

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. **07-cv-00644-WDM-CBS**

EDWARD J. KERBER,
NELSON B. PHELPS,
JOANNE WEST,
NANCY A. MEISTER,
THOMAS J. INGEMANN, JR.,
MARTHA A. LENSINK,
SAMUEL G. STRIZICH,
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.,
PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendants.

**PLAINTIFFS' RESPONSE IN OPPOSITION To [Docket No. 16]
QWEST DEFENDANTS' June 20, 2007 MOTION TO DISMISS**

Named Plaintiffs, through their counsel, respectfully submit their brief in opposition to Qwest Defendants' Fed. R. Civ. P. Rule 12(b)(6) Motion to Dismiss filed on June 20, 2007. For all the reasons stated herein, Qwest Defendants' motion should be denied, as Plaintiffs' claims should not be dismissed as a matter of law. Indeed, the dispositive legal issue to be addressed runs against Qwest Defendants, and this Court, as a matter of judicial economy, can *sua sponte* enter a partial summary judgment in favor of Plaintiffs.

I. SUMMARY STATEMENT of FACTS and CLAIMS.¹

This case involves a challenge brought pursuant to the Employee Retirement Income Security Act (“ERISA”) contesting decisions made by Qwest Communications International, Inc. (“Qwest”) to reduce “Basic Life Insurance Coverage” for a protected group of Plan participants classified as “Eligible Retirees.” The Plaintiffs include five participants (Kerber, Phelps, Meister, West and Ingemann) in the Qwest Group Life Insurance Plan (“Plan”) and two persons (Lensink and Strizich) who are beneficiaries of deceased Eligible Retirees.² Collectively, Plaintiffs assert in the Amended Complaint three claims for relief based upon ERISA. Plaintiffs have moved for class certification, seeking to benefit a proposed class of at least 48,000 Eligible Retirees scattered all over the United States. (Doc. # 11 and #12).

The dispute concerns Basic Life Insurance Coverage which has long been a stable feature of retirement from Qwest and predecessors-in-interest (U S WEST, Mountain Bell, Northwestern Bell, Pacific Northwest Bell and AT&T) (Doc. # 10, Amended Complaint, ¶¶ 22, 34). The Basic Life Insurance Coverage benefit is payable no matter what the underlying cause of the death of the Eligible Retiree. (*Id.* ¶ 35). For decades, this benefit has been the monetary equivalent of the Eligible Retiree’s last annual salary before his or her retirement date. Starting at age 66 years and one month, the benefit is reduced by 10% each year until at age 70 years when the benefit is decreased to the equivalent of one half the person’s former last annual salary. (*Id.*).

In September 1997, U S WEST sent an official notice to all retirees to inform them,

¹ This is simply a summary, and Plaintiffs incorporate all of the allegations of the Amended Complaint (Doc. # 10) which allegations Defendants accept as true for purposes of their Motion to Dismiss. (Doc. # 16, p. 4).

² While Plaintiff Samuel G. Strizich is a beneficiary of Sharon Strizich, a deceased former U S WEST management worker, Mr. Strizich is a retired former U S WEST Executive Director and, he too, is a Plan participant.

among other things, the company was changing the rules concerning Basic Life Insurance Coverage for retirees. (*Id.* ¶ 56). Vice President Law and Corporate Human Resources Antonia Ozeroff reported:

We are also raising the minimum retiree basic life insurance benefit to \$20,000 for the beneficiaries of retirees dying on or after December 31, 1996. This represents an increase for more than 80% of our current retirees. If you retired after December 31, 1995, your current minimum retiree basic life insurance benefit will remain unchanged.

(Defendants' Ex. 18, Doc. # 16-23, K00416).

Accordingly, in June 1998, Plan sponsor U S WEST created an Amended and Restated Group Life Insurance Plan document (the "1998 Governing Plan Document"). (Amended Complaint ¶ 58). The 1998 Governing Plan Document states:

On the first day of the month coinciding with or next following the date upon which an Eligible Retiree attains age 66, the amount of Basic Life Coverage in effect at retirement shall be reduced annually by 10 percent until the last day of the month in which an Eligible Retiree attains age 70, at which time, such Eligible Retiree's Basic Life Coverage shall remain at 50 percent of the Basic Life Coverage amount in effect prior to his 66th birthday. Notwithstanding the foregoing, **for certain Eligible Retirees, such Basic Life Coverage shall not be reduced below certain minimum amounts set forth in Appendix 7**

(Defendants' Ex. 19, Doc. # 16-24, QL00014 [**emphasis added**]) Appendix 7, found on the last page of the 1998 Governing Plan Document, contains the following rules:

Minimum and Maximum Benefits for Certain Eligible Retirees

Minimum and maximum Benefit coverage limitations shall apply to certain Eligible Retirees in accordance with the following **rules**:

1.1 **Minimum Benefit.**

(a) 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.

(b) The Basic Life Coverage amount for an Eligible Retiree

who retires on or after January 1, 1996 **shall not be reduced below** \$30,000.³

1.2 Maximum Benefit. The maximum Basic Life Coverage amount for an Eligible Retiree who retires on or after January 1, 1996 shall be \$100,000 or, if greater, the Basic Life Coverage in effect on December 31, 1995 for any such individual covered as an Eligible Employee on that date.

(Defendants' Ex. 19, Doc. # 16-24, QL00037 [**emphasis added**]).

Those rules continued in effect after Qwest merged with U S WEST and Qwest became Plan sponsor. Despite the very clear and unambiguous rules, Qwest leadership decided to *reduce* basic life insurance coverage to a mere \$10,000 and apply that change to Occupational Retirees. (Amended Complaint ¶ 2). This change was announced by Qwest in October 2005, as one "made with a great deal of thought and consideration." (*Id.*). However, no Plan amendment was adopted until more than a year later, on December 13, 2006. (*Id.* ¶¶ 2, 82, 83). The December 13, 2006 Plan Amendment 2006-1 states:

Effective January 1, 2006, with respect to Occupational Employees upon their retirement, the Basic Life Coverage is a flat \$10,000 Benefit. **Effective January 1, 2006, with respect to Post-1990 Occupational Retirees, the Basic Life Coverage is a flat \$10,000 Benefit.** To the extent a Post-1990 Occupational Retiree has elected and maintained participation in Supplemental Life Coverage, the amount of such Benefit shall not be impacted due to this change in Basic Life Coverage.

