

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

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.,

Defendants.

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

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),¹ file this Second Amended Complaint:

¹ This Second Amended Complaint is filed pursuant to the Court's Orders entered during the March 20, 2008 "Status Hearing" (See Docket 59) allowing Plaintiffs leave to file a motion to amend the complaint and their Second Amended Complaint on or before April 1, 2008.

PRELIMINARY STATEMENT

By Amended Order dated February 27, 2008 (Docket 47), the Court interpreted the ‘Reservation of Rights’ clause set forth within the Governing PLAN Document and ruled that Plaintiffs’ claims asserting that Qwest was contractually barred from reducing Plaintiffs’ Basic Life Insurance benefits to a flat \$10,000 did not state a claim upon which relief could be granted. The Court also ruled that Plaintiffs’ prior claims of equitable estoppel under ERISA failed to state a claim upon which relief could be granted. The Court ruled Plaintiffs’ other asserted claims remain pending in this case. In this Second Amended Complaint, Plaintiffs assert class claims for declaratory, injunctive and other equitable relief available under ERISA, which claims are summarized as follows:

- a) a FIRST claim for declaratory relief under ERISA Section 502(a)(1)(B) and injunctive and equitable relief under ERISA Section 502(a)(3) ordering that since the Governing PLAN Document fails to specify a procedure for making PLAN amendments, and Qwest corporate by-laws and corporate resolutions do not specify a PLAN amendment procedure, the PLAN fails to comply with ERISA Section 403(b), and, therefore, all Eligible Retirees’ rights to PLAN benefits remain governed by the unaltered terms of the Governing PLAN Document;
- b) a SECOND claim for an order declaring PLAN fiduciaries and administrators breached their fiduciary duty under ERISA Section 404(a)(1) to act in the best interests of PLAN participants, since PLAN fiduciaries and administrators repeatedly sent Plaintiffs Kerber, Phelps and all other Pre-1991 retirees official written confirmation falsely representing that their basic life insurance benefits could not be amended, suspended or discontinued;
- c) a THIRD claim for declaratory relief under ERISA Section 502(a)(1)(B) that no document created prior to December 13, 2006, no document, including the October 14, 2005 dated recommendation and resolution executed by members of the Qwest Plan Design Committee, constitutes a bona fide PLAN amendment so as to reduce Eligible Retirees’ basic life insurance benefits;
- d) a FOURTH claim for declaratory relief under ERISA Section 502(a)(1)(B) that the document labeled as Amendment 2006-1 executed and adopted by the Qwest Plan Design Committee on December 13, 2006 left in place inconsistent terms within the Governing PLAN Document and, accordingly, due to the conflicting terms and

ambiguity, the more favorable terms concerning Eligible Retirees' basic life insurance coverage continued to govern;

- e) a FIFTH claim for declaratory relief under ERISA Section 502(a)(1)(B) that the document labeled as Amendment 2006-1 executed and adopted by the Qwest Plan Design Committee on December 13, 2006 was illegally applied retroactively to beneficiaries of retirees who deceased during January 1, 2006 through December 12, 2006, contrary to the "Prior Loss Proviso" set forth within the "reservation of rights" clause in the Governing PLAN Document;
- f) a SIXTH claim for declaratory relief under ERISA Section 502(a)(1)(B) that any PLAN amendment executed and adopted by members of the Qwest Plan Design Committee and applied by PLAN administrators retroactively to beneficiaries of retirees who deceased prior to the adoption date violates the "Prior Loss Proviso" terms of the Governing PLAN Document;
- g) a SEVENTH claim for an order declaring PLAN fiduciaries and administrators breached their fiduciary duty of loyalty under ERISA Section 404(a)(1) to act in the best interests of PLAN participants, since PLAN fiduciaries and administrators failed to investigate life insurance continuation and conversion options and impress upon the Company, under the circumstances, to institute rules allowing Eligible Retirees to exercise continuation or conversion of their drastic loss of life insurance coverage; and
- h) an EIGHTH claim for relief under ERISA Section 502(c)(1)(B) for per diem civil penalty to be assessed against the PLAN Administrator for failure to produce requested instruments under which the PLAN was established or is operated.

JURISDICTION AND VENUE

1. 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), 1132(f), 1132(g), and upon 28 U.S.C. §§ 1331.

2. 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.

