

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.

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

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**PLAINTIFFS EDWARD J. KERBER, NELSON B. PHELPS, JOANNE WEST,**  
**NANCY A. MEISTER, THOMAS J. INGEMANN, JR., MARTHA A. LENSINK** and  
**SAMUEL G. STRIZICH**, by and through their counsel, Curtis L. Kennedy, pursuant to  
Fed.R.Civ.P., Rule 15(a),<sup>1</sup> file this Amended Complaint:

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<sup>1</sup> This Amended Complaint is filed pursuant to this Court's May 9, 2007 Minute Order (Docket 8) directing Plaintiffs to file an amended complaint on or before May 31, 2007.

**PRELIMINARY STATEMENT**

1. For over fifty years, A.T.&T. and its successor companies, including U S WEST, provided a life insurance benefit considered by the plan sponsor to be an earned entitlement payable upon the death of the retiree receiving a service pension and delivered to his or her beneficiaries or estate. U S WEST, the plan sponsor before being acquired by QWEST, memorialized in the governing plan document an ironclad rule that the life insurance coverage could not be reduced below a certain level. The rules proclaimed an anti-amendment as follows:

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

The Basic Life Coverage amount for an Eligible Retiree who retires on or after January 1, 1996 **shall not be reduced** below \$30,000.<sup>2</sup>

2. Notwithstanding the clear and unambiguous rules limiting reductions in coverage, QWEST leadership decided to reduce life insurance coverage to a mere \$10,000 and apply that change to Occupational Retirees. This planned change was announced by Qwest in October 2005 as one “made with a great deal of thought and consideration.” However, a plan amendment was not adopted until December 13, 2006. The December 13, 2006 Plan Amendment 2006-1 was illegally applied to Occupational Retirees *retroactive* to January 1, 2006.

3. QWEST formally announced that Management Retirees would suffer the same plight as the Occupational Retirees. This announcement came shortly after discovery was completed in *Kerber, et al v. Qwest Pension Plan, et al*, Case No. 05-cv-00478-BNB-PAC. This is perceived as retribution against Named Plaintiffs for exercising their legal rights to protect

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<sup>2</sup> A straightforward reading of those rules can only lead any reasonable person to understand the company is prohibited from reducing life insurance below those stated levels.

class members' entitlement to a separate survivors' benefit, the "Pension Death Benefit," the subject of on-going litigation in this District. QWEST Chief Executive Officer Richard Notebaert announced the Company had decided all retirees would suffer the same reduction of life insurance coverage to only \$10,000 effective January 1, 2007.<sup>3</sup>

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

5. Despite a massive outcry in which QWEST received countless written impassioned protestations from retirees, QWEST leadership, including Mr. Notebaert, have refused and will continue to refuse to do the right thing and comply with the rules which specifically forbid reductions below the stated thresholds. Thus far, hundreds if not a thousand beneficiaries and estates have already been cheated out of the proper amount of life insurance benefits payable at the deaths of retirees.

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

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The Company claimed this *drastic* reduction affecting all retirees was required as part of QWEST's necessary mission to be a good steward of its resources, but was taking effect in the same year QWEST CEO Dick Notebaert's total compensation package had to be set at about \$25 million.

### **JURISDICTION AND VENUE**

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

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

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

### **THE PARTIES**

10. Named Plaintiff EDWARD J. KERBER is a United States citizen and resident of Warrenton, Oregon. KERBER was formerly employed as a “District Manager” within the Human Resources Department at U S WEST, Inc. He retired after at least 30 years of service from U S WEST, Inc. effective February 28, 1990. He is a retiree receiving a service pension annuity from the Qwest Pension Plan. Defendants classify him as a *Pre-1991* Management Retiree.<sup>4</sup> KERBER is a “participant,” as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the

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Defendants classify U S WEST/Qwest retirees into four groups: 1) *Pre-1991* Occupational Retirees; 2) *Post-1990* Occupational Retirees; 3) *Pre-1991* Management Retirees; and 4) *Post-1990* Management Retirees. The distinction between *Pre-1991* and *Post-1990* retirees is based upon prior litigation in this District concerning health care coverage. *Phelps v. U S WEST*, Case No. 95-Z-2759 (D. Colorado). U S WEST agreed to memorialize a commitment of lifetime guaranteed health care and prescription coverage for all *Pre-1991* Retirees and a small group of persons who retired during 1992.

Qwest Group Life Insurance Plan. KERBER is fully qualified to have benefits paid to his beneficiaries upon his death. KERBER's beneficiaries include his spouse.

11. Named Plaintiff NELSON B. PHELPS is a United States citizen and resident of Aurora, Colorado. PHELPS was formerly employed as an "Executive Director" within the Human Resources Department at U S WEST, Inc. He retired after 24 years of service from U S WEST, Inc. effective February 28, 1990. He is a retiree receiving a service pension annuity from the Qwest Pension Plan. Defendants classify him as *Pre-1991* Management Retiree. PHELPS is a "participant," as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. PHELPS is fully qualified to have benefits paid to his beneficiaries upon his death. PHELPS's beneficiaries include his spouse.