(Defendants' Ex. 26, Doc. # 16-31 QL02127 [**emphasis added**]). The December 13, 2006 adopted Plan Amendment 2006-1 was illegally applied to benefits paid to beneficiaries of deceased Post-1990 Occupational Retirees *retroactive* to January 1, 2006. (Amended Complaint ¶ 84). Applying the December 13, 2006 Plan Amendment 2006-1 retroactive to reduce benefits for deaths occurring during the period January 1, 2006 through December 12, 2006 violated the Plan's rule that "no amendment shall reduce the benefits of any Participant with

³ A straightforward reading of the rules can only lead any reasonable person to understand the company is prohibited from reducing Basic Life Insurance Coverage below those stated levels.

respect to a loss incurred prior to the date such amendment is adopted.” (*Id.* ¶¶ 80-81; Defendants’ Ex. 19, Doc. # 16-24, “10.1 Amendment”, QL00028).

To date, no other Plan amendment has been **adopted**. (Amended Complaint ¶ 89). Nevertheless, starting in January 2007, Plan administrators and fiduciaries paid out only \$10,000 in Basic Life Insurance benefits upon the deaths of all Occupational Retirees (both Post-1990 and Pre-1991) and Management Retirees (both Post-1990 and Pre-1991). (*Id.* ¶ 90).

Before this litigation was commenced, there was a massive outcry in which Qwest leadership (officers and members of the Board of Directors) received countless written impassioned protestations from retirees. (*Id.* ¶ 5). Qwest leadership did not respond to any of the thousands of letters and email messages and complaints received from the retirees and there is no effective internal claims process to address the Plaintiffs’ claims. (*Id.* ¶¶ 30-32). Defendants have refused and continue to refuse to do the right thing and comply with the rules which specifically forbid reductions below the thresholds established for Eligible Retirees. Hundreds of persons, perhaps a thousand beneficiaries and estates, have already been cheated out of the proper amount of Basic Life Insurance benefits payable at the deaths of Eligible Retirees. (*Id.* ¶ 87).

Therefore, Plaintiffs for themselves and a proposed class of all other Eligible Retirees-Plan Participants and their beneficiaries seek a panoply of declaratory, preliminary injunctive, permanent injunctive and other equitable relief. (*Id.* ¶ 6, Prayer for Relief ¶¶ A-P).

Named Plaintiffs incorporate their three claims for relief, as more fully stated in their Amended Complaint. **To summarize, the first claim** is based upon breach of fiduciary duty and equitable estoppel. Defendants’ actions to reduce Plaintiffs’ and Eligible Retirees’ Basic Life Insurance Coverage is completely contrary to the terms of the rules of the 1998 Governing Plan Document and contrary to past written representations made to Plaintiffs and the proposed

class of retirees. The established rules and past written representations were made with the intent that Plaintiffs and the class of retirees 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. Plaintiffs and the class of retirees have been systematically tricked into believing their minimum life insurance coverage was protected. Accordingly, Plaintiffs and the class of retirees reasonably and detrimentally relied upon past written representations and did not obtain the equivalent in life insurance coverage from other sources. A specific exception was made to the Plan sponsor's rights under the reservation of rights clause restraining its ability to reduce Basic Life Insurance Coverage for all Eligible Retirees. Qwest must live with that restraint. Since Qwest Defendants acted in contravention of the rules, Plaintiffs seek an order declaring Defendants 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).

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 rules prohibiting such reductions. Plaintiffs request this Court apply principles of equitable estoppel, under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and issue an order nullifying any amendment reducing coverage in derogation of the rules protecting all Eligible Retirees. In addition, Plaintiffs request this Court 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. Finally, to the extent Plan administrators have already paid out Basic Life Insurance benefits to beneficiaries of Eligible Retirees entitled to the minimum coverage levels, this Court should declare Plan administrators breached their fiduciary duties to

act in accordance with governing Plan terms, as required by ERISA § 404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D).

To summarize, for their second claim, Plaintiffs seek equitable relief reforming the Plan and striking any amendment which purports to reduce coverage below the promised minimum coverage limits. Plaintiffs seek an order striking or reforming any amendment, including Plan Amendment 2006-1, retroactively applied before its adoption date. 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.

Plaintiffs contend 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 commitments for minimum coverage to Eligible Retirees. Pursuant to ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), Plaintiffs seek equitable and remedial relief for the benefit of the Plan as a whole, including an order requiring Plan sponsor Qwest to correct the current faulty language in the current Summary Plan Description and Summary of Material Modifications and issue corrected documents with language disclosing that the Plan contains rules providing protected minimum coverage, not subject to further reduction. In the alternative, Plaintiffs seek the same appropriate equitable relief – injunctive relief - pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3).

To summarize, for their third claim, Plaintiffs, pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), bring this action and request this Court to clarify their rights to future Plan benefits. Plaintiffs have sufficiently alleged that Qwest Defendants violated the terms of the Plan, namely: a) violating the terms of the rules, a private anti-amendment provision, prohibiting a reduction below minimum Basic Life Insurance Coverage

for Eligible Retirees; and b) violating the terms of Article 10.1 of the Plan prohibiting any reduction of benefits before an amendment is adopted. Therefore, pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), Plaintiffs seek a declaration that: 1) 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; 2) those Plan participants who retired before January 1, 1996 are entitled to have paid out upon their death, at the very least, \$20,000 in Plan benefits; 3) those Plan participants who retired on or after January 1, 1996 are entitled to have paid out upon their death, at the very least, \$30,000 in Plan benefits; and 4) beneficiaries of deceased Plan participants who were paid a flat \$10,000 for deaths occurring before Amendment 2006-1, or any other amendment was actually adopted, are entitled to payment of additional benefits, plus pre-judgment and post-judgment interest.

