, the PDC has consisted of three Qwest Corporation officers or employees—Teresa Taylor, Felicity O’Herron, and Erik Ammidown. (*Id.* ¶ 3; Ex. A-3 ¶ 2; Ex. A-4 ¶ 2.)

21. Under the collective bargaining and associated letter agreements (“CBA”) between QCII and the Communications Workers of American (“CWA”), QCII was entitled to implement “caps,” or maximums, effective January 1, 2006 on the amount Qwest would contribute towards the cost of providing Health Plan benefits to Post-1990

Occupational Retirees. Upon implementation of the Health Plan caps, Post-1990 Occupational Retirees would immediately become obligated to contribute on a monthly basis the amount in excess of the caps in order to continue to maintain Health Plan coverage. In the summer of 2005, Qwest sought to accommodate the desire of Post-1990 Occupational Retirees for a three-year postponement, until January 1, 2009, of implementation of the caps. (Ex. A-1 ¶¶ 4-5.)

22. On or about August 14, 2005, representatives of QCII and the CWA signed letters regarding the Health Plan and the Life Plan. The Health Plan letter stated that “no retired employee shall be required to pay any contribution toward Plan costs for coverage prior to January 1, 2009” (emphasis in original). The Life Plan letter stated that “beginning January 1, 2006, the Basic Life Insurance benefit . . . [for] current eligible retirees will be reduced to a flat ten thousand dollar (\$10,000) benefit.” (*Id.* ¶ 6 & Exs. 1-2 thereto.)

23. An October 1, 2005 CWA newsletter stated that one of the “key provisions” of the CWA’s three-year agreement with Qwest was “[c]ontinuation of 100 percent employer-paid health care,” and further stated: “Retired workers also maintain their employer-paid health care, with some offsetting changes to the company-paid life insurance coverage for those who retired after 1990.” (*Id.* ¶ 19 & Ex. 7 thereto.)

24. In October 2005, the members of the PDC considered, approved, and executed the Oct. 2005 Resolutions. Those resolutions described the life insurance benefit for which Post-1990 Occupational Retirees were currently eligible, and then stated:

Recommendation: That the Director, Employee Benefits, Health Life & Disability, Human Resources, or his delegate, be authorized to take all actions appropriate to implement for the 2006 plan year: * * * *Change the Basic Life Insurance Benefit for Post-1990 Occupational Retirees to reduce to a fixed \$10,000 benefit effective January 1, 2006.*

* * *

*RESOLVED, that the Qwest Group Life Insurance Plan **be and hereby is amended** and restated to incorporate the design changes approved.*

(Ex. A-1 ¶ 7 & Ex. 3 thereto (emphasis added); Ex. A-3 ¶ 3; Ex. A-4 ¶ 5.)

25. The members of the PDC unanimously intended to effectuate, by means of the Oct. 2005 Resolutions, an amendment to the Life Plan under which the life insurance benefit for Post-1990 Occupational Retirees would be reduced to \$10,000 effective January 1, 2006. The PDC approved the 2005 Amendment to offset the enormous cost of postponing for three years the obligation of Post-1990 Occupational Retirees to pay amounts in excess of the Health Plan benefit caps. (Ex. A-1 ¶¶ 7-8; Ex. A-3 ¶ 3; Ex. A-4 ¶ 5.)

26. On or about October 20, 2005, Teresa Taylor sent a letter to the President of the Association of U S West Retirees (“AUSWR”), with a copy to the Minnesota Public Utilities Commission (“PUC”). Ms. Taylor’s letter stated that Qwest was delaying for three years implementation of the Health Plan caps for Post-1990 Occupational Retirees, and that to “offset the cost” of this delay, “[e]ffective Jan. 1, 2006, the basic life insurance benefit will be reduced to a fixed amount of \$10,000 for eligible occupational post-1990 retirees.” (Ex. A-4 ¶ 4 & Ex. 2 thereto.)

27. On October 17, 2005, Qwest mailed a letter regarding the Life and Health Plans (the “Oct. 2005 Letter/SMM”) to all Post-1990 Occupational Retirees, including Joseph Lensink, which stated that it was “intended to be a summary of material modification as described in section 104(b)” of ERISA, and that “[e]ffective Jan. 1, 2006, the basic life insurance benefit will be reduced to a fixed amount of \$10,000 for eligible Occupational Post-1990 Retirees.” (Ex. A-4 ¶ 3; Ex. A-5 ¶ 2 & Ex. 1 thereto; Ex. A-6 ¶ 5.)

28. Also in October 2005, Qwest mailed to all Post-1990 Occupational Retirees, including Joseph Lensink, a booklet entitled “Your 2006 Occupational Benefit Program Guide” (the “Oct. 2005 Guide/SMM”), which stated that it too was “intended to serve as a ‘Summary of Material Modifications’” and that “[e]ffective Jan. 1, 2006, the Basic Life Insurance benefit for . . . retirees who retire on or after Jan. 1, 1991 will be reduced to a flat ten thousand dollar (\$10,000) benefit.” (Ex. A-5 ¶¶ 3 & 5 & Ex. 2 thereto pp. QL08392-93.)

29. Also in October 2005, Qwest mailed to all Post-1990 Occupational Retirees, including Joseph Lensink, a Benefit Enrollment Statement (the “Oct. 2005 Statement”), stating that the amount of life insurance payable on the death of Post-1990 Occupational Retirees would be \$10,000 effective January 1, 2006. (Ex. A-5 ¶¶ 4-5 & Ex. 3 thereto; Ex. A-6 ¶¶ 3-4.)