12. Named Plaintiff JOANNE WEST is a United States citizen and resident of South Jordan, Utah. WEST was formerly employed as a "Senior Process Specialist" within the Wholesale Markets Department at QWEST. She retired after almost 35 years of service from QWEST effective February 11, 2004. She received a lump sum service pension from the Qwest Pension Plan. Defendants classify her as a *Post-1990* Retiree. WEST is a "participant," as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. WEST is fully qualified to have benefits paid to her beneficiaries upon her death. WEST's beneficiaries include her spouse.

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

classify her as a *Post-1990* Retiree. MEISTER is a “participant,” as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. MEISTER is fully qualified to have benefits paid to her beneficiaries upon her death. MEISTER’s beneficiaries include her two children.

14. Named Plaintiff THOMAS J. INGEMANN, Jr., is a United States citizen and resident of Newport, Minnesota. INGEMANN was formerly employed as an “Account Consultant” in the National Accounts Department at QWEST. He retired after almost 40 years service from QWEST effective March 2, 2005. Defendants classify him as a *Post-1990* Retiree. He is a retiree receiving a service pension annuity from the Qwest Pension Plan. INGEMANN is a “participant,” as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. INGEMANN is fully qualified to have benefits paid to his beneficiaries upon his death. INGEMANN’s beneficiaries include his spouse.

15. Named Plaintiff MARTHA A. LENSINK is a United States citizen and resident of Prescott, Arizona. LENSINK is the surviving spouse of Joseph M. Lensink, a former Occupational worker last employed with U S WEST who retired effective on or about March 1, 1997. Defendants classified him as a *Post-1990* Occupational Retiree. Joseph M. Lensink died on January 5, 2006. LENSINK is the beneficiary of Joseph M. Lensink’s entitlement to Basic Group Life Insurance PLAN benefits. Instead of receiving the full amount of PLAN benefits (approximately \$42,000) as promised by U S WEST when Mr. Lensink commenced retirement after 30 years of employment service, LENSINK, as sole beneficiary, received a flat payment of \$10,000, pursuant to Amendment 2006-1 discussed hereinbelow.

16. Named Plaintiff SAMUEL G. STRIZICH is a United States citizen and resident of Scottsdale, Arizona. STRIZICH is the surviving spouse of Sharon Strizich, a former Management worker with U S WEST who commenced a service pension on February 28, 1990. Defendants classified her as a *Pre-1991* Retiree. Sharon Strizich died on March 20, 2007. STRIZICH is the sole beneficiary of Sharon Strizich's entitlement to Basic Group Life Insurance benefits. Instead of receiving the full amount of benefits (approximately \$62,000) as promised by U S WEST when Mrs. Strizich commenced retirement after 30 years of employment service, STRIZICH has been told by PLAN administrators that he will receive a flat payment of only \$10,000.

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

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

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

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

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

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

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

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

23. *In general*, the PLAN provides that participants would receive life insurance coverage roughly equivalent to his or her last annual salary working for QWEST or a predecessor company, but that coverage would be reduced 10% each year starting at age 66 until age 70 after which age there would be no further reduction of coverage. U S WEST, when serving as plan sponsor, memorialized in the governing PLAN document the following anti-amendment provision limiting the plan sponsor's right to reduce coverage:

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

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

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

25. U S WEST Employee Benefits Committee was the named fiduciary and PLAN administrator during January 1984 through June 2000.

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

27. Defendant QWEST PLAN DESIGN COMMITTEE is the entity to which the QWEST Board of Directors has delegated certain authority to make changes to the PLAN. This entity is comprised of QWEST officers and/or director level management employees.

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

29. Defendant PRUDENTIAL INSURANCE COMPANY OF AMERICA (“PRUDENTIAL”) is an insurance company organized and existing under the laws of the State of New Jersey and has done business and continues to do business in this District. QWEST and PRUDENTIAL entered into group insurance contract **G-93634** to provide NAMED

PLAINTIFFS and other qualified employee and retiree PLAN participants coverage and benefits. PRUDENTIAL, the insurance carrier, is also the claims administrator and performs certain fiduciary responsibilities, including determining claims, and delivering payment of the proper amount of PLAN benefits to beneficiaries. Pursuant to Fed.R.Civ.P. Rule 19(a), PRUDENTIAL is named as a necessary party to this litigation, so that complete relief, including temporary and preliminary restraining orders and permanent injunctions, can be granted to Named Plaintiffs and the proposed class. PRUDENTIAL qualifies under ERISA's definition of a "fiduciary" as a person who "exercises any discretionary authority or discretionary control respecting management of such plan" and any person who "has any discretionary authority or discretionary responsibility in the administration of such plan." 29 U.S.C. § 1002(21)(A).

## **FACTS**

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

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

31. There is no effective internal administrative claims process to challenge the illegal PLAN amendment(s) that purport to reduce life insurance coverage to only \$10,000 and

such action would be futile, a meaningless exercise, as Qwest Defendants have committed themselves to a position adverse to that of Named Plaintiffs and the proposed class.

32. It would be folly to require any of the proposed class of PLAN participants to pursue administrative claims in order to obtain the relief requested herein, including removal of QWEST from administration of employee benefit plans and to redress any violations of ERISA's fiduciary duty provisions. *Unger v. U S WEST, Inc.*, 889 F. Supp. 419, 423 (D. Colo. Judge Babcock, 1996).