3. 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

4. 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.² KERBER is a “participant,” as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the 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.

5. 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

2

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.

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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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, as sole beneficiary, received a flat payment of \$10,000.

11. U S WEST, Inc., was at various 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.

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

13. 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.

14. 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; and
U S WEST Group Life Insurance Plan.

15. 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.

16. 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.

17. 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 "Plan 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.

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

19. The COMMITTEE is the current PLAN administrator and named fiduciary for the Plan.

20. 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.

21. Certain members of the COMMITTEE are also members of the QWEST PLAN DESIGN COMMITTEE and they have a conflict of interest.

22. Neither QWEST, as Plan sponsor, nor the QWEST PLAN DESIGN COMMITTEE, have established either a PLAN amendment procedure or a procedure for adopting PLAN amendments.

23. 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. 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).

24. At all times mentioned herein, PLAN administrators and PRUDENTIAL were the agents of the COMMITTEE.

FACTS

A. Unavailable and Ineffective Administrative Procedures

25. 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 the proposed class of Eligible Retirees.

26. There is no effective internal administrative claims process to challenge 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 of Eligible Retirees.

27. 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 the COMMITTEE from administration of employee benefit plans and to redress any violations of ERISA's fiduciary duty provisions. *Unger v. U S WEST, Inc.*, 889 F. Supp. 419, 423 (D. Colo. Judge Babcock, 1996).

28. This action under ERISA has been timely filed.

B. Description and History of the Group Life Insurance Benefit

29. For over fifty years (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.

30. U S WEST memorialized PLAN terms in which document the parties to this case refer to as the Governing PLAN Document, a document executed in June 1998.

31. The unamended Governing PLAN Document states 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 66th 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, there are rules set forth in Appendix 2 and Appendix 7 providing that Basic Life Insurance benefit cannot be reduced below minimum thresholds, which rules the Court refers to in the February 27, 2008 Amended Order (Docket 47) as the "Minimum Benefit Promise." 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.

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

32. 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 ("5+5") 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.*"

33. 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 estate planning to address a sudden loss of PLAN benefits.

34. In addition, for at least *four consecutive years*, after QWEST merged with U S WEST, PLAN administrators sent formal notices to KERBER, PHELPS and thousands of other Eligible Retirees who retired before 1991, which formal notice contained 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).

D. Illegal Retroactive Application of PLAN Amendment 2006-1 Executed and Adopted by QWEST PLAN DESIGN COMMITTEE Members On December 13, 2006.

35. The Governing PLAN Document in Article X, Section 10.1 contains the following "reservation of rights" provision:

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). The highlighted text is referred to in the Court's Amended Order entered February 27, 2008 (Docket 47) as the "Prior Loss Proviso."

36. The Prior Loss Proviso contemplates there must be an adoption process in order for a PLAN amendment purporting to reduce benefits to become effective.

37. The Governing PLAN Document states in Section 10.1 that the Company may amend the PLAN. However, the Governing PLAN Document does not identify the persons with the Company authorized to amend the PLAN.

38. A document which identifies persons within the Company with authority to amend the PLAN constitutes a document under which the PLAN is established or is operated.

39. The Governing PLAN Document does not state any procedure for amendment of the PLAN.

40. A document which provides for or sets forth a procedure to amend the PLAN constitutes a document under which the PLAN is established or is operated.

41. The Governing PLAN Document does not state any procedure for adoption of an amendment to the PLAN.

42. A document which provides for or sets forth a procedure to amend the PLAN constitutes a document under which the PLAN is established or is operated.

43. None of QWEST's corporate by-laws or corporate resolutions provide a PLAN amendment procedure.

44. None of QWEST's corporate by-laws or corporate resolutions provide a procedure for adopting a PLAN amendment.

45. The Prior Loss Proviso prohibits PLAN administrators from applying a PLAN amendment that reduces the amount of life insurance benefits to be paid to beneficiaries of PLAN Participants who die before the PLAN amendment is adopted.

46. On October 14, 2005, at least two members of the QWEST PLAN DESIGN COMMITTEE met and documented the following recommendation and resolutions:

Recommendation: That the Director, Employee Benefits, Health Life & Disability, Human Resources, or his delegate, be authorized to take all actions appropriate to implement for the 2006 plan year:

- * Change the benefit available under the Qwest Group Life Insurance Plan with respect to occupational employees upon retirement effective January 1, 2006:

The Basic Life Insurance Benefit is reduced to a fixed \$10,000 benefit.