30. Plaintiffs do not challenge the adequacy or propriety of the SMMs issued in October 2005 with respect to the 2005 Amendment. (*See* SAC.)

31. Plaintiffs do not allege that Qwest attempted to conceal from Plan participants the reduction in life insurance coverage that would take effect on January 1, 2006. To the contrary, plaintiffs state that Qwest “announced” in October 2005 that it had “decided to reduce life insurance coverage to a mere \$10,000 and apply that change to Occupational Retirees.” (Amended Complaint (Doc. No. 10) ¶ 2.)

32. In the fall of 2005, QCII notified Prudential Insurance Company of America (“Prudential”), which had issued a group life insurance policy on the lives of Plan participants (the “Group Policy”), that Qwest intended to amend the Plan to reduce the life insurance benefit for Post-1990 Occupational Retirees to \$10,000 effective January 1, 2006.

By January of 2006, the Group Policy was modified to reflect this amendment. (Ex. A-1 ¶ 10.)

33. Prudential administered the Plan in accordance with the terms of the 2005 Amendment, by providing a life insurance benefit in the reduced amount of \$10,000 to beneficiaries of Post-1990 Occupational Retirees who died on and after January 1, 2006. (Ex. A-1 ¶ 11.)

34. On February 16, 2006, QCII reported in a Form 10-K publicly filed with the Securities and Exchange Commission (“SEC”) that Post-1990 Occupational Retirees “will receive a reduced life insurance benefit starting January 1, 2006.” (Ex. A-1 Ex. 10 thereto, p. QL08767.)

35. In accordance with ERISA Section 104(b)(4), 29 U.S.C. § 1024(b)(4): (a) the 1998 Plan Document has been available for inspection by Plan participants and beneficiaries in QCII’s offices at all times between June 12, 1998 and the present; and (b) the Oct. 2005 Resolutions have been available for inspection by Plan participants and beneficiaries in QCII’s offices at all times between October 14, 2005 and the present. No Plan participant or beneficiary sought to inspect those documents in QCII’s offices at any time prior to November 15, 2006. (Ex. A-1 ¶ 15.)

36. In accordance with ERISA Section 104(b)(4), 29 U.S.C. § 1024(b)(4), Qwest has been prepared to produce to any Plan participant or beneficiary who requested copies of Plan documents: (a) a copy of the 1998 Plan Document at all times between June 12, 1998 and the present; and (b) a copy of the Oct. 2005 Resolutions at all times between October 14, 2005 and the present. Neither plaintiffs nor any other Plan participants or

beneficiaries submitted any written request for copies of any Plan documents prior to November 15, 2006. (Ex. A-1 ¶ 16; Ex. A-2, Ex. 1 thereto, p. 12 (Res. to Inter. 1.)

37. In November 2006 plaintiffs' counsel Curtis Kennedy sent a letter to the Plan Administrator requesting, *inter alia*, all Plan documents pursuant to Section 104(b)(4). In response to Mr. Kennedy's request, in December 2006 Eric Ammidown sent Mr. Kennedy a letter enclosing the 1998 Plan Document, Oct. 2005 Resolutions, and other documents identified in that letter. (Ex. A-1 ¶ 17; Ex. A-2, Ex. 1 thereto p. 6 (Res. to RFAs 15-16.)

38. After stating that the Plan "be and hereby is amended and restated" to reduce the life insurance benefit for Post-1990 Occupational Retirees to \$10,000 effective January 1, 2006, the Oct. 2005 Resolutions authorize a Qwest official to "approve and execute the final form of *such restatement*." (Ex. A-1, Ex. 3 thereto (emphasis added).)

39. When the PDC executed the Oct. 2005 Resolutions, PDC member Erik Ammidown, who typically handled logistical issues relating to restatements or amendments of plan documents, contemplated that the lengthy 1998 Plan Document would be restated in its entirety, and that the new and restated Plan document would incorporate the amended terms set forth in the Oct. 2005 Resolutions. But after the Oct. 2005 Resolutions were executed, Mr. Ammidown decided against creating an entirely new and restated Plan document. (Ex. A-1 ¶ 12.)

40. In lieu of creating an entirely new and restated Plan document, on December 13, 2006, the members of the PDC reviewed, approved, and executed the Dec. 2006 Resolutions, which stated in part that the Plan "*was amended* to incorporate changes to retiree coverage which are effective January 1, 2006," and which restated the terms of the

2005 Amendment rather than the terms of the entire Plan. (*Id.* ¶ 13 & Ex. 5 thereto, p. QL02125; Ex. A-3 ¶ 4; Ex. A-4 ¶ 6.)

41. All three PDC members understood that the purpose and effect of the Dec. 2006 Resolutions was in part to restate the 2005 Amendment that the PDC had approved and enacted by means of the Oct. 2005 Resolutions. For this reason, and because all affected Plan participants had already received SMMs and other notices regarding the 2005 Amendment, Qwest did not send Plan participants or beneficiaries SMMs or other notices following execution of the Dec. 2006 Resolutions. (Ex. A-1 ¶ 14; Ex. A-3 ¶ 4; Ex. A-4 ¶ 6.)

42. Plaintiffs do not assert any claim against Qwest based on its failure to issue SMMs following execution of the Dec. 2006 Resolutions. (*See* SAC.)