Qwest Defendants move to dismiss only a portion of the Amended Complaint. Qwest Defendants contend Plaintiffs' claims that Defendants are barred by the rules set forth in the 1998 Governing Plan Documents from reducing 48,000 Eligible Retirees' Basic Life Insurance Coverage to \$10,000 fails to state a claim upon which relief can be granted. (Doc. # 16, p. 12).

II. SUMMARY OF ARGUMENT.

The first and most important issue presented in this litigation is whether or not Plan sponsor Qwest is bound by the rules that Basic Life Insurance Coverage "*shall not be reduced below*" the stated coverage amounts set forth in the 1998 Governing Plan Document. Plaintiffs contend those rules circumscribe Qwest's discretionary rights under the 'reservation of rights' provision in the Plan, meaning it was illegal for Qwest to skirt the rules and implement Plan Amendment 2006-1 which was adopted on December 13, 2006. This conclusion, which is a legal question to be decided by this Court based on its review of authenticated Plan documents,

is dispositive of this case in favor of Plaintiffs and the proposed class of 48,000 Eligible Retirees (and their beneficiaries). Accordingly, Qwest Defendants' motion to dismiss must be denied. Furthermore, since there is no factual dispute on this legal issue, this Court may *sua sponte* grant a partial summary judgment in favor of Plaintiffs.

III. ARGUMENT.

A. When Ruling Upon Qwest Defendants' Motion to Dismiss, this Court May Consider the Plan Documents and Written Notices That Are Referenced in the Amended Complaint. There is No Dispute About the Authenticity of Those Documents.

No complaint should be dismissed for failure to state a claim unless it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claims which would entitle the plaintiffs to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). When ruling on a motion filed pursuant to Fed. R. Civ. P. 12(b)(6), this Court "must accept as true all well pleaded facts, and construe all reasonable allegations in the light most favorable to the plaintiff." *United States v. Colorado Supreme Court*, 87 F.3d 1161, 1164 (10th Cir. 1996). "The court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." *Sutton v. Utah State Sch. for the Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999) (quotation omitted).

The Amended Complaint is based on the terms of the Plan and the rules forbidding reduction of Basic Life Insurance Coverage below the minimum stated amounts for Eligible Retirees. Accordingly, both sides agree that the Plan document, the SPDs, and the other papers referenced in the Amended Complaint are central to the three claims forming the basis for the Amended Complaint. There is *no* dispute concerning the authenticity of any of the documents and, under the circumstances, it is appropriate for this Court to consider those documents when

ruling upon Qwest Defendants' motion to dismiss. *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384-85 (10th Cir. 1997).⁴

B. Plaintiffs' Claim that Qwest Is Barred From Reducing Basic Life Insurance Benefits for Eligible Retirees Most Certainly States a Claim Upon Which Relief Can Be Granted, Because the Plan's Rules Unambiguously Forbid Qwest From Reducing Such Benefits Below the Stated Minimums.

The Plan's rules couldn't be stated any clearer. No means *no*. Shall not be reduced below, means *shall not be reduced below*. The rules circumscribe the right of the Plan sponsor to reduce Basic life Insurance Coverage below the stated thresholds for 48,000 Eligible Retirees.

Qwest Defendants make the following argument about how its rights are circumscribed:

Here as in *Chiles*, the 1998 Plan Document specifically contemplates a situation in which Qwest's discretion to change the Plan is circumscribed: It states that "no amendment shall reduce the benefits of any Participant with respect to a loss incurred prior to the date such amendment is adopted." (Ex. 19 p. QL00028). And here as in *Chiles*, "the interpretive maxim of *expressio unius est exclusio alterius* — the expression of one thing is the exclusion of another—properly applies to this case. By explicitly listing a qualification to [Qwest's] ability to change the . . . Plan, it is proper to infer that the right to make other changes to . . . participants' benefits was reserved." 95 F.3d at 1512.

(Doc. # 16, p. 16). In making that argument, Qwest Defendants try to ignore the 'elephant in the room.' There is not just *one* situation where Qwest Defendants' discretion to change the Plan is circumscribed. Clearly, there are *two* situations. Accordingly, Qwest Defendants' argument would be correct if re-written as follows:

Here, as in *Chiles*, the 1998 Plan Document specifically contemplates **two situations** in which Qwest's discretion to change the Plan is circumscribed: **Number One**, it states that "no amendment shall reduce the benefits of any Participant with respect to a loss incurred prior to the date such amendment is adopted." (Ex. 19 p. QL00028). **Number Two, it clearly states the rules that: "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**

⁴ The parties, through their counsel, stipulated to the authenticity of 27 documents referenced in the Amended Complaint, and that stipulation is filed herewith as Exhibit A.

\$20,000” and “The Basic Life Coverage amount for an Eligible Retiree who retires on or after January 1, 1996 shall not be reduced below \$30,000.” (Ex. 19 p. QL00037)” And here as in Chiles, “the interpretive maxim of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—properly applies to this case. By explicitly listing **two qualifications** to [Qwest’s] ability to **reduce benefits or** change the . . . Plan, it is proper to infer that the right to make other changes to . . . participants’ benefits was reserved.” 95 F.3d at 1512.”

Plaintiffs contend that this case involves one overarching question – whether the “shall not be reduced below” precise language found in the 1998 Governing Plan Document’s rules circumscribe Plan sponsor Qwest’s rights under the reservation of rights clause to reduce the life insurance coverage below the minimum thresholds.⁵ The answer to this question is yes.