33. This action under ERISA has been timely filed.

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

34. For over fifty years (since 1957) AT&T and successor companies, to-wit: "Mountain Bell," "Northwestern Bell," "Pacific Northwest Bell," "U S WEST," and, now, QWEST, committed to provide a Basic Life Insurance benefit payable to the estate or beneficiaries of PLAN participants.

35. The Basic Life Insurance benefit is based upon the worker's last annual salary rounded to the nearest \$1,000.00 at the time he or she commences retirement pay status. This amount continues in effect until the retiree reaches one month past age 66 years. On the first day of the month following the PLAN participant's 66<sup>th</sup> birthday, the amount of Basic Life Insurance is reduced by 10%. Each year thereafter, the Basic Life Insurance is further reduced until the amount of insurance reaches 50% of the original amount by age 70. However, the Basic Life Insurance benefit cannot be reduced below minimum thresholds, as explained later in this Amended Complaint. The Basic Life Insurance benefit is payable to a named beneficiary or beneficiaries in the event of the PLAN participant's death from any cause.

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

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

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

37. For several decades after 1957, there was no clearly stated “reservation of rights” set forth in either the governing PLAN document or the summary plan descriptions (SPDs).

38. However, at some point in time, the PLAN sponsors (Mountain Bell, Northwestern Bell and Pacific Northwest Bell) placed in the governing PLAN document and SPDs a reservation of rights statement. The actual timing and date of notice of that reservation of rights is seriously debated by the parties to this litigation.

39. During 1974 through 1983, PLAN sponsors Mountain Bell, Northwestern Bell and Pacific Northwest Bell issued a series of SPDs, each time modifying a provision concerning plan “continuance.”

40. *Mountain Bell* issued a SPD revised December 1, 1974 which document at p. 13 contains, in part, the following text:

**Plan Continuance**

The company fully intends to continue the Program in accordance with applicable collective bargaining agreements. Should the Program be discontinued, claims based on events preceding the date of discontinuance will be honored.

41. *Mountain Bell* issued a SPD revised August 7, 1977 which document at p. 14 contains, in part, the following text:

**Plan Continuance**

The company fully intends to continue the Program indefinitely but reserves the right to end or amend it, subject to collective bargaining. Should the Program be discontinued, claims based on events preceding the date of discontinuance will be honored.

42. *Pacific Northwest Bell* issued a SPD dated January 1, 1978 which document at p. 60 contains, in part, the following text:

**PROGRAM CONTINUANCE**

The Company fully intends to continue the Group Life Insurance Program indefinitely but reserves the right to end or amend it. Should the Program be discontinued, claims based on events preceding the date of discontinuance will be honored.

43. *Pacific Northwest Bell* issued a SPD dated December 1978 which document at p. 114 contains, in part, the following text:

**PLAN CONTINUANCE**

The Company intends to continue these Plans indefinitely but reserves the right to end or amend them, subject to collective bargaining. If any Plan should be terminated or changed, it will not affect your right to any benefit to which you have already become entitled.

44. *Northwestern Bell* issued a SPD dated January 1, 1981 which document at p. 42 contains, in part, the following text:

**PROGRAM CONTINUANCE**

The Company intends to continue the Group Life Insurance Program in accordance with the applicable collective bargaining agreement. Should the Program be discontinued, claims based on events preceding the date of discontinuance will be honored.

45. *Pacific Northwest Bell* issued a SPD dated January 1, 1981 which document at p. 13 contains, in part, the following text:

**PROGRAM CONTINUANCE**

The Company fully intends to continue the Group Life Insurance Program indefinitely but reserves the right to end or amend it in accordance with applicable collective bargaining agreements. Should the Program be discontinued, claims based on events preceding the date of discontinuance will be honored.

46. *Pacific Northwest Bell* issued a SPD dated May 1, 1982 which document at p. 13 contains, in part, the following text:

**PROGRAM CONTINUANCE**

The Company fully intends to continue the Group Life Insurance Program indefinitely but reserves the right to end or amend it in accordance with applicable collective bargaining agreements. Should the Program be discontinued, claims based on events preceding the date of discontinuance will be honored.

47. *Mountain Bell* issued a SPD dated October 1, 1982 which document at p. 18 contains, in part, the following text:

**PROGRAM CONTINUANCE**

The Company fully intends to continue the Group Life Insurance Program indefinitely but reserves the right to end or amend it in accordance with applicable collective bargaining agreements. Should the Program be discontinued, claims based on events preceding the date of discontinuance will be honored.

48. During 1984 through 1996, PLAN sponsor U S WEST issued a series of SPDs, each time modifying a provision concerning plan “continuance,” “termination” or “amendment.”

49. The SPD dated April 1, 1984 does not contain any provisions concerning either “continuance,” “termination” or “amendment.”

50. The SPD dated July 1984 at p. 11, contains, in part, the following text:

**PROGRAM CONTINUANCE**

The Company intends to continue the Group Life Insurance Program in accordance with the applicable bargaining agreement. Should the Program be discontinued, claims based on events preceding the date of discontinuance will be honored.

51. The SPD dated March 1986 at p. 11 contains, in part, the following text:

**PROGRAM CONTINUANCE**

The Company intends to continue the Group Life Insurance Program but reserves the right to end or amend it at any time subject to any applicable collective bargaining agreements. Should the Program be discontinued, claims based on events preceding the date of discontinuance will be honored.