43. Not until January 2007 at the earliest did any plaintiff ever read the 1998 Plan Document, the Oct. 2005 Resolutions, or the Dec. 2006 Resolutions. Plaintiff Martha Lensink never read any of these documents until after March 2007, *i.e.*, until after plaintiffs filed this lawsuit. All plaintiffs admit that, although they rely on these documents to support their claims in this case, they did not otherwise “detrimentally rely” on (a) the alleged fact that the 1998 Plan Document’s amendment procedure failed to comply with ERISA Section 402(b)(3), (b) the Oct. 2005 Resolutions, or (c) the alleged ambiguities, conflicts with other documents, and other deficiencies in the Dec. 2006 Resolutions. (Ex. A-2, Ex. 1 thereto, pp. 8-10, 12-15 & 18-19 (Res. to RFAs 27-31 & to Inter. 2-5, 7-9 & 17).)

44. In response to an interrogatory asking plaintiffs to specify the facts supporting any contention that Qwest executed the Oct. 2005 Resolutions in bad faith or in an effort to conceal matters from retirees, the sole alleged fact that plaintiffs identified was

that Teresa Taylor did not attend the October 14, 2005 PDC meeting. (Ex. A-2, Ex. 1 thereto, p. 19 (Res. to Inter. 18).) Ms. Taylor reviewed, approved, and executed the Oct. 2005 Resolutions in mid-October 2005, *i.e.*, shortly after the October 14, 2005 PDC meeting. (Ex. A-4 ¶ 5.)

45. In late 2006, plaintiffs' attorney Curtis Kennedy prepared an article that was distributed to AUSWR members and that stated:

There is Little Chance of Successful Legal Challenge For Persons Retiring After June 1987. * * * [I]n view of numerous court decisions, AUSWR predicts that any federal judge asked to make a decision about this dispute will, applying ERISA federal law, rule there has been an enforceable 'reservation of rights' clause in the SPDs at least since June 1987 to the present, which gives either U S WEST or Qwest the right to takeaway or reduce the basic life insurance benefit.

All seven Participants in this case retired after June 1987. (SAC ¶¶ 4-10; Ex. A-2, Ex. 2 thereto p. 2 & Ex. 1 thereto pp. 11 (Res. to RFA 37) & 22 (Res. to Doc. Req. 2).)

III. ARGUMENT

A. Plaintiffs Are Not Entitled To Summary Judgment on Plaintiffs' First Claim.

Plaintiffs' First Claim alleges that the 2005 and 2006 Amendments are null and void because the 1998 Plan Document does not specify a procedure for amending the Plan that complies with ERISA Section 402(b)(3). Plaintiffs' Motion seeking summary judgment on this claim should be denied for two independent reasons.

1. Plaintiffs' Motion Should Be Denied Because the Plan's Amendment Procedure Fully Complies with the Requirements of Section 402(b)(3) as Interpreted in *Curtiss-Wright*.

As Qwest stated in its recent Motion To Dismiss this and other claims (Doc. No. 79), the U.S. Supreme Court held in *Curtiss-Wright* that an ERISA plan document containing language *identical* in all material respects to the amendment language in the 1998

Plan Document *does* specify a procedure for amending an ERISA plan that complies with Section 402(b)(3). Because plaintiffs cannot establish that the Plan's amendment procedure violates Section 402(b)(3), plaintiffs' Motion seeking summary judgment on their First Claim should be denied.

2. Even If the Plan's Amendment Procedure Were Inadequate, Plaintiffs Are Not Entitled to Relief Because They Have Not Proven Detrimental Reliance by Plaintiffs or Bad Faith or Active Concealment by Qwest.

Plaintiffs allege, not only that the Plan lacks an amendment procedure that satisfies Section 402(b)(3), but that the proper remedy for this alleged deficiency is to declare null and void the 2005 Amendment and all other Plan amendments purporting to reduce retirees' life insurance benefits. (Pl. Br. at 8-9.) But even if an ERISA plan violates Section 402(b)(3), a plan amendment may be invalidated only if plaintiffs prove detrimental reliance by plaintiffs or bad faith or active concealment by the plan sponsor. *See, e.g., Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560 (7th Cir. 1995); *Adams v. Avondale Industries, Inc.*, 905 F.2d 943, 949 (6th Cir. 1990); *Aldridge v. Lily-Tulip, Inc.*, 40 F.3d 1202, 1211-12 (11th Cir. 1994). Plaintiffs' Motion does not even attempt to present evidence of such circumstances, and the undisputed facts set forth above show that such circumstances do not exist. (*See* Undisputed Facts set forth above ("UF") ¶¶ 21-23, 25-26, 35-36 & 43.) For this additional reason, plaintiffs' Motion seeking summary judgment on plaintiffs' First Claim should be denied.

B. Plaintiffs Are Not Entitled To Summary Judgment on Plaintiffs' Third, Fourth and Fifth Claims.

Plaintiffs also seek summary judgment on their Third, Fourth and Fifth Claims. Plaintiffs' Third Claim alleges that the Oct. 2005 Resolutions, which state that the

Life Plan “be and hereby is” amended to reduce the life insurance benefit to \$10,000 for Post-1990 Occupational Retirees effective January 1, 2006, did not amend the Plan, and seeks a declaration so stating. (SAC ¶¶ 89-90.) Plaintiffs’ Fourth Claim alleges that the Dec. 2006 Resolutions likewise did not amend the Plan, and seeks a declaration so stating. (*Id.* ¶¶ 91-93.) Plaintiffs’ Fifth Claim alleges in the alternative that if the Dec. 2006 Resolutions are found to have amended the Plan, that amendment did not become effective until December 13, 2006, and therefore did not reduce life insurance coverage for Post-1990 Occupational Retirees who died between January 1 and December 12, 2006. (*Id.* ¶¶ 94-96.) Plaintiffs’ Motion seeking summary judgment on these claims should be denied for three independent reasons.