In interpreting the Plan’s terms, this Court must “examine the plan documents as a whole and, if unambiguous . . . construe them as a matter of law.” *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1511 (10th Cir.1996). This Court cannot look only at the ‘reservation of rights’ provision without also considering the rules forbidding reductions of coverage below stated minimum amounts established for the protected group of Eligible Retirees. This Court should look at all of the Plan’s provisions from the viewpoint of the objectively reasonable employee. See *McGee v. Equicor-Equitable HCA Corp.*, 953 F.2d 1192, 1202 (10th Cir. 1992) (court gives words their common and ordinary meaning, as a reasonable person in the position of the Plan participant would have understood them); *Keszenheimer v. Reliance Life Ins. Co.*, 402 F.3d 504, 506 (5th Cir. 2005) (the pertinent language is read “in the ordinary and popular sense as would a person of ordinary intelligence and experience, such that the language is given its generally accepted meaning”); *Richardson v. Pension Plan of Bethlehem Steel*

⁵ This common legal issue, and others, makes this case most suitable for class certification. (See, Plaintiffs’ memorandum in support of their motion for class certification, Doc. # 12 ¶ 6).

Corp., 112 F.3d 982, 985 (9th Cir. 1997) (“terms in an ERISA Plan should be interpreted in an ordinary and popular sense as would a [person] of average intelligence and experience”).

Applying this analysis, this Court must conclude that the rules set forth on Appendix 7 of the 1998 Governing Plan Document circumscribe or deny the right of the Plan sponsor to reduce Basic Life Insurance Coverage for the protected group of 48,000 Eligible Retirees.

As set forth below, Plaintiffs’ claim that Qwest is barred from reducing Eligible Retirees’ Basic Life Insurance Coverage below the stated minimums succeeds under Tenth Circuit law, because the 1998 Governing Plan Document can be held to state in “clear and express language” that an exception has been made for Eligible Retirees, as they are entitled to a minimum level of Basic Life Insurance benefits.⁶

1. Plaintiffs’ Claims Succeed Under Tenth Circuit Law.

The Tenth Circuit’s decision in *Chiles* is fully supportive of Plaintiffs’ claim that Qwest is barred from *reducing* basic life insurance coverage for Eligible Retirees below the stated minimums. The 1998 Governing Plan Document’s explicit promise to a specific group of Plan participants (i.e., all “Eligible Retirees”) to not reduce coverage below the stated minimums carves out an exception of the Plan sponsor’s rights under the reservation of rights provision.

One cannot simply read the ‘reservation of rights’ provision in isolation, as Qwest Defendants do and, otherwise, belittle the significance of the rules for the protected group of Eligible Retirees. The rules are material terms of the Plan. Indeed, any provision of a plan subject to ERISA that establishes a benefit is a material term of the plan. *Curcio v. John Hancock Mut. Life Ins. Co.*, 33 F.3d. 226, 237 (3rd Cir. 1994); *Baker v. Lukens Steel Co.*, 793

⁶ Plan sponsor U S WEST described the Basic Life Insurance Coverage for Eligible Retirees as an entitlement, stating “*You are entitled to the benefits paid under the Group Life Insurance Program.*” (Defendants’ Ex. 14, Doc. # 16-19, K00419 [*emphasis added*]).

F.2d 509, 512 (3rd Cir. 1986). “In interpreting the terms of an ERISA plan we examine the plan documents as a whole. . . “ *Chiles*, 95 F.3d at 1511. Hence, the ‘**reservation of rights**’ **provision “must be read in tandem with the promise of” not reducing Basic Life Insurance Coverage for participants who are Eligible Retirees.** *Id.* at 1512.

It is axiomatic that when a court is “examining the language of the plan document, each provision should be read consistently with the others and the terms must be construed to render none of them nugatory.” *Conley v. Pitney Bowes*, 34 F.3d 714, 717 (8th Cir. 1994) (quoting *Jacobs v. Pickands Mather & Co.*, 933 F.2d 652, 657 (8th Cir. 1991); *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1293 (6th Cir. 1991). The way Qwest Defendants see it, the rules stated on Appendix 7 of the 1998 Governing Plan Document are superfluous. Not true.

In *Chiles*, the Tenth Circuit noted the welfare plan specifically circumscribed one situation restraining the plan sponsor’s discretionary right to make changes pursuant to the reservation of rights provision. That one situation was ‘termination’ of the plan vis-a-vis the rights of persons receiving long-term disability. The Tenth Circuit explained:

[T]he LTD Plan’s reservation of rights clause contains a proviso. Described in the Plan’s SPD, it states: “If the group Long-Term Disability Plan **terminates**, and if on the date of such termination you are totally disabled, your Long-Term Disability benefits and your claim for such benefits will continue as long as you remain totally disabled as defined by the Plan.” Here, the LTD Plan specifically **contemplates a situation in which Control Data’s discretion to change the Plan is circumscribed.** We find that the interpretive maxim of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—properly applies to this case. (citing *Smart v. Gillette Co. Long-Term Disability Plan*, 70 F.3d 173, 179 (1st Cir.1995). By explicitly listing a qualification to Control Data’s ability to change the LTD Plan, it is proper to infer that the right to make other changes to disabled participants’ benefits was reserved.

Id. at 1512 (**emphasis added**). In other words, while the plan sponsor in *Chiles* reserved the right to make virtually all other changes to plan benefits, including charging retirees monthly

premiums, it deliberately chose to remove that right for persons on disability benefits in the event of a plan termination.

In this case, the one specific change that Qwest, as Plan sponsor, cannot do is to *reduce* coverage below the stated minimums for Eligible Retirees, a protected group of Plan participants. While, assuming *arguendo*, the Plan sponsor may have retained the right to make other changes to Plan benefits, such as reduce coverage for other groups of Plan participants and even entirely terminate the Plan, the Plan sponsor certainly cannot reduce coverage to the detriment of Eligible Retirees, so long as the Plan continues in effect.

The Tenth Circuit stated that its holding in *Chiles* made “particular sense in that case, where plaintiffs’ reading of the Plan would render the termination exception superfluous.” *Id.* at 1513 (emphasis added). Here too, Qwest Defendants’ reading of the 1998 Governing Plan Document would render the reduction exception superfluous. The Tenth Circuit’s analysis compels a holding here that the 1998 Governing Plan Document is not ambiguous with respect to Qwest’s inability to reduce Eligible Retiree’s Basic Life Insurance Coverage below the stated minimums while the Plan is in operation. Under Qwest Defendants’ erstwhile interpretation, Qwest can do exactly what the Plan’s rules prohibit it from doing. That makes no sense.