- * Change the Basic Life Insurance Benefit for Post-1990 Occupational Retirees to reduce it to a fixed \$10,000 benefit effective January 1, 2006. To the extent a Post-1990 Occupational Retiree has elected to participate in a supplemental life insurance benefit, such benefit shall not be impacted due to this benefit change and shall not reduce.
- * Amendment of the Qwest Group Life Insurance Plan to require that a civil lawsuit or other proceeding be filed not later than 1 year after the exhaustion of internal Plan remedies.

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

FURTHER RESOLVED, that the Executive Vice President and Chief Human Resources Officer is authorized to approve and execute the final form of such restatement.

By: s/ _____ By: s/ _____
Teresa Taylor Felicity O'Herron

By: s/ _____ Date: October 14, 2005
Erik P. Ammidown

47. The aforesaid October 14, 2005 Plan Design Committee Minutes and Resolutions reciting a **recommendation** regarding the Plan, was neither labeled nor published as a PLAN amendment.

48. At times, Qwest Defendants have stamped the aforesaid October 14, 2005 document as "Confidential," meaning the document is not intended for public disclosure.

49. While the aforesaid October 14, 2005 dated document recites a recommendation for a Director Level management employee or his delegate to be authorized to take certain action, it does not state whether all or part of the recommendation was approved. It does not show what action, if any, was carried out by the authorized employee or his delegate.

50. The aforesaid October 14, 2005 dated document does not identify any approved design changes.

51. The aforesaid October 14, 2005 dated document does not provide any new definitions, and the Governing PLAN Document does not define "Post-1990 Occupational Retirees."

52. The aforesaid October 14, 2005 dated document does not remove from the Governing PLAN Document any inconsistent terms. For example, the document does not remove any inconsistent terms set forth within Section 2.2, Appendix 2 and Appendix 7 of the Governing PLAN Document.

53. The aforesaid October 14, 2005 dated document is confusingly worded, woefully incomplete and ineffective for it to constitute a bona fide PLAN amendment. The document shows unfinished business, action not yet ripe for inclusion as an adopted PLAN amendment into the Governing PLAN Document.

54. The aforesaid October 14, 2005 dated document was not adopted and not treated as an effective PLAN amendment.

55. A reasonable PLAN participant would not consider the aforesaid October 14, 2005 dated document to be an adopted PLAN amendment.

56. On November 15, 2006, prior to filing this lawsuit, several retirees including Named Plaintiff Nelson PHELPS, served on the PLAN Administrator a request for documents and disclosures pursuant to ERISA Section 104(b)(4), 29 U.S.C. Section 1024(b)((4). The PLAN Administrator responded by letter dated December 18, 2006.

57. Notably, when the PLAN Administrator, via COMMITTEE member Erik Ammidown, responded by letter dated December 18, 2006 to PHELPS's document disclosure request, the PLAN Administrator did not refer to the aforesaid October 14, 2005 document as a "Plan amendment." Instead, the aforesaid document was referenced to be "Plan Design Committee Resolutions, October 14, 2005."

58. In the December 18, 2006 response, the PLAN Administrator produced a document entitled "PLAN DESIGN COMMITTEE Minutes and Resolutions December 13, 2006 QWEST GROUP LIFE INSURANCE PLAN" which document states, in pertinent part:

Recommendation:

That the attached amendment which is effective January 1, 2006 is **adopted** in substantially the form attached hereto.

RESOLVED, that the Amendment 2006-1 to the Qwest Group Life Insurance Plan be and hereby is **adopted** effective January 1, 2006, in substantially the form as the attached document; and

FURTHER RESOLVED, that Erik P. Ammidown, the Director, Health, Life & Disability Benefits is hereby authorized to publish the amendment, together with descriptions as required, as soon as is administrative practicable.

By: s/ _____
Teresa Taylor

By: s/ _____
Felicity O'Herron

By: s/ _____
Erik P. Ammidown

Date: December 13, 2006

(emphasis added)

59. The December 13, 2006 minutes and resolutions of the QWEST PLAN DESIGN COMMITTEE meeting reflect that the document attached thereto and labeled as “AMENDMENT 2006-1” was executed and adopted by QWEST PLAN DESIGN COMMITTEE members on December 13, 2006 (hereinafter “PLAN Amendment 2006-1”).