1. **Qwest Approved the 2005 Amendment By Means of the Oct. 2005 Resolutions.**

In *Curtiss-Wright*, the Supreme Court stated that whether a plan sponsor effectuated a plan amendment turns on, *inter alia*, whether the persons or committees having authority to amend the plan “actually approved the new plan provision.” *Curtiss-Wright*, 514 U.S. at 85. The Court also equated a company’s “decision to amend” with whether the company “sufficiently manifest[ed] its intention” to amend. *Id.* at 80. The undisputed facts set forth above show that the PDC “sufficiently manifested its intention” to amend the Plan by means of the Oct. 2005 Resolutions. (*See* UF ¶¶ 24, 26-29, 32-33 & 35-37.) Against these undisputed facts, the plaintiffs, who would bear the burden of proof on this issue at trial, have not set forth even the slightest quantum of evidence to support a jury finding that Qwest did not approve the 2005 Amendment by means of the Oct. 2005 Resolutions.

2. **Even If Qwest Failed To Approve the 2005 Amendment by Means of the Oct. 2005 Resolutions, Qwest Subsequently Ratified that Amendment Before Its Effective Date.**

In *Curtiss-Wright*, the Supreme Court pointed out that even if an attempted plan amendment is defective, the plan sponsor can render the amendment effective through ratification. *Curtiss-Wright*, 514 U.S. at 85. The undisputed facts set forth above demonstrate that Qwest ratified the 2005 Amendment in multiple ways prior to its January 1, 2006 effective date. (See UF ¶¶ 22 & 26-36.)

3. **Even If the Oct. 2005 and Dec. 2006 Resolutions Were Defective, Plaintiffs Have Not Proven Detrimental Reliance by Plaintiffs or Bad Faith or Active Concealment by Qwest.**

Finally, even assuming that the Oct. 2005 and Dec. 2006 Resolutions suffered from the infirmities alleged by plaintiffs, plaintiffs are not entitled to the relief they seek—nullification of the 2005 Amendment—unless they prove detrimental reliance by plaintiffs or bad faith or active concealment by Qwest. See, e.g., *Loskill v. Barnett Banks, Inc. Severance Pay Plan*, 289 F.3d 734 (11th Cir. 2002); *Alford v. Kimberly-Clark Tissue Co.*, 14 F. Supp. 2d 1290, 1299 (S.D. Ala. 1998); *Whitfield v. Torch Operating Co.*, 935 F. Supp. 822, 831 (E.D. La. 1996); *Franklin v. First Union Corp.*, 84 F. Supp. 2d 720, 729 (E.D. Va. 2000). Plaintiffs' Motion does not even attempt to present evidence of such circumstances, and the undisputed facts set forth above show that no such circumstances exist. (See UF ¶¶ 19, 21-23, 25-34 & 43.)

For all the reasons set forth above, plaintiffs' Motion seeking summary judgment on plaintiffs' Third, Fourth and Fifth Claims should be denied.

Because the issues raised by plaintiffs' Motion are identical to those raised by Qwest's Motion for Summary Judgment on Plaintiffs' First, Third, Fourth and Fifth Claims

for Relief filed contemporaneously herewith (Doc. No. 90), to avoid submittal of redundant briefs Qwest respectfully incorporates herein the arguments set forth in that motion.

IV. CONCLUSION

For the reasons set forth above, Qwest respectfully requests that plaintiffs' Motion be denied.

DATED: July 14, 2008.

s/ Christopher J. Koenigs

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2008, I electronically filed the foregoing **Qwest's Brief in Opposition to Plaintiffs' Amended Motion for a Summary Judgment** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Curtis L. Kennedy, Esq. at CurtisLKennedy@aol.com

s/Patricia Eckman

Patricia Eckman

LITIGATION\1261408.1

EXHIBIT A – 1
Declaration of Erik P. Ammidown

Exhibit to Qwest' Brief in Opposition to
Plaintiffs' Amended Motion for a
Summary Judgment

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-CV-00644-WDM-KLM

EDWARD J. KERBER, *et al.*,

Plaintiffs,

vs.

QWEST GROUP LIFE INSURANCE PLAN, *et al.*,

Defendants.

DECLARATION OF ERIK P. AMMIDOWN

I, Erik P. Ammidown, declare as follows:

1. I am employed by Qwest Corporation (“QC”) as the Director of Employee Benefits. QC is a subsidiary of Qwest Communications International Inc. (together with its affiliates, “QCII”), one of the defendants in this action. I joined QCII’s predecessor, U S WEST, Inc., in July 1998 as a Health Plan Manager in the benefits department. I have worked in the U S WEST, Inc., and then in the QCII, benefits department at all times since July 1998. During this time, I have supervised the provision of benefits under various benefit plans, including the Qwest Group Life Insurance Plan (the “Life Plan”). I have personal knowledge of the facts set forth below.

2. A resolution that the Executive Committee of QCII’s Board of Directors approved on August 10, 2000 states in pertinent part that “a Plan Design Committee is hereby established and given full power in a non-fiduciary capacity to amend and/or terminate each of the employee benefit plans . . . of the Corporation.”