2. Plaintiffs’ Claims Succeed Under the Law of Every Other Circuit.

After misapplying the *Chiles* decision, Qwest Defendants devote a significant portion of their motion-memorandum brief to making their argument that “a general reservation of rights provision is itself sufficient to allow an employer to reduce retiree benefits even in the face of clear language promising specified ‘lifetime’ benefits.” (Doc. # 16, pp. 17-23). Defendants’ argument is inapposite. Rather, this case specifically concerns the effect of very precise language serving to deny the Plan sponsor’s right to *reduce* coverage affecting Eligible Retirees.

Despite all the case law and rhetoric found in Qwest Defendants' brief, it is missing one fundamental legal truism accepted by all federal appellate courts concerning welfare benefits. Welfare benefits may be changed or eliminated by a plan sponsor unless it imposed a contractual limitation on itself in its welfare benefit plan. *See International Union, U.A.W. v. Skinner Engine Co.*, 188 F.3d 130, 138 (3rd Cir. 1999) (citing *Inter-Modal Rail Employees Ass'n v. Atchison, Topeka & Santa Fe Ry. Co.*, 520 U.S. 510, 515, 117 S.Ct. 1513, 1516 (1997) (noting that employer may "contractually cede its freedom"). Bottom line: The 1998 Governing Plan Document's reduction rules suffice for the "clear and express language" necessary to vest Plaintiffs and all Eligible Retirees an extra-ERISA commitment and Qwest chose to disobey the clearly stated rules.

Therefore, Plaintiffs' claim that Plan sponsor Qwest is barred by virtue of the 1998 Governing Plan Document's rules from reducing Eligible Retirees' Basic Life Insurance benefits to \$10,000 states a claim upon which relief can be granted.

C. Plaintiffs' Claim that Qwest Is Equitably Estopped by Virtue of the Plan's Rules from Reducing Eligible Retirees' Life Insurance Benefits to \$10,000 States a Claim Upon Which Relief Can Be Granted Because the Plan Unambiguously Denies Qwest the Right to Reduce Eligible Retirees' Benefits to that Low Level.

Plaintiffs also claim that Qwest is equitably estopped by virtue of the Plan's rules combined with official confirmation notices sent to Plaintiffs and Eligible Retirees from reducing their Basic Life Insurance Coverage. This claim succeeds because Qwest Defendants have previously interpreted or explained that the rules of the 1998 Governing Plan Document unambiguously prevent Qwest from reducing Eligible Retirees' coverage below the stated minimum thresholds.

Neither the Tenth Circuit nor the Supreme Court has determined whether federal

common law equitable estoppel is a viable claim in the ERISA context. Yet, the majority of Circuit Courts recognize equitable estoppel as a viable claim in an ERISA context.⁷ Though the Tenth Circuit has neither adopted nor rejected an equitable estoppel rule in the ERISA context, the Tenth Circuit has discussed the claim. See, e.g., *Cannon v. Group Health Serv.* 77 F.3d 1270, 1275-77 (10th Cir. 1996), *cert. denied*, 519 U.S. 816, 117 S.Ct. 66 (1996); *Averhart v. U S WEST Management Pension Plan*, 46 F.3d 1480, 1486 (10th Cir. 1994). In *Averhart*, the Tenth Circuit avoided a decision of the viability of such claim by concluding the plaintiffs failed to state a claim:

“We hold that, in any event, the plaintiffs have not shown any viable basis for the estoppel theory they advance – that there were representations made interpreting ambiguous Plan terms. Courts that have recognized estoppel claims in these circumstances have done so only where “the terms of the Plan are ambiguous” and “the employer[‘s] communications constituted an interpretation of that ambiguity.”

Averhart at 1486 (citations omitted) (excerpt cited in *Cannon* at 1275-77). The Tenth Circuit has outlined a framework of rules and elements to be followed when analyzing an equitable estoppel claim. *Cannon*, 77 F.3d at 1276-77;⁸ *Kaus v. Standard Life Ins. Co.*, 176 F.Supp. 2d

⁷ See *Sprague, et al. v. General Motors Corp.*, 133 F.3d 388, 403 (6th Cir. 1998) (en banc), *cert. denied*, 524 U.S. 923, 118 S. Ct. 2312 (1998); *Hudson v. Delta Air Lines, Inc.*, 90 F.3d 451, 458 n.12 (11th Cir. 1996), *cert. denied*, 519 U.S. 1149, 117 S.Ct. 1082 (1997); *Swaback v. American Information Technologies Corp.*, 103 F.3d 535, 542 (7th Cir. 1996); *Fink v. Union Central Life Ins. Co.*, 94F.3d 489, 492 (8th Cir. 1996); *Schonholz v. Long Island Jewish Medical Center*, 87 F.3d 72, 78 (2nd Cir. 1996); *In re Unisys Corp. Retiree Medical Benefit “ERISA” Litigation*, 58 F.3d 896, 907 (3rd Cir. 1995); *Greany v. Western Farm Bureau Life Ins. Co.*, 973 F.2d 812,821-22 (9th Cir. 1992); *Cleary v. Graphic Communications International Union Supplemental Retirement and Disability Fund*, 841 F.2d 444, 447 (1st Cir. 1988).

⁸ In *Cannon*, the Tenth Circuit considered whether plaintiff has stated an equitable estoppel claim applying the Eleventh Circuit’s test for equitable estoppel in ERISA cases. The five elements of equitable estoppel which the Eleventh Circuit has identified are: (1) the party to be estopped misrepresented material facts; (2) the party to be estopped was aware of the true facts; (3) the party to be estopped intended that the

1193, 1198 (D. Kan. 2001).