52. The SPD dated June 1, 1987 at p. 10 contains, in part, the following text:

**PLAN CONTINUANCE**

The Company intends to continue the Group Life Insurance Program but reserves the right to terminate or amend it at any time, subject to applicable limitations of the law or any applicable collective bargaining agreements.

If the Group Life Insurance Program is ended (or if there is a transfer of Program assets and liabilities or a Program split-up), you will not be vested in any Program benefits or have any further rights (other than payment of covered expenses you had before the Program ended).

After all benefits have been paid and legal requirements have been met, the Group Life Insurance Program would turn over any remaining money to the Company.

The Company will return money attributable to Supplemental coverage to employees enrolled for that coverage.

53. The SPD dated July 1991 at p. 163 contains, in part, the following text:

**PLAN TERMINATION AND AMENDMENT**

U S WEST, Inc., as the plan administrator for all Companies, intends to continue your group life insurance plan, but reserves the right to terminate or amend it at any time with respect to any or all classes of current or future participants (including retired employees) subject to applicable limitations of the law or any applicable collective bargaining agreements.

If the group life insurance plan is ended or changed (or if there is a transfer of plan assets and liabilities or a plan split-up), you will not be vested in any plan benefits or have any further rights (other than payment of benefits to which you or your beneficiaries had become entitled because of death or injury before the plan ended or was changed).

After all benefits have been paid and legal requirements have been met, the plan administrator would apply any funds attributable to participant contributions for supplemental life or dependent life coverage exclusively for the benefit of the participants enrolled for such coverage at the time of any change or termination of the plan. Any trust funds will be distributed according to the terms of the trust. All other plan assets would be turned over to the Company.

54. The SPD dated January 1994 at p. J26 contains, in part, the following text:

**PLAN TERMINATION AND AMENDMENT**

U S WEST, Inc., as the plan administrator for all Companies, intends to continue your group life insurance plan, but reserves the right to terminate or amend it at any time with respect to any or all classes of current or future participants (including retired employees) subject to applicable limitations of the law or any applicable collective bargaining agreements.

If the group life insurance plan is ended or changed (or if there is a transfer of plan assets and liabilities or a plan split-up), you will not be vested in any plan benefits or have any further rights (other than payment of benefits to which you or your beneficiaries had become entitled because of death or injury before the plan ended or was changed).

After all benefits have been paid and legal requirements have been met, the plan administrator would apply any funds attributable to participant contributions for supplemental life or dependent life coverage exclusively for the benefit of the participants enrolled for such coverage at the time of any change or termination of the plan. Any trust funds will be distributed according to the terms of the trust. All other plan assets would be turned over to the Company.

55. The SPD dated January 1, 1996 at p. 19 contains, in part, the following text:

**PLAN TERMINATION AND AMENDMENT**

U S WEST, Inc., as the Plan Administrator for all Companies, intends to continue your U S WEST Group Life Insurance Plan, but reserves the right to terminate or amend it at any time with respect to any or all classes of current or future participants (including retired employees) subject to applicable limitations of the law or any applicable collective bargaining agreements.

If the U S WEST Group Life Insurance Plan is terminated or amended (or if there is a transfer of plan assets and liabilities or a plan split-up), you will not be vested in any plan benefits or have any further rights (other than payment of benefits to which you or your beneficiaries had become entitled because of death or injury before the plan terminated or was amended).

Pursuant to the terms of the trust, after all benefits have been paid and legal requirements have been met, the Plan Administrator would apply any funds attributable to participant contributions for supplemental life or dependent life coverage exclusively for the benefit of the participants enrolled for such coverage at the time of any change or termination of the plan. Any trust funds will be distributed according to the terms of the trust.

56. Regardless of whether the version of SPD issued to a PLAN participant upon his or her retirement during 1984 through 1996 contained either a coherent, clearly stated or easily understood reservation of rights provision, U S WEST mass mailed a letter dated September 25, 1997 to its retirees which letter contained, in part, the following text:

Dear Retiree and Beneficiary:

\* \* \*

\* 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.

\* \* \*

Sincerely,

(signed)

Antonia Ozeroff, Vice President - Corporate Human Resources

57. PLAN sponsor U S WEST chose to limit its rights and any other PLAN sponsor's rights under any reservation of rights clause by inserting into the governing PLAN document an ironclad anti-amendment provision addressing a very specific situation.

**C. Language Restricting the PLAN Sponsor's Power to Amend The Plan.**

58. In the governing PLAN document, as amended and restated effective June 12, 1998 and executed by U S WEST Vice President - Corporate Human Resources Antonia Ozeroff, PLAN sponsor U S WEST memorialized the following minimum commitments for PLAN participants:<sup>5</sup>

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

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

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This document executed by U S WEST Vice President Antonia Ozeroff is the only known governing PLAN document, whereas numerous versions of SPDs were issued by PLAN sponsors U S WEST and QWEST.

59. The aforesaid provisions stating minimum commitments were intended by PLAN sponsor U S WEST to serve as private anti-cutback provisions giving PLAN participants more protections above and beyond that which ERISA accords to welfare benefits.

60. The aforesaid provisions reflect PLAN sponsor U S WEST's intent to contractually commit to providing Eligible Retirees with a minimum level of Basic Life Insurance Coverage, notwithstanding any other reservation of rights language set forth in either the governing PLAN document or a SPD. PLAN sponsor U S WEST deliberately chose a specific situation in which to circumscribe its power and rights under any reservation of rights language set forth in either the governing PLAN documents or SPDs.