3. I have been a member of the Qwest Plan Design Committee (“PDC”) between July 8, 2005 and the present, and a member of the Qwest Employee Benefits Committee (“EBC”) between August 3, 2005 and the present. By virtue of my position at QC and my membership on the PDC and the EBC, I have certain responsibilities relating to the Life Plan and the Qwest Health Care Plan (“Health Plan”). Retiree Participants in the Life and Health Plans were either “Occupational” (*i.e.* union) or “Management” (*i.e.*, salaried) employees of QCII or its predecessor companies prior to their retirement. I participated in the decisions regarding the Life Plan and the Health Plan described below.

4. Under the collective bargaining and associated letter agreements (“CBA”) between QCII and the Communications Workers of America (“CWA”), QCII was entitled to implement “caps,” or maximums, effective January 1, 2006 on the amount Qwest would contribute towards the cost of providing Health Plan benefits to retirees who are former occupational employees and who retired after December 31, 1990 (“Post-1990 Occupational Retirees”). Under the CBA, Qwest paid essentially the full cost of Health Plan benefits for Post-1990 Occupational Retirees before January 1, 2006. Because the cost of Health Plan benefits has exceeded the caps since at least 2003, upon implementation of the Health Plan caps, Post-1990 Occupational Retirees would immediately become obligated to contribute on a monthly basis the amount in excess of the caps in order to continue to maintain Health Plan coverage.

5. In the summer of 2005, Qwest sought to accommodate the desire of Post-1990 Occupational Retirees for a three-year postponement, until January 1, 2009, of implementation of the Health Plan caps.

6. On or about August 14, 2005, representatives of QCII and the CWA signed letters regarding the Health Plan and the Life Plan, true and correct copies of which are attached hereto as Exhibits 1 and 2 respectively.

7. At a meeting on October 14, 2005, I reviewed, approved, and executed a document entitled “Plan Design Committee—Minutes and Resolutions October 14, 2005—Group Life Insurance Plan,” a true and correct copy of which is attached hereto as Exhibit 3 (the “Oct. 2005 Resolutions”). I intended by means of the Oct. 2005 Resolutions to amend the Life Plan to reduce the life insurance benefit to \$10,000 for Post-1990 Occupational Retirees effective January 1, 2006 (the “2005 Amendment”).

8. The PDC approved the 2005 Amendment to the Life Plan in order to offset the enormous cost of postponing for three years the obligation of Post-1990 Occupational Retirees to pay amounts in excess of the Health Plan benefit caps. Qwest’s approval of the 2005 Amendment and its three-year postponement of implementation of the Health Plan caps were part of a *quid pro quo*, and Qwest would not have taken one of these actions without taking the other.

9. The savings that Post-1990 Occupational Retirees have enjoyed by virtue of the three-year postponement of implementation of the Health Plan caps have been made possible by the savings Qwest has realized by virtue of the 2005 Amendment reducing the Life Plan benefit for these same retirees. If plaintiffs prevail in this lawsuit, and Qwest accordingly loses the savings provided by the 2005 Amendment, Post-1990 Occupational Retirees will receive an enormous windfall, because they will have received a substantial benefit (postponement of implementation of the Health Plan caps) without incurring the corresponding cost (reduction of the life insurance benefit to \$10,000).

10. In the fall of 2005 QCII notified Prudential Insurance Company of America (“Prudential”), which had issued a group life insurance policy on the lives of participants in the Life Plan (the “Group Policy”), that Qwest had amended the Life Plan to reduce life insurance benefits for Post-1990 Occupational Retirees to \$10,000 effective January 1, 2006. By January of 2006, the Group Policy was modified to reflect this amendment.

11. Effective January 1, 2006, Prudential began administering the Life Plan in accordance with the terms of the 2005 Amendment, by providing life insurance benefits in the reduced amount of \$10,000 to beneficiaries of Post-1990 Occupational Retirees who died on and after January 1, 2006.

12. I am the PDC member who most often handles the logistical issues relating to restatements or amendments of plan documents. When the PDC executed the Oct. 2005 Resolutions, I contemplated that the document entitled “U S West Group Life Insurance Plan As Amended and Restated Effective as of June 12, 1998,” a true and correct copy of which is attached hereto as Exhibit 4 (the “1998 Plan Document”) would be restated in its entirety, and that the new and restated Life Plan document would incorporate the amended terms set forth in the Oct. 2005 Resolutions. But after the Oct. 2005 Resolutions were executed, I decided against creating an entirely new and restated Life Plan document.

13. In lieu of creating such a document, on December 13, 2006, I and the other PDC members reviewed, approved and executed documents entitled “Plan Design Committee—Minutes and Resolutions December 13, 2006—Qwest Group Life Insurance Plan” and “Resolutions of the Qwest Plan Design Committee—Qwest Group Life Insurance Plan—Amendment 2006-1” (jointly, the “Dec. 2006 Resolutions”), a true and correct copy

of which (with attachments) is attached hereto as Exhibit 5. The Dec. 2006 Resolutions stated that the Life Plan “was amended to incorporate changes to retiree coverage which are effective January 1, 2006,” and restated solely the terms of the 2005 Amendment rather than the terms of the entire Life Plan.

14. I understood that the purpose and effect of the Dec. 2006 Resolutions was in part to restate the 2005 Amendment that the PDC had approved and enacted by means of the Oct. 2005 Resolutions. For this reason, and because all affected Plan participants had already received SMMs and other notices regarding the 2005 Amendment, Qwest did not send Life Plan participants or beneficiaries SMMs or other notices following execution of the Dec. 2006 Resolutions.