1. **Qwest Defendants' Actions Served to Interpret and Explain the Rules to Mean that it Was Forbidden to Reduce Coverage Below the Established Minimum Levels For the Protected Group of Eligible Retirees.**

After the rules were put in place by Plan sponsor U S WEST circumscribing its rights and protecting benefits for Eligible Retirees, Plaintiffs received SPDs, and official notices, as recited in Paragraph Nos. 62-66 of the Amended Complaint, as follows:

62. During the merger proceedings, the SPD posted at U S WEST's internal website (<http://hr.uswc.uswest.com/benefits/handbook/lifeinsu.html>) contains, in part, the following text:

Retiree Basic Coverage

When you retire on a service or disability pension, your full amount (if you retire after December 31, 1995, the maximum benefit is \$100,000 unless coverage was greater than \$100,000 on December 31, 1995, in which case it will be frozen at the December 31, 1995 level of coverage) of Basic coverage will continue through age 65. Beginning at age 66, your Basic Life Insurance coverage reduces the same as it does for an active employee, as described above.

For retirees who retired on a Service or Disability Pension before 1/1/96 and who die on or after 12/31/96, the minimum Basic Life insurance coverage is \$20,000 and *will not reduce below that amount.*

If you retire after age 65, the reduced amount of your coverage will be in effect and continue to reduce (as described above) to the age of 70. At age 70, coverage will no longer be reduced. Basic will continue at 50% of the initial amount but *no less than \$30,000 if you retire after December 31, 1995.*

misrepresentation be acted upon or had reason to believe that the party asserting the estoppel would rely on it; (4) the party asserting the estoppel did not know nor should it have known, the true facts; and (5) the party asserting the estoppel reasonably and detrimentally relied on the misrepresentation. *Cannon*, 77 F.3d at 1276-77 (citing *National Cos. Heath Benefit Plan*, 929 F.2d at 1572).

(Defendants' Ex. 27, Doc. # 16-321, K00394 [*emphasis added*]).

63. After the merger was completed, QWEST became Plan sponsor and issued revised SPDs with language concerning minimum Basic Life Insurance coverage.

64. The SPD effective January 2001 Qwest eventually sent to *Post-90 Retirees* during September 2002 contains at pp. 203-204, in part, the following text concerning Basic Coverage:

Retiree Basic Life

When you retire on a service or disability pension, your full amount (if you retire after December 31, 1995, the maximum benefit is \$100,000 unless coverage was greater than \$100,000 on December 31, 1995, in which case it will be frozen at the December 31, 1995 level of coverage) of Basic coverage will continue through age 65. Beginning at age 66, your Basic Life Insurance coverage reduces the same as it does for an active employee, as described above.

For retirees who retired on a service or disability pension before January 1, 1996, and who die on or after December 31, 1996, the minimum Basic Life insurance coverage is \$20,000 and *will not reduce below that amount*.

If you retire after age 65, the reduced amount of your coverage will be in effect and continue to reduce (as described above) to the age of 70. At age 70, coverage will no longer be reduced. Basic Life will continue at 50% of the initial amount, but *no less than \$30,000 if you retire after December 31, 1995*.

(Defendants' Ex. 20, Doc. # 16-25, QL04109-QL04110 [*emphasis added*]).

65. The SPD effective January 2001 sent to *Pre-1991 Retirees* during April 2003 contains at pp. 4-5, in part, the following text concerning Basic Coverage:

Basic Coverage

As a retiree, Basic Life coverage decreases by 10% on the first day of the month following your 66th birthday. Each year, your coverage will be reduced by 10% of your annual pay at the time of retirement, up to a total reduction of 50% by age 70.

Basic Life Insurance coverage is rounded to the next higher thousand dollars. For example, if your Annual Pay was \$26,200 at

retirement, your Basic Life Insurance coverage is \$27,000.

When you retire on a service or disability pension, your full month of Basic coverage will continue through age 65. If you retire after December 31, 1995, the maximum benefit is \$100,000 unless coverage was greater than \$100,000 on December 31, 1995, in which case it will be frozen at the December 31, 1995 level of coverage. Beginning at age 66, your Basic Life Insurance coverage reduces as described above.

For retirees who retired on a service or disability pension, and who die on or after 1996, the minimum Basic Life insurance coverage is \$20,000 and *will not reduce below that amount.*

If you retire after age 65, the reduced amount of your coverage will be in effect and continue to reduce (as described above) to the age of 70. At age 70, coverage will no longer be reduced. Basic Life will continue at 50% of the initial amount, but *no less than \$30,000 if you retire after December 31, 1995.*

(Defendants' Ex. 21, Doc. # 16-26, QL01786-QL01787 [*emphasis added*]).

66. All of the written representations in Plan publications and SPDs issued by Plan sponsors 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 basic coverage could not be reduced below a certain threshold, depending upon respective retirement dates.

The SPDs informed Plaintiffs' reasonable expectations for entitlement of minimum Basic Life Insurance Coverage. *See Salterelli v. Bob Baker Group Med. Trust*, 35 F.3d 382, 386-87 (9th Cir.1994) (adopting doctrine of reasonable expectations as part of federal common law governing ERISA cases). "Any burden of uncertainty created by careless or inaccurate drafting of the summary must be placed on those who do the drafting, and who are most able to bear that burden, and not on the individual employee, who is powerless to affect the drafting of the summary or the policy and ill equipped to bear the financial hardship that might result from a misleading or confusing document. Accuracy is not a lot to ask." *Chiles*, 95 F.3d at 1518 (citing *Hansen v. Continental Ins. Co.*, 940 F.2d 971, 982 (5th Cir.1991)).

In addition to the SPDs sent to all retirees, Qwest Defendants sent out "Confirmation

Statements” telling all Pre-1991 Retirees that the company did not reserve the right to make changes to their expected life insurance benefits. (Amended Complaint ¶ 76). It is undisputed that on four occasions QWEST sent thousands of Pre-1991 retirees the following official notice:

**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

Benefit	Option Description	Coverage Level	Effective Date	Monthly Employee Cost
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.