61. Since PLAN sponsor U S WEST explicitly listed a qualification to its rights to change Eligible Retirees' Basic Life Insurance coverage, the aforesaid provisions preclude any amendment without the consent of PLAN participants that would allow any subsequent PLAN sponsor to reduce coverage below the stated minimum thresholds. Said PLAN terms constitute an extra-ERISA contractual commitment limiting the right of any PLAN sponsor to make PLAN changes reducing minimum coverage amounts. The aforesaid extra-ERISA contractual commitment is now binding upon QWEST, the successor in interest, the COMMITTEE and PLAN fiduciaries.

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*. (*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*. (*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 66<sup>th</sup> 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.* (*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 retirements dates.

67. Certainly, in **none** of the PLAN publications and SPDs issued to Named Plaintiffs and PLAN participants before their respective retirements were there statements and

disclosures, **easily understood by a reasonable person**, to advise PLAN participants that the sponsoring company reserved the right to reduce coverage below the minimum levels established and memorialized by PLAN sponsor U S WEST.

68. To the extent that any PLAN publication or SPD includes a “reservation of rights” statement, the private anti-amendment statement declaring Basic Coverage shall not be reduced below the established minimum amounts is controlling and the Court must construe the restrictions against the drafters and PLAN sponsor in favor of PLAN participants and their beneficiaries.

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

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

70. Named Plaintiffs and class members earned the promised minimum life insurance coverage through their long years of employment service. Countless PLAN participants are unable to adjust their retirement plans to address the sudden loss of PLAN benefits.

71. Because of the representations and provisions for the Pension Death Benefit and the Group Life Insurance Benefit that would provide for his wife upon his death, PHELPS

declined the survivor annuity option for the payment of his service pension and the election became irrevocable upon retirement.

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

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

74. PLAN fiduciaries, including past members of the U S WEST Employee Benefits Committee, and past senior officers of PLAN sponsor U S WEST, have acknowledged the aforesaid representations and commitments were made to Named Plaintiffs and PLAN participants when they were making retirement decisions and choosing between receiving a lump sum distribution of pension benefits or monthly annuity.

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

76. In addition, for several years *after* QWEST merged with U S WEST, QWEST and PLAN administrators sent formal notices to retirees reporting that there could be no changes of

life insurance coverage for persons who retired before 1991. For at least *four consecutive years*, QWEST sent thousands of Pre-1991 retirees a formal document containing the following text:

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

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

**Benefit Information**

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. (emphasis added).**

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

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

**E. Illegal Retroactive Application of PLAN Amendment 2006-1 Adopted December 13, 2006 to Post-1990 Occupational Retirees Who Died Before the Adoption of PLAN Amendment 2006-1.**

79. The governing PLAN document contemplates an adoption process of any written amendment.

80. The governing PLAN document provides that no PLAN amendment can effectively reduce life insurance coverage for beneficiaries of PLAN Participants who die before the amendment is adopted.

81. The governing PLAN document states in Article X, Section 10.1:

Amendment. Except to the extent limited by any applicable collective bargaining agreement, the Company reserves the right, in its sole discretion, to amend the Plan at any time, in any manner, including, without limitation, the right to amend the Plan to reduce, change, eliminate, or modify the type or amount of Benefits provided to any class of Participants. Moreover, unless otherwise explicitly provided in a Contract, no amendment shall be made to the Plan without the consent of the Company. Any such amendment of the Plan shall be effective on such date as the Plan Sponsor may determine; provided, however, that **no amendment shall reduce the benefits of any Participant with respect to a loss incurred prior to the date such amendment is adopted. (emphasis added).**

82. On December 13, 2006, Amendment 2006-1 was executed by QWEST PLAN DESIGN COMMITTEE members Teresa Taylor, Erik Ammidown and Felicity O'Herron. This PLAN amendment is intended to reduce Basic Life Insurance coverage payable upon the deaths of *Post-1990* Occupational Retirees to a flat \$10,000.

83. Amendment 2006-1 was adopted on December 13, 2006.

84. QWEST Defendants applied Amendment 2006-1 retroactive to January 1, 2006. Beneficiaries of *Post-1990* Occupational Retirees who died between January 1, 2006 and December 12, 2006 were paid a flat \$10,000 in Basic Life Insurance benefits.

85. PLAN fiduciaries and administrators, by applying Amendment 2006-1 to beneficiaries of Occupational Retirees who died during January 1, 2006 through December 12, 2006 failed to act in conformity with the terms of Article 10.1 of the governing PLAN document. Accordingly, PLAN fiduciaries and administrators breached fiduciary duties under ERISA Section 1104(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

86. Named Plaintiff LENSINK , a surviving spouse of Occupational Retiree Joseph M. Lensink who died on January 5, 2006, is one such beneficiary to whom PLAN fiduciaries breached fiduciary duties by paying her only \$10,000 in PLAN Benefits. There are hundreds, if not more than a thousand other PLAN beneficiaries who, too, wrongly suffered the illegal application of Amendment 2006-1 applied to the deaths of Occupational Retirees who died during the period January 1, 2006 through December 12, 2006.