15. In accordance with ERISA Section 104(b)(4): (a) the 1998 Plan Document has been available for inspection by Plan participants and beneficiaries in QCII’s offices at all times between June 12, 1998 and the present; and (b) the Oct. 2005 Resolutions have been available for inspection by Plan participants and beneficiaries in QCII’s offices at all times between October 14, 2005 and the present. No Plan participant or beneficiary sought to inspect those documents in QCII’s offices at any time prior to November 15, 2006.

16. Qwest has been prepared to produce to any Plan participant or beneficiary who requested copies of documents under ERISA Section 104(b)(4): (a) a copy of the 1998 Plan Document at all times between June 12, 1998 and the present; and (b) a copy of the Oct. 2005 Resolutions at all times between October 14, 2005 and the present. Neither plaintiffs nor any other Plan participants or beneficiaries submitted any written request under ERISA Section 104(b)(4) for copies of these, or any other, Plan documents prior to November 15, 2006.

17. On or shortly after November 15, 2006, I received a letter from Curtis Kennedy, Esq., a true and correct copy of which is attached as Exhibit 6. In response to Mr. Kennedy's request, I sent Mr. Kennedy a letter dated December 18, 2006, a true and correct copy of which is attached as Exhibit 7. I enclosed with my December 18, 2006 letter copies of the 1998 Plan Document and the other documents identified in that letter, including the Oct. 2005 Resolutions and Dec. 2006 Resolutions.

18. Attached hereto as Exhibit 8 is a true and correct copy of a document entitled "Resolutions of the Qwest Communications International Inc. Employee Benefits Committee" adopted March 23, 2004.

19. Attached hereto as Exhibit 9 is a true and correct of an item dated October 1, 2005 posted on the website of the Communications Workers of America entitled "Tough Bargaining Produces Settlement for 25,000 Members at Qwest."

20. Attached hereto as Exhibit 10 are true and correct copies of pages from the Form 10-K that QCII filed with the Securities and Exchange Commission ("SEC") on February 16, 2006.

21. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: July 11, 2008.

s/Erik P. Ammidown

Erik P. Ammidown

EXHIBIT A – 2
Declaration of Christopher J. Koenigs

Exhibit to Qwest' Brief in Opposition to
Plaintiffs' Amended Motion for a
Summary Judgment

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-CV-00644-WDM-KLM

EDWARD J. KERBER, *et al.*,

Plaintiffs,

vs.

QWEST GROUP LIFE INSURANCE PLAN, *et al.*,

Defendants.

DECLARATION OF CHRISTOPHER J. KOENIGS

Christopher J. Koenigs, being of lawful age and duly sworn, deposes and says:

1. I am counsel for the defendants (collectively, "Qwest") in the above-referenced action. I have personal knowledge of the facts set forth below.

2. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs' Responses to Defendants' First Set of Discovery.

3. Attached hereto as Exhibit 2 is a true and correct copy of a document entitled "Legal Activities Extra by Curtis Kennedy, AUSWR Litigation Counsel," which is the document identified as Exhibit 19 at page 11 of Plaintiffs' Responses to Defendants' First Set of Discovery (Exhibit 1 hereto).

4. Attached hereto as Exhibit 3 is a true and correct copy of an e-mail I received from Plaintiffs' attorney Curtis Kennedy on January 10, 2008.

5. Attached hereto as Exhibit 4 is a true and correct copy of *Haran v. Dow Jones & Co.*, 216 F.3d 1072, 2000 WL 777982 (2d Cir. 2000).

6. Attached hereto as Exhibit 5 is a true and correct copy of *Schoonejongen v. Curtiss-Wright*, 1997 WL 34486781 (D.N.J. June 25, 1997).

7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: July 11, 2008.

s/Christopher J. Koenigs
Christopher J. Koenigs

EXHIBIT A – 3
Declaration of Felicity O’Herron

Exhibit to Qwest’ Brief in Opposition to
Plaintiffs’ Amended Motion for a
Summary Judgment

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-CV-00644-WDM-KLM

EDWARD J. KERBER, *et al.*,

Plaintiffs,

vs.

QWEST GROUP LIFE INSURANCE PLAN, *et al.*,

Defendants.

DECLARATION OF FELICITY O'HERRON

I, Felicity O'Herron, declare as follows:

1. I am employed by Qwest Corporation ("QC") as the Vice President, Human Resources. QC is a subsidiary of Qwest Communications International Inc. ("QCII," collectively with its affiliates "Qwest"), one of the defendants in this action. I have personal knowledge of the facts set forth below.

2. I have been a member of the Qwest Plan Design Committee ("PDC") between July 8, 2005 and the present, and a member of the Qwest Employee Benefits Committee ("EBC") between August 3, 2005 and the present. By virtue of my position at QC and my membership on the PDC and the EBC, I have certain responsibilities relating to the Qwest Group Life Insurance Plan (the "Plan").

3. At a meeting on October 14, 2005, I reviewed, approved, and executed a document entitled "Plan Design Committee—Minutes and Resolutions October 14, 2005—Group Life Insurance Plan," a copy of which bears Bates No. QL02122 (the "Oct. 2005

Resolutions”). I intended by means of the Oct. 2005 Resolutions to amend the Plan to reduce the life insurance benefit to \$10,000 for Post-1990 Occupational Retirees effective January 1, 2006 (the “2005 Amendment”).