60. PLAN Amendment 2006-1 is intended by the QWEST PLAN DESIGN COMMITTEE members to reduce Basic Life Insurance coverage payable upon the deaths of *Post-1990 Occupational Retirees* to a fixed \$10,000 amount.

61. PLAN Amendment 2006-1 states that “Effective January 1, 2006, with respect to Post-1990 Occupational Retirees, the Basic Life Coverage is a flat \$10,000 Benefit.”

62. PLAN Amendment 2006-1 does not provide any new definitions, and the Governing PLAN Document does not define “Post-1990 Occupational Retirees.”

63. PLAN Amendment 2006-1 does not remove from the Governing PLAN Document any terms inconsistent with the terms of PLAN Amendment 2006-1, including those terms set forth in Section 2.2, Appendix 2 and Appendix 7.³

64. Section 2.2, Appendix 2 and Appendix 7 of the Governing PLAN Document have terms more favorable to Eligible Retirees than those terms set forth in PLAN Amendment 2006-1. The Governing PLAN Document provides minimum Basic Life Insurance benefits for “Eligible Retirees,” a term that is specifically defined in Section 2.2 of the Governing PLAN Document.

³ Unlike amendments QWEST PLAN DESIGN COMMITTEE members made to *other* Qwest employee benefit plans, PLAN Amendment 2006-1 does not contain a proviso stating: “Any inconsistent provisions of the Plan shall be read consistent with this Amendment.”

65. The terms of PLAN Amendment 2006-1 conflict with the terms of the Governing Plan Document and an ambiguity exists with respect to the amount of Basic Life Insurance benefits payable to beneficiaries of certain Eligible Retirees classified as *Post-1990 Occupational Retirees*.

66. As between the terms of PLAN Amendment 2006-1 and the terms of the Governing PLAN Document, PLAN administrators should have acted in the best interests of PLAN participants, as required by ERISA Section 404(a)(1), and they should have applied principles of *contra proferentum* and carried out the more favorable terms of the Governing PLAN Document when making benefit payments to beneficiaries of deceased Eligible Retirees.

67. PLAN administrators applied the terms of PLAN 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. Since this action violated the Prior Loss Proviso, PLAN administrators breached their ERISA fiduciary duty under ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1) Section 1104(a)(1), to act in the best interests of PLAN participants and their beneficiaries.

68. PLAN administrators, by applying PLAN Amendment 2006-1 to beneficiaries of Post-1990 Occupational Retirees who died during January 1, 2006 through December 12, 2006 failed to act in conformity with the terms of Section 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).

69. Named Plaintiff LENSINK, a surviving spouse of Post-1990 Occupational Retiree Joseph M. Lensink who died on January 5, 2006, is one such beneficiary to whom PLAN

fiduciaries breached fiduciary duties and violated the Prior Loss Proviso by paying her only \$10,000 in PLAN Benefits. There are hundreds of other PLAN beneficiaries to whom the less favorable terms of PLAN Amendment 2006-1 were retroactively applied by PLAN administrators making benefit payments concerning Post-1990 Occupational Retirees who died during the period January 1, 2006 through December 12, 2006.

E. Illegal Reduction of Pre-1991 Occupational Retirees' and All Management Retirees' PLAN Benefits in Absence of An Adopted PLAN Amendment.

70. Upon information and belief, to date, QWEST Defendants have not *adopted* another PLAN Amendment since the members of the QWEST PLAN DESIGN COMMITTEE executed and adopted PLAN Amendment 2006-1 on December 13, 2006, which document Plaintiffs contend is ineffective to reduce Eligible Retirees' PLAN benefits.⁴

71. Since January 1, 2007 to the present, PLAN administrators have provided beneficiaries of *Pre-1991* Occupational Retirees and all Management Retirees who have died since January 1, 2007 a fixed \$10,000 payment of Basic Life Insurance benefits.

72. Since PLAN administrators paid reduced PLAN benefits payable to beneficiaries of *Pre-1991* Occupational Retirees and all Management Retirees who died since January 1, 2007, before there was a duly adopted PLAN Amendment, PLAN administrators failed to act in conformity with the terms of Section 10.1 of the Governing PLAN Document. Accordingly,

4

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 PLAN Amendment 2006-1 which is dated and adopted on December 13, 2006.