(Defendants’ Ex. 22, Doc. # 16-27, K00368; Defendants’ Ex. 23, Doc. # 16-28, K00369; Defendants’ Ex. 24, Doc. # 16-29, K00370; and Defendants’ Ex. 25, Doc. # 16-30, K00371 [emphasis added]).

Assuming the Tenth Circuit, like numerous other appellate courts, will recognize Plaintiffs’ ERISA equitable estoppel claim, it is quite obvious the 1998 Governing Plan Document’s rules have been interpreted and explained in formal notices sent out by Qwest Defendants as not giving the company the right to make reductions in coverage below the stated minimums with respect to the protected group of 48,000 Eligible Retirees. It was most reasonable for Plaintiffs and the proposed class of Eligible Retirees to rely upon the same. If all along the reductions rules were superfluous – as Qwest Defendants now choose to characterize them – then, there was a plethora of misrepresentations and official Plan announcements which

said otherwise. Thus, Qwest Defendants should not be granted their motion to dismiss.

2. Plaintiffs Have Sufficiently Stated and Proven Their Claim that Qwest Defendants Breached Their Fiduciary Duty By Not Abiding by The Commitment Not to Reduce Eligible Retirees' Basic Life Insurance Coverage Below the Stated Minimum.

There can be no doubt that the rules put in place by Plan sponsor U S WEST are binding upon successor Plan sponsor Qwest. The 1998 Governing Plan Document was executed by the U S WEST Vice President-Law and Corporate Human Resources and Assistant Secretary almost 18 months *after* the *Chiles* decision in which the Tenth Circuit said a plan sponsor is allowed to make changes and terminate welfare benefits unless it has contractually agreed, in some fashion, to limit its rights. Here, in the aftermath of the *Chiles* decision, the Plan sponsor contractually agreed to limit its right to reduce coverage for a particular group of Plan participants - Eligible Retirees - and Plaintiffs are entitled to have those rules enforced under ERISA. Qwest Defendants' motion for dismissal must be denied because Plaintiffs have sufficiently alleged and adequately proven their claim that the Plan sponsor's right to make reductions affecting Eligible Retirees was circumscribed. Since, Qwest Defendants breached their duties under ERISA and did not act in accordance with the rules, judgment should be entered in favor of Plaintiffs.

D. This Court May Enter Partial Summary Judgment For Plaintiffs.

Qwest Defendants' motion to dismiss has revealed a fundamental truth about this litigation. This Court can conclude, at this early stage, that the 1998 Governing Plan Document's rules are most unambiguous with respect to Plan sponsor Qwest's rights to reduce Basic Life Insurance Coverage for Eligible Retirees, so long as the Plan remains in operation. The 1998 Governing Plan Document's rules clearly circumscribe the right of Plan sponsor Qwest to reduce 48,000 Eligible Retirees' Basic Life Insurance Coverage below the stated minimum

thresholds. The rules can't be ignored. Therefore, all action taken by Defendants in contravention of the reduction rules cannot be allowed to stand. The challenged December 13, 2006 adopted Plan Amendment 2006-1, as it affects Plaintiffs and Eligible Retirees, must be stricken.

This Court has seen sufficient evidence – the undisputed documents – to declare the December 13, 2006 adopted Plan Amendment 2006-1 runs afoul of the Plan's clearly stated rules. Hence, this Court may enter partial summary judgment in favor of Plaintiffs and the proposed class of all Eligible Retirees. District Courts are empowered to enter summary judgment *sua sponte* under limited conditions, *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2554 (1986). The entry of a partial summary judgment *sua sponte* is warranted when the following conditions are met: (1) there is no dispute of material fact with respect to the partial summary judgment; and (2) the losing party has had an adequate opportunity to address the issues involved, including adequate time to develop any facts necessary to oppose a partial summary judgment. *David v. City and County of Denver*, 101 F.3d 1344, 1358-1359 (10th Cir. 1996) (citing *Celotex* and *Fuller v. City of Oakland*, 47 F.3d 1522, 1533 (9th Cir. 1995).

In view of the uncontroverted stipulated evidence (Defendants' Exhibits 1-27 filed with their Doc. # 16 and the Stipulation filed herewith as Exhibit A), Plaintiffs have both adequately alleged and proven that the reduction rules set forth in the 1998 Governing Plan Document prevent Plan sponsor Qwest from reducing Eligible Retirees' Basic Life Insurance Coverage below the stated minimums, so long as the Plan remains in effect. Therefore, in the interest of judicial economy, this Court should send the right message to the parties by *sua sponte* granting Plaintiffs a motion for partial summary judgment.

IV. CONCLUSION and REQUEST FOR ORAL ARGUMENT

For all the foregoing reasons, the Court should deny [Doc. # 16] Qwest Defendants' Motion to Dismiss filed on June 20, 2007. Due to the importance of the issues in this civil action, which case is being monitored by thousands of putative class members, an oral argument hearing is requested.

DATED this 29th day of June, 2007.

/s/ Curtis L. Kennedy
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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2007, a true and correct copy of the above and foregoing document, together with Exhibit A, was electronically filed with the Clerk of the Court using the CM/ECF system. I also certified that on this 29th day of June, 2007, a true and correct copy of the above and foregoing document, together with Exhibit A, was delivered to Qwest Defendants' counsel of record via email as follows:

Christopher J. Koenigs, Esq.
Michael B. Carroll, Esq.
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mcarroll@sah.com (Michael Carroll, Esq.)
Counsel for Qwest Defendants

Also, copy of the same was delivered via email to all Named Plaintiffs.

/s/ Curtis L. Kennedy _____
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ATTORNEY FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. **07-cv-00644-WDM-CBS**

EDWARD J. KERBER,
NELSON B. PHELPS,
JOANNE WEST,
NANCY A. MEISTER,
THOMAS J. INGEMANN, JR.,
MARTHA A. LENSINK,
SAMUEL G. STRIZICH,
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.,
PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendants.