4. At a meeting on December 13, 2006, I reviewed, approved, and executed a document entitled “Plan Design Committee—Minutes and Resolutions December 13, 2006—Qwest Group Life Insurance Plan,” as well as an attached document entitled “Resolutions of the Qwest Plan Design Committee—Qwest Group Life Insurance Plan Amendment 2006-1,” true and correct copies of which (with attachments) bear Bates Nos. QL02125-QL02138 (together, the “Dec. 2006 Resolutions”). I understood that the purpose and effect of the Dec. 2006 Resolutions was in part to restate the 2005 Amendment that the PDC had approved and enacted by means of the Oct. 2005 Resolutions.

5. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: July 2, 2008.

s/Felicity O’Herron
Felicity O’Herron

EXHIBIT A – 4
Declaration of Teresa A. Taylor

Exhibit to Qwest' Brief in Opposition to
Plaintiffs' Amended Motion for a
Summary Judgment

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-CV-00644-WDM-KLM

EDWARD J. KERBER, *et al.*,

Plaintiffs,

vs.

QWEST GROUP LIFE INSURANCE PLAN, *et al.*,

Defendants.

DECLARATION OF TERESA A. TAYLOR

I, Teresa A. Taylor, declare as follows:

1. I am Executive Vice President, Chief Administrative Officer, Chief Human Resources Officer for Qwest Corporation ("QC"). QC is a subsidiary of Qwest Communications International Inc. (collectively with its affiliates and predecessors, "Qwest"), one of the defendants in this action. I have personal knowledge of the facts set forth below.

2. I have been a member of the Qwest Plan Design Committee ("PDC") at all times between December 15, 2004 and the present. By virtue of my position at Qwest and my membership on the PDC, I have certain responsibilities relating to the Qwest Group Life Insurance Plan (the "Plan").

3. Attached hereto as Exhibit 1 is a true and correct copy of a letter dated October 14, 2005 from me to Occupational Post-1990 Retirees regarding Retiree Health & Basic Life Insurance Benefit Changes. This letter bears Bates No. QL07405.

4. Attached hereto as Exhibit 2 is a true and correct copy of a letter I sent to Mimi Hull, President of the Association of U S WEST Retirees, with a copy to the Minnesota Public Utilities Commission, on or about October 20, 2005. This letter bears Bates Nos. QL08193-QL08194.

5. In approximately mid-October 2005, I reviewed, approved, and executed a document entitled "Plan Design Committee—Minutes and Resolutions October 14, 2005—Group Life Insurance Plan," a true and correct copy of which bears Bates No. QL02122 (the "Oct. 2005 Resolutions"). I intended by means of the Oct. 2005 Resolutions to amend the Plan to reduce the life insurance benefit to \$10,000 for Post-1990 Occupational Retirees effective January 1, 2006 (the "2005 Amendment").

6. At a meeting on December 13, 2006, I reviewed, approved, and executed a document entitled "Plan Design Committee—Minutes and Resolutions December 13, 2006—Qwest Group Life Insurance Plan," as well as an attached document entitled "Resolutions of the Qwest Plan Design Committee—Qwest Group Life Insurance Plan Amendment 2006-1," true and correct copies of which (with attachments) bear Bates Nos. QL02125-QL02138 (together, the "Dec. 2006 Resolutions"). I understood that the purpose and effect of the Dec. 2006 Resolutions was in part to restate the 2005 Amendment that the PDC had approved and enacted by means of the Oct. 2005 Resolutions.

7. At a meeting on September 14, 2006, I reviewed, approved, and executed a document entitled "Plan Design Committee—Minutes and Resolutions September 14, 2006—Qwest Group Life Insurance Plan," a copy of which bears Bates Nos. QL02123-QL02124 (the "Sept. 2006 Resolutions"). I intended by means of the Sept. 2006 Resolutions to amend the Plan to reduce the life insurance benefit to \$10,000 for all eligible Pre-1991

Retirees, Post-1990 Management Retirees, and ERO-1992 Retirees effective January 1, 2007 (the "2006 Amendment").

8. On June 7, 2007, I reviewed, approved, and executed a document entitled "Resolutions of the Qwest Plan Design Committee—Qwest Group Life Insurance Plan Regarding Amendment 2007-1," a copy of which bears Bates Nos. QL06596-QL06598 (the "June 2007 Resolutions"). I understood that the purpose and effect of the June 2007 Resolutions was in part to restate the 2006 Amendment that the PDC had approved and enacted by means of the Sept. 2006 Resolutions.

9. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: July 2, 2008.

s/Teresa A. Taylor
Teresa A. Taylor

EXHIBIT A – 5
Declaration of Wendy Haan

Exhibit to Qwest' Brief in Opposition to
Plaintiffs' Amended Motion for a
Summary Judgment

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-CV-00644-WDM-KLM

EDWARD J. KERBER, *et al.*,

Plaintiffs,

vs.

QWEST GROUP LIFE INSURANCE PLAN, *et al.*,

Defendants.

DECLARATION OF WENDY HAAN

I, Wendy Haan, declare as follows:

1. I am a Vice President of Marketing for IHAC, Inc. d/b/a Hope Health ("Hope Health"). I have personal knowledge of the facts set forth below.