PLAN fiduciaries and administrators breached fiduciary duties under ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

73. 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 hundreds of other PLAN beneficiaries who, too, have suffered illegal reduction of Basic Life Insurance benefits, prohibited by Section 10.1 of the Governing PLAN Document, when no authorizing PLAN Amendment was duly adopted.

74. 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.

75. 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 Eligible Retirees are entitled to bring this action to have this Court, *inter alia*, “enforce [their] rights under the terms of the plan, or to clarify [their] rights to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B).

FIRST CLAIM FOR RELIEF
(ERISA Section 502(a)(1)(B) - Declaration of All Eligible Retirees' Rights to Plan Benefits)

76. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 75, inclusive (together with the Class Action Allegations, ¶s 114-127), as if they were fully set forth herein.

77. ERISA Section 402(b)(3) requires that “every employee benefit plan **shall—provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan.**” (emphasis added) 29 U.S.C. § 1102(b)(3). Since the Governing Plan Document does not provide a *procedure* for amending the PLAN and there are no Qwest corporate by-laws or corporate resolutions that provide a procedure for amending the PLAN, there is no compliance with the requirements of ERISA Section 402(b)(3), 29 U.S.C. § 1102(b)(3).

Accordingly, Named Plaintiffs on behalf of themselves and the proposed class of all Eligible Retirees and their beneficiaries, pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), ask this Court to declare the PLAN fails to comply with the requirements of ERISA Section 402(b)(3);

79. Named Plaintiffs on behalf of themselves and the proposed class of all Eligible Retirees and their beneficiaries, pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), ask this Court to declare Named Plaintiffs' and Eligible Retirees' rights to PLAN benefits are not governed by documents purporting to be PLAN amendments reducing their benefits. They ask this Court to declare that their rights to PLAN benefits remain governed by the terms of the Governing PLAN Document, as executed in June 1998, and that any subsequent document

purporting to reduce Eligible Retirees' benefits payable to their beneficiaries be declared null and void.

80. Named Plaintiffs seek appropriate equitable relief, including removal of PLAN fiduciaries and PLAN administrators, appointment of an independent fiduciary, and notice to the proposed class.

SECOND CLAIM FOR RELIEF
(Breach of Fiduciary Duty - Material Misrepresentations)

81. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 80, inclusive (together with the Class Action Allegations, ¶s 114-127), as if they were fully set forth herein.

82. As PLAN fiduciaries, COMMITTEE and PLAN administrators always had a duty to truthfully communicate material facts affecting the interests of Named Plaintiffs and all Eligible Retirees and their beneficiaries.

83. None of the PLAN publications and SPDs issued to a PLAN participants before or upon his or her respective retirement prior to January 1991 contained coherent, clearly stated disclosure, **easily understood by a reasonable person**, to advise the PLAN participant that the sponsoring company reserved the right to reduce coverage below the promised minimum levels.

84. During the 1990 "5+5" early retirement offer extended to Named Plaintiffs KERBER and PHELPS and thousands of others, U S WEST and PLAN administrators issued a letter dated March 26, 1990 to containing the following text: "*You are **entitled** to the benefits paid under the Group Life Insurance Program.*"

85. The SPD issued by PLAN sponsor QWEST in April 2003 to Pre-1991 Retirees contained this statement: "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.*” (emphasis added).

86. In addition, when sending the aforesaid Confirmation Statement to thousands of Pre-1991 Retirees, the PLAN sponsor, COMMITTEE and PLAN administrators either deliberately or negligently made material misrepresentations that the formula for their promised life insurance coverage was not subject to amendment, suspension or discontinuance at any time.

87. The PLAN sponsor, COMMITTEE and PLAN administrators either negligently or recklessly deceived Pre-1991 Retirees and their beneficiaries (especially spouses) and they did not truthfully represent and explain the risk that their PLAN benefits might be reduced pursuant to the ‘reservation of rights’ clause set forth within the Governing PLAN Document.

88. Accordingly, Named KERBER and PHELPS Plaintiffs on behalf of themselves and the proposed class of Eligible Retirees to whom Qwest sent the Confirmation Notices concerning the rights of Pre-1991 Retirees ask this Court to declare PLAN fiduciaries and PLAN administrators breached their ERISA fiduciary duties under ERISA Section 404(A)(1), 29 U.S.C. § 1132(a)(1), to act in the best interest of PLAN participants and their beneficiaries, and to order appropriate equitable relief, including removal of PLAN fiduciaries and PLAN administrators, appointment of an independent fiduciary, and notice to the proposed class.