87. Accordingly, Named Plaintiff LENSINK on behalf of herself and all other similarly situated PLAN beneficiaries asks this Court, pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), to: 1) enter an order declaring Amendment 2006-1 executed and adopted on December 13, 2006 to be null and void as applied to the estates and beneficiaries of any Occupational Retirees who died during January 1, 2006 through December 12, 2006; 2) enter an order reforming or striking Amendment 2006-1; 3) enter an order requiring PLAN Administrators or an appointed independent fiduciary to notify all of the estates and beneficiaries of Occupational Retirees who died during January 1, 2006 through December 12, 2006 that, if they received only \$10,000 in PLAN benefits, they were cheated out of payment of the proper amount of Basic Life Insurance coverage and that they are entitled to demand and promptly

receive a corrected payment of PLAN benefits, together with prejudgment and post-judgment interest.

**F. Illegal Reduction of *Pre-1991* Occupational and Both *Pre-1991* and *Post-1990* Management Retiree PLAN Benefits in Absence of An Adopted PLAN Amendment.**

88. The governing PLAN document provides for an adoption process of any written amendment. In part, the governing PLAN document states in Article X, Section 10.1 “. . . **no amendment shall reduce the benefits of any Participant with respect to a loss incurred prior to the date such amendment is adopted.**”

89. Upon information and belief, to date, QWEST Defendants have not adopted another PLAN Amendment since the adoption of Amendment 2006-1 on December 13, 2006.<sup>6</sup> Therefore, other than Amendment 2006-1 which prescribes a reduction of PLAN benefits for *Post-1990* Occupational Retirees, there is no other duly adopted PLAN amendment prescribing a reduction of PLAN benefits for other groups of retirees, including *Pre-1991* Occupational Retirees and both *Pre-1991* and *Post-1990* Management Retirees.

90. Nevertheless, since January 1, 2007 to date, QWEST Defendants have provided beneficiaries of *Pre-1991* Occupational Retirees and Management Retirees who have died since January 1, 2007 a flat \$10,000 in Basic Life Insurance benefits.

91. Since PLAN fiduciaries and administrators have reduced PLAN benefits payable to beneficiaries of *Pre-1991* Occupational Retirees and Management Retirees who died since January 1, 2007, and have done such before there was a duly adopted PLAN Amendment, they

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In response to a February 28, 2007 dated formal ERISA Section 104(b)(4) document disclosure request, PLAN Administrator Erik Ammidown sent Plaintiffs' counsel a letter dated March 26, 2007 confirming there had been no subsequent amendment after Amendment 2006-1 which is dated and adopted on December 13, 2006.

have failed to act in conformity with the terms of Article 10.1 of the governing PLAN document. Accordingly, PLAN fiduciaries and administrators breached fiduciary duties under ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

92. Named Plaintiff STRIZICH, as surviving spouse of Management Retiree Sharon Strizich who died on March 20, 2007, is one such beneficiary to whom PLAN fiduciaries are breaching fiduciary duties by not paying him the full Basic Life Insurance benefits he is entitled to receive. STRIZICH is entitled to the full \$62,000 payment, not a reduced flat amount of only \$10,000. There are more than one hundred other PLAN beneficiaries who, too, have suffered illegal reduction of Basic Life Insurance benefits, prohibited by Article 10.1 of the governing PLAN document, when no authorizing PLAN Amendment was duly adopted.

93. Accordingly Named Plaintiff STRIZICH on behalf of himself and all other similarly situated PLAN beneficiaries asks this Court, pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), to: 1) enter an order declaring QWEST Defendants' reduction of Basic Life Insurance benefits to be illegal, null and void, as applied to the estates and beneficiaries of any *Pre-1991* Occupational Retirees and Management Retirees who died since January 1, 2007 in the absence of a duly adopted PLAN amendment authorizing such reduction of benefits; 2) enter an order requiring PLAN Administrators or an appointed independent fiduciary to notify all of the estates and beneficiaries of *Pre-1991* Occupational Retirees and Management Retirees who died since January 1, 2007 that, if they received only \$10,000 in PLAN benefits, they were cheated out of payment of the proper amount of Basic Life Insurance coverage and that they are entitled to demand and receive promptly a corrected payment of PLAN benefits, together with prejudgment and post-judgment interest.

**G. Action Taken in Retaliation Because Named Plaintiffs Have Been Exercising Their Legal Rights to Protect Their Pension Death Benefits.**

94. Since March 2005, Named Plaintiffs KERBER, PHELPS, WEST, MEISTER and INGEMANN have been litigating in this District a civil action against QWEST Defendants involving the rights of service pension-eligible retirees to receive a Pension Death Benefit under the Qwest Pension Plan. These five Named Plaintiffs seek declaratory, injunctive and other equitable relief in *Kerber, et al v. Qwest Pension Plan*, Case No. 05-cv-00478-BNB-PAC. That civil action was commenced after QWEST announced intention to take away the Pension Death Benefit because it was considered to be duplicative of the Basic Group Life Insurance benefits.

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

96. On October 14, 2006, QWEST CEO Richard Notebaert began announcing to PLAN participants that QWEST would reduce Basic Life Insurance coverage to a mere \$10,000 for all other groups of retirees.