2. Attached hereto as Exhibit 1 is a true and correct copy of a letter dated October 14, 2005, addressed to Post-1990 Occupational Retirees regarding "Retiree Health & Basic Life Insurance Benefit Changes" (the "Letter"). The Letter bears the Bates-number QL07405. On October 14, 2005, Hope Health mailed a copy of the Letter to certain retirees (the "Post-1990 Occupational Retirees") of Qwest Communications International Inc., its predecessors and/or its affiliates (collectively "Qwest"). The Post-1990 Occupational Retirees are former occupational (or "union") employees of Qwest who retired on or after January 1, 1991. A few days prior to October 14, 2005, Qwest's outside contractor CitiStreet, L.L.C. ("CitiStreet") had provided Hope Health with a file listing the names and addresses of the Post-1990 Occupational Retirees. Hope Health then mailed a copy of the

Letter to all the Post-1990 Occupational Retirees identified on this file. This was a special mailing (as opposed to an annual mailing) that Hope Health made at Qwest's request.

3. Attached hereto as Exhibit 2 is a true and correct copy of a booklet entitled "Your 2006 Occupational Benefit Program Guide" (the "Oct. 2005 Occupational Guide/SMM"). The Oct. 2005 Guide/SMM bears Bates-numbers QL08386 through QL08437. The Oct. 2005 Guide/SMM is an example of the type of Benefit Program Guide ("Guide/SMM") that Qwest annually sends to all of its eligible retirees.

4. Attached hereto as Exhibit 3 is a true and correct copy of a Benefit Enrollment Statement dated October 13, 2005 addressed to Joseph Lensink (the "2005 Lensink Statement"). The 2005 Lensink Statement bears Bates-numbers QL08515 through QL08517. The 2005 Lensink Statement is an example of the type of individualized Benefit Enrollment Statement that Qwest annually sends to all of its retirees who are eligible for certain benefits.

5. In mid-October of 2005, CitiStreet provided Hope Health with a collection of individualized Benefit Enrollment Statements for Qwest retirees. CitiStreet included the retirees' names and addresses on the first pages of these Benefit Enrollment Statements, and organized them into groups. Hope Health then: (a) placed each of these Benefit Enrollment Statements into an envelope that still showed the retiree's name and address, (b) placed a copy of the appropriate Guide/SMM into the same envelope, and for each of the Post-1990 Occupational Retirees the appropriate Guide/SMM was the attached Oct. 2005 Occupational Guide/SMM, and (c) on October 24 and 25, 2005, placed these envelopes in the regular United States mail.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: July 9, 2008.

s/Wendy Haan
Wendy Haan

EXHIBIT A – 6
Declaration of Christina Redmond

Exhibit to Qwest' Brief in Opposition to
Plaintiffs' Amended Motion for a
Summary Judgment

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-CV-00644-WDM-CBS

EDWARD J. KERBER, *et al.*,

Plaintiffs,

vs.

QWEST GROUP LIFE INSURANCE PLAN, *et al.*,

Defendants.

DECLARATION OF CHRISTINA REDMOND

I, Christina Redmond, declare as follows:

1. I am a Vice President of Customer Relationships and Operations for CitiStreet, L.L.C. CitiStreet, L.L.C. was recently purchased by ING Direct, Inc., but I will refer to the company as "CitiStreet" in this declaration. I have worked for CitiStreet since 2004.

2. In this declaration, I will refer to Qwest Communications International Inc. and any one or more its affiliates and predecessors as "Qwest." Since 1998, CitiStreet and its affiliate State Street have provided benefit plan administration services to Qwest. Among many other things, based on Qwest's direction, CitiStreet has provided information to a third-party company called IHAC, Inc. d/b/a Hope Health ("Hope Health") so that Hope Health could send mailings to Qwest retirees.

3. Attached hereto as Exhibit 1 is a true and correct copy of a Benefit Enrollment Statement dated October 13, 2005 addressed to Joseph Lensink (the "2005 Lensink Statement"). The 2005 Lensink Statement bears Bates-numbers QL08515 through

QL08517. I understand the participant's address and benefit information was redacted to preserve confidentiality. The 2005 Lensink Statement is an example of the type of individualized Benefit Enrollment Statement that Qwest annually sends to all of its retirees who are eligible for certain benefits.

4. Based on my own knowledge of the process and my review of CitiStreet's records, I know the information set forth in this paragraph and the following paragraph. In mid-October of 2005, based on Qwest's direction, CitiStreet forwarded a collection of individualized Benefit Enrollment Statements to Hope Health so that Hope Health could send them to Qwest retirees. CitiStreet included the names and addresses of those retirees on the first page of these Benefit Enrollment Statements, and organized the Benefit Enrollment Statements into groups. One group contained the Benefit Enrollment Statements to send to the former Qwest's occupational (or "union") employees who retired on or after January 1, 1991 (the "Post-1990 Occupational Retirees"). One of the Benefit Enrollment Statements in that group was addressed to Mr. Joseph Lensink. This information in this paragraph is consistent with the fact that CitiStreet still has in its records a copy of the attached 2005 Lensink Benefit Statement.

5. In addition, on October 11, 2005, CitiStreet forwarded to Hope Health a file containing the names and addresses of the Post-1990 Occupational Retirees, the receipt of which was confirmed by a representative from Hope Health. Mr. Joseph Lensink was a Post-1990 Occupational Retiree at that time. This file was sent to Hope Health in order to allow Hope Health to send a special mailing (as opposed to an annual mailing) to the Post-1990 Occupational Retirees.

6. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: July 9, 2008.

s/Christina Redmond
Christina Redmond