THIRD CLAIM FOR RELIEF
(ERISA Section 502(a)(1)(B) - Declaration That October 14, 2005 Minutes Are Ineffective)

89. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 88, inclusive (together with the Class Action Allegations, ¶s 114-127), as if they were fully set forth herein.

90. Named Plaintiffs on behalf of themselves and a class of all Eligible Retirees and their beneficiaries ask this Court to declare their rights to benefits pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) and enter an order declaring the October 14, 2005 dated document recording minutes of the QWEST PLAN DESIGN COMMITTEE meeting is ineffective to constitute a PLAN amendment and that said document does not govern the rights of any beneficiaries because the document was not duly adopted and incorporated into the Governing PLAN Document.

FOURTH CLAIM FOR RELIEF
(ERISA Section 502(a)(1)(B) - Plan Amendment 2006-1 Is Ineffective)

91. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 90, inclusive (together with the Class Action Allegations, ¶s 114-127), as if they were fully set forth herein.

92. Named Plaintiffs on behalf of themselves and a class of all Eligible Retirees and their beneficiaries ask this Court to declare their rights to benefits pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), and enter an order: a) declaring PLAN fiduciaries and PLAN administrators were required under Section 8.6(i) of the Governing PLAN Document to apply the provisions of the PLAN in a uniform and non-discriminatory manner so that all persons similarly situated were treated alike; b) declaring the December 13, 2006 dated document labeled as PLAN Amendment 2006-1, when read with the inconsistent terms remaining within the Governing PLAN Document, created a conflict and ambiguity; and c) declaring the more favorable terms of the unamended Governing PLAN Document continued to govern the benefit rights of Eligible Retirees and their beneficiaries.

93. In addition, Named Plaintiffs on behalf of themselves and a class of Eligible Retirees and their beneficiaries, ask this Court, pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), to enter orders: 1) reforming or striking PLAN Amendment 2006-1; 2) requiring PLAN administrators or an appointed independent fiduciary to notify all of the estates and beneficiaries of Eligible Retirees whose benefit payments were reduced pursuant to the terms of PLAN Amendment 2006-1 that they are entitled to receive a corrected payment of PLAN benefits, together with prejudgment and post-judgment interest; and 3) requiring PLAN administrators or an appointed independent fiduciary to make the corrected benefit payments, together with prejudgment and post-judgment interest.

FIFTH CLAIM FOR RELIEF
(ERISA Section 502(a)(1)(B) - Violation of Prior Loss Proviso)

94. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 93, inclusive (together with the Class Action Allegations, ¶s 114-127), as if they were fully set forth herein.

95. Named Plaintiff LENSINK on behalf of herself and a class of similarly situated beneficiaries of Post-1990 Occupational Retirees ask this Court to declare her rights to benefits pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) and enter an order declaring PLAN Amendment 2006-1 executed and adopted by QWEST PLAN DESIGN COMMITTEE members on December 13, 2006 to be in violation of the Prior Loss Proviso and, therefore, null and void as applied to the estates and beneficiaries of any Post-1990 Occupational Retirees who died during January 1, 2006 through December 12, 2006.

96. In addition, 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 enter orders: 1) reforming or striking PLAN Amendment 2006-1; 2) 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, if they received only \$10,000 in PLAN benefits, they are entitled to receive a corrected payment of PLAN benefits, together with prejudgment and post-judgment interest; and 3) requiring PLAN administrators or an appointed independent fiduciary to make the corrected benefit payments, together with prejudgment and post-judgment interest.

SIXTH CLAIM FOR RELIEF
(ERISA Section 502(a)(1)(B) - Additional Violation of Prior Loss Proviso)

97. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 96, inclusive (together with the Class Action Allegations, ¶s 114-127), as if they were fully set forth herein.

98. Named Plaintiff STRIZICH on behalf of himself and a class of similarly situated PLAN beneficiaries ask this Court to declare his rights to benefits pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) and enter an order declaring any purported PLAN amendment executed and adopted by QWEST PLAN DESIGN COMMITTEE members and applied retroactively to be in violation of the Prior Loss Proviso and, therefore, null and void.