Exhibit A

**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.

**STIPULATION REGARDING AUTHENTICITY AND ADMISSIBILITY OF
CERTAIN DOCUMENTS PRODUCED BY THE PARTIES**

The Named Plaintiffs (“Plaintiffs”) and Defendants Qwest Group Life Insurance Plan, Qwest Employees Benefit Committee, Qwest Plan Design Committee, and Qwest Communications International Inc. (“QCI”) (collectively, “Qwest”) (jointly, the “Parties”) hereby stipulate and agree that the following documents are authentic under Federal Rule of Evidence (“FRE”) 901 and are non-hearsay under FRE 801 to 805:

1. The Summary Plan Description (“SPD”) issued by Mountain Bell, dated December 1, 1974, bearing Bates Nos. K00001-K00019, that is cited and quoted in paragraph 40 of Plaintiffs’ Amended Complaint (“Complaint”).

2. The SPD issued by Mountain Bell dated August 7, 1977, bearing Bates Nos. QL02791-QL02818, that is cited and quoted in paragraph 41 of Plaintiffs’ Complaint.

3. The SPD issued by Pacific Northwest Bell dated January 1, 1978, bearing Bates Nos. K00021-K00028, that is cited and quoted in paragraph 42 of Plaintiffs’ Complaint.

4. The SPD issued by Pacific Northwest Bell dated December 1978, bearing Bates Nos. QL03152-QL03269, that is cited and quoted in paragraph 43 of Plaintiffs' Complaint.

5. The SPD issued by Pacific Northwest Bell dated January 1, 1981 bearing Bates Nos. K00084-K00101, that is cited and quoted in paragraph 45 of Plaintiffs' Complaint.

6. An SPD issued by Northwestern Bell dated January 1, 1981 bearing Bates Nos. K00029-K00083, that is cited and quoted in paragraph 44 of Plaintiffs' Complaint.

7. The SPD issued by Pacific Northwest Bell dated May 1, 1982 bearing Bates Nos. K00104-K00120, that is cited and quoted in paragraph 46 of Plaintiffs' Complaint.

8. The SPD issued by Mountain Bell dated October 1, 1982 bearing Bates Nos. K00304-K00335, that is cited and quoted in paragraph 47 of Plaintiffs' Complaint.

9. The SPD issued by U S WEST dated April 1, 1984 bearing Bates Nos. K00336-K00356, that is cited in paragraph 49 of Plaintiffs' Complaint.

10. The SPD issued by U S WEST dated July 1984 bearing Bates Nos. QL05356-QL05370 that is cited and quoted in paragraph 50 of Plaintiffs' Complaint.

11. The SPD issued by U S WEST dated March 1986 bearing Bates Nos. K00404-K00415 that is cited and quoted in paragraph 51 of Plaintiffs' Complaint.

12. The SPD issued by U S WEST dated June 1, 1987 bearing Bates Nos. QL04552-QL04566 that is cited and quoted in paragraph 52 of Plaintiffs' Complaint.

13. A letter dated March 26, 1990 sent to (*inter alia*) Named Plaintiffs Kerber and Phelps discussing, *inter alia*, “Your pension check” and bearing Bates Nos. K00417 that is cited and quoted in paragraph 69 of Plaintiffs’ Complaint.

14. A letter dated March 26, 1990 discussing, *inter alia*, “Your lump sum check” and bearing Bates Nos. K00419 that is cited and quoted in paragraph 69 of Plaintiffs’ Complaint.

15. The SPD issued by U S WEST dated July 1991 bearing Bates Nos. QL01795-QL02121 that is cited and quoted in paragraph 53 of Plaintiffs’ Complaint.

16. The SPD issued by U S WEST dated January 1994 bearing Bates Nos. QL03270-QL03695 and QL3718-3904 that is cited and quoted in paragraph 54 of Plaintiffs’ Complaint.

17. The SPD issued by U S WEST dated January 1, 1996 bearing Bates Nos. QL00092-QL00122 that is cited and quoted in paragraph 55 of Plaintiffs’ Complaint.

18. A letter dated September 25, 1997 bearing Bates Nos. K00416 that US West mailed to Plan participants, and that is cited and quoted in paragraph 56 of Plaintiffs’ Complaint.

19. A document entitled “U S West Group Life Insurance Plan as Amended and Restated Effective as of June 12, 1998,” bearing Bates Nos. QL000001-QL00037, and that is cited and quoted in paragraphs 1, 23, 58, 81 and 88 of the Complaint.

20. The SPD effective January 2001 that Qwest sent to Post-1990 Retirees bearing Bates Nos. QL03905-QL04123 that is cited and quoted in paragraph 64 of Plaintiffs’ Complaint.

21. The SPD effective January 2001 that Qwest sent to Pre-1991 Retirees bearing Bates Nos. QL01783-QL01794 that is cited and quoted in paragraph 64 of Plaintiffs' Complaint.

22. A Confirmation Statement for the 2001 Health Care and Group Life Insurance Plans, bearing Bates Nos. K00368-K00369, that is cited and quoted in paragraph 76 of Plaintiffs' Complaint.

23. A Confirmation Statement for the 2002 Health Care and Group Life Insurance Plans, bearing Bates Nos. K00420-K00422, that is cited and quoted in paragraph 76 of Plaintiffs' Complaint.

24. A Confirmation Statement for the 2003 Health Care and Group Life Insurance Plans, bearing Bates Nos. K00370-K00371, that is cited and quoted in paragraph 76 of Plaintiffs' Complaint.

25. A Confirmation Statement for the 2004 Health Care and Group Life Insurance Plans, bearing Bates Nos. K00373-K00374, that is cited and quoted in paragraph 76 of Plaintiffs' Complaint.

26. Amendment 2006-1 dated December 13, 2006 bearing Bates Nos. QL02126-QL02138, that is cited in paragraphs 2 and 81-83 of Plaintiffs' Complaint.

27. Material from U S WEST internal website bearing Bates Nos. K00375-K00403, that is cited in paragraph 62 of Plaintiffs' Complaint.

DATED: June 28, 2007.

s/ Curtis L. Kennedy

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