97. Named Plaintiffs contend that QWEST's decision to adversely affect all other groups of retirees by reducing their Basic Life Insurance coverage was substantially motivated by a concerted effort and intent to retaliate against Named Plaintiffs and their proposed class of participants who have been making headway in the *Kerber* case and for more than two years forestalling QWEST Defendants' ability to reduce or takeaway the Pension Death Benefits. While these alleged facts may or may not fit squarely within the confines of an ERISA Section 510, 29 U.S.C. Section 1140, violation, they are relevant to the issue of the proper injunctive

relief to be granted in this action, including removal of PLAN fiduciaries and PLAN administrators.

98. Pursuant to ERISA Section 502(a)(3)(A) and (B), 29 U.S.C. Section 1132(a)(3)(A) and (B), Named Plaintiffs and the proposed class of PLAN participants are entitled to ask this Court to enjoin any act or practice which violates any provision of the terms of the PLAN and to obtain other appropriate equitable relief, including removal of PLAN Administrators who operate under a conflict of interest. Also, pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), Named Plaintiffs and the proposed class of PLAN participants are entitled to bring this action to have this Court, *inter alia*, clarify their rights to future PLAN benefits.

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

99. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 98, inclusive (together with the Class Action Allegations, ¶s 122-136), as if they were fully set forth herein.

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

101. QWEST Defendants' recently announced position that PLAN benefits are reduced to \$10,000, regardless of the PLAN Participant's retirement date is completely contrary

to the position taken by the COMMITTEE and PLAN administrators in the past and the written representations made to Named Plaintiffs and the proposed class of PLAN participants.

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

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

104. Accordingly, Named Plaintiffs and PLAN participants reasonably and detrimentally relied upon the written representations made by PLAN administrators that there was a commitment to provide the promised PLAN benefits to their estate or beneficiaries, including surviving spouse, and Named Plaintiffs and PLAN participants did not obtain the equivalent in life insurance coverage from other sources.

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

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

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

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

109. Named Plaintiffs request this Court to apply principles of federal common law equitable estoppel, and grant class-wide appropriate equitable relief, including a declaration that the reduction of PLAN benefits to only \$10,000 violates the anti-amendment provisions providing for minimum coverage. This Court should apply principles of equitable estoppel, under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and issue an order nullifying any amendment in derogation of the PLAN's minimum coverage provisions. In addition, this Court should apply principles of equitable estoppel, under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and issue an order nullifying any amendment in derogation of the plan sponsor's additional commitment to Pre-1991 Retirees. Finally, to the extent PLAN Administrators have paid out life insurance benefits below the minimum Basic 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).

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

110. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 109, inclusive (together with the Class Action Allegations, ¶s 122-136), as if they were fully set forth herein.

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

112. Plaintiffs seek an order reforming the PLAN, striking any PLAN amendment which purports to reduce coverage below the promised minimum coverage limits. In addition, Plaintiffs seek an order striking or reforming any PLAN amendment, including Amendment 2006-1, retroactively applied before its adoption date.

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

114. ERISA Section 102, 29 U.S.C. § 1022, provides in pertinent part that a summary plan description (SPD) must contain “the plan's requirements respecting eligibility for participation and benefits . . . [and] circumstances which may result in disqualification, ineligibility, or denial or loss of benefits. . . .”<sup>7</sup>

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

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<sup>7</sup> In addition to ERISA Section 102, there are a plethora of regulations that require the SPD, the core disclosure document, to contain correct information. *See* 29 C.F.R. § 2520.102-3.

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

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

118. In the alternative, pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), this Court should grant appropriate equitable relief – injunctive relief - requiring QWEST, as plan sponsor, and the QWEST PLAN DESIGN COMMITTEE to reform the PLAN, the SPD and SMM and issue to PLAN Participants documents with language disclosing the PLAN provides protected minimum coverage, not subject to further reduction.

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

119. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 118, inclusive (together with the Class Action Allegations, ¶s 122-136), as if they were fully set forth herein.

120. Named Plaintiffs have sufficiently alleged that QWEST Defendants violated the terms of the PLAN, namely: a) violating the terms of the private anti-amendment provision prohibiting a reduction below minimum Basic Life Insurance coverage; and b) violating the terms of Article 10.1 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), Named Plaintiffs and the proposed class of PLAN participants are entitled to bring this action and they request this Court to clarify their rights to PLAN benefits under the terms of the PLAN.

121. Named Plaintiffs seek a declaration that those PLAN Participants who retired before January 1, 1991 are entitled to have paid out upon their death the full amount of promised PLAN benefits. Also, Named Plaintiffs seek a declaration that those PLAN Participants who retired before January 1, 1996 are entitled to have paid out upon their death, at the very least, \$20,000 in PLAN benefits. In addition, Named Plaintiffs seek a declaration that those PLAN Participants who retired on or after January 1, 1996 are entitled to have paid out upon their death, at the very least, \$30,000 in PLAN benefits. In addition, Named Plaintiffs seek a declaration that 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.

**CLASS ACTION ALLEGATIONS**

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

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

124. **Class Size.** The precise size of the class is presently unknown and will be determined through discovery. However, there can be no dispute that the size of the class is well over eighty thousand persons.<sup>8</sup> The class is so numerous that joinder of all the members of the class is impractical.