99. 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 all Management Retirees who died since January 1, 2007 that, if they received only \$10,000 in PLAN benefits, they are entitled to receive a corrected payment of PLAN benefits, together with prejudgment and post-judgment interest; and 3) requiring PLAN administrators or an appointed independent fiduciary to make the corrected benefit payments, together with prejudgment and post-judgment interest.

SEVENTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty of Loyalty)

100. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 99, inclusive (together with the Class Action Allegations, ¶s 114-127), as if they were fully set forth herein.

101. ERISA Section 404(a)(1) imposes high standards of fiduciary duty upon administrators of an ERISA plan. 29 U.S.C. § 1104(a)(1). ERISA's fiduciary duty encompasses three components. *See Berlin v. Michigan Bell Telephone Co.*, 858 F.2d 1154, 1162 (6th Cir. 1988). The **first** is a “duty of loyalty” which requires that “all decisions regarding an ERISA plan 'must be made with an eye single to the interests of the participants and beneficiaries.’” *Id.* (quoting *Donovan v. Bierwirth*, 680 F.2d 263, 271 (2d Cir. 1982)); accord 29 U.S.C. § 1104(a)(1) (requiring a plan fiduciary to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries”). **Second**, ERISA imposes a “prudent person”

fiduciary obligation, which is codified in the requirement that a plan fiduciary exercise his duties “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.” 29 U.S.C. § 1104(a)(1)(B); *accord Berlin*, 858 F.2d at 1162. The prudent person standard, in combination with the duty of loyalty, “imposes an unwavering duty on an ERISA trustee to make decisions with single-minded devotion to a plan’s participants and beneficiaries and, in so doing, to act as a prudent person would act in a similar situation.” *Berlin*, 858 F.2d at 1162 (quoting *Morse v. Stanley*, 732 F.2d 1139, 1145 (2d Cir. 1984)). **Finally**, ERISA requires that a fiduciary “act ‘for the exclusive purpose’ of providing benefits to plan beneficiaries.” *Id.* (quoting *Donovan*, 680 F.2d at 271).

102. Certain members of the QWEST PLAN DESIGN COMMITTEE are also members of the COMMITTEE, the named fiduciary and PLAN Administrator.

103. The Governing PLAN Document states in Section 3.4: “Conversion Rights: A Participant shall be eligible to convert his coverage under the Plan to individual coverage in the circumstances and in accordance with the rules prescribed by the Company or set forth in any applicable Contract.”

104. Members of the COMMITTEE had the knowledge, ability and means to lobby or advocate on behalf of Eligible Retirees and their beneficiaries for the Company to prescribe rules for Eligible Retirees’ continuation or conversion rights in circumstances where group benefit coverage is drastically reduced. However, COMMITTEE members chose not to exercise their influence within Qwest and act in the best interests of PLAN participants. Instead,

COMMITTEE members chose to act solely in the best interests of Qwest to avoid premium costs and save money.

105. COMMITTEE members failed to perform as a prudent fiduciary of the PLAN and investigate and advocate the best interests of Eligible Retirees and their beneficiaries in so far as obtaining for Eligible Retirees a means for them to either: 1) convert their promised group life insurance benefit coverage into an individual policy, so as to mitigate against the drastic loss of group coverage; or 2) pay premiums associated with the cost of continuing the same level of PLAN benefit coverage, so as to mitigate against the drastic loss of group coverage.

106. After Qwest announced in October 2006 its plan to reduce group benefit coverage for all remaining groups of Eligible Retirees, COMMITTEE members and PLAN administrators received notice that QWEST had received countless written and emailed impassioned protestations from retirees. Despite receiving notice that countless retirees and their beneficiaries had included in their estate planning the promised group life insurance coverage, COMMITTEE members and PLAN administrators failed to act in the best interests of Eligible Retirees and their beneficiaries so as to give them a reasonable means or options to mitigate against the reduction of PLAN benefits.

107. Accordingly, Named Plaintiffs on behalf of themselves and the proposed class of Eligible Retirees and their beneficiaries, ask this Court to declare PLAN fiduciaries and PLAN administrators breached their ERISA fiduciary duties under ERISA Section 404(A)(1), 29 U.S.C. § 1132(a)(1), to act in the best interest of PLAN participants and their beneficiaries