125. **Questions of Law and Fact Common to the Class.** This suit poses questions of law and fact which are common to and affect the rights of all putative class members. The questions presented include, but are not limited to: A) whether QWEST Defendants violated their fiduciary duties under ERISA Section 404 when making representations and providing PLAN publications and SPDs that led reasonable PLAN participants to conclude that PLAN benefits for Pre-1991 Retirees were protected; B) whether QWEST Defendants' and predecessor's actions interpreted minimum PLAN benefits to be an entitlement, *not* subject to further reduction; C) whether QWEST Defendants are judicially or equitably estopped to reduce the PLAN benefits; D) whether Amendment 2006-1 and any other amendment applied retroactively so as to reduce PLAN benefits payable to beneficiaries of PLAN participants who died before the adoption of the particular amendment is null and void, contrary to the express

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The latest Form 5500 Annual Return/Report of Employee Benefit Plan executed by Erik Ammidown on October 13, 2006 reports there are over 48,000 retired or separated PLAN participants receiving benefits, plus over 39,000 actively employed PLAN Participants.

provisions of the governing PLAN document; E) whether purported PLAN amendments reducing coverage to \$10,000 for all retirees violate the terms and conditions of the PLAN and other provisions of ERISA; and F) whether PLAN participants are entitled to declaratory and injunctive relief and the form and extent of the relief to which they should receive.

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

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

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

129. QWEST Defendants' issuance of faulty PLAN documents, including the current SMM and SPD, and refusal to abide by the private anti-cutback provisions and refusal to acknowledge the PLAN provides for minimum coverage and refusal to abide by their representations of further protected coverage for *Pre-1991* Retirees makes appropriate an award of final injunctive and declaratory plan-wide and class-wide relief. Likewise, QWEST Defendants' retroactive application of PLAN amendments so as to reduce benefits payable to beneficiaries of PLAN participants who died before the amendments were adopted makes appropriate an award of final injunctive and declaratory plan-wide and class-wide relief.

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

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

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

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

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

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

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

**PRAYER FOR RELIEF**

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

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

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

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

D. Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), declare the Named Plaintiffs' and PLAN participants' rights to future PLAN benefits and that, pursuant to the private anti-cutback provisions enacted by PLAN sponsor U S WEST, the minimum coverage levels cannot be reduced by QWEST Defendants;

E. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), apply principles of federal common law equitable estoppel and rule that, in as much as the PLAN publications and

SPDs contained representations about minimum coverage that could not be reduced, Named Plaintiffs and the proposed class of PLAN participants and beneficiaries have an “entitlement” to the minimum coverage amounts;

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

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

H. Pursuant to ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), grant equitable and remedial relief for the benefit of the PLAN as a whole, including an order requiring the QWEST PLAN DESIGN COMMITTEE, COMMITTEE, PLAN administrators and QWEST, as PLAN sponsor, to correct faulty language in the PLAN and SPD and issue a corrected SPD and SMM with language disclosing the PLAN provides minimum coverage not subject to further reduction and language disclosing the PLAN provides protected coverage to Pre-1991 Retirees not subject to further reduction;

I. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), grant equitable and remedial relief ordering either QWEST Defendants or an appointed independent fiduciary at

QWEST Defendants' expense to distribute a revised SPD and SMM to all PLAN participants which documents correctly disclose the PLAN provides for minimum coverage *not* subject to further reduction;

J. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), enter an order declaring Amendment 2006-1 executed and adopted on December 13, 2006 null and void as applied to the estates and beneficiaries of *Post-1990* Occupational Retirees who died during January 1, 2006 through December 12, 2006, enter an order reforming or striking Amendment 2006-1 and enter an order requiring PLAN Administrators or an appointed independent fiduciary to notify all of the estates and beneficiaries of *Post-1990* Occupational Retirees who died during January 1, 2006 through December 12, 2006 that they were cheated out of payment of the proper amount of Basic Life Insurance coverage and that they are entitled to demand and receive a corrected payment of PLAN benefits, together with prejudgment and post-judgment interest;

K. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), enter an order declaring QWEST Defendants' reduction of Basic Life Insurance benefits to be illegal, null and void , as applied to the estates and beneficiaries of any *Pre-1991* Occupational Retirees and Management Retirees who died since January 1, 2007 in the absence of a duly adopted PLAN amendment authorizing such reduction of benefits and enter an order requiring PLAN Administrators or an appointed independent fiduciary to notify all of the estates and beneficiaries of *Pre-1991* Occupational Retirees and Management Retirees who died since January 1, 2007 that, if they received only \$10,000 in PLAN benefits, they were cheated out of payment of the proper amount of Basic Life Insurance coverage and that they are entitled to demand and

promptly receive a corrected payment of PLAN benefits, together with prejudgment and post-judgment interest;

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

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

N. Grant Plaintiffs and the proposed class members such other and further class-wide and plan-wide relief, including temporary, preliminary and permanent injunctive relief and other appropriate equitable relief allowable under ERISA § 502(a)(3) and, in the alternative, relief under Fed.R.Civ.P. Rule 65, as the Court deems just and proper;

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

P. Pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1), order QWEST Defendants to pay the reasonable value of Plaintiffs' interim and final attorney's fees for services

performed, expert witness fees, accounting fees, necessary expenses of litigation, and costs of this action.

DATED this 15<sup>th</sup> day of May, 2007.

Respectfully submitted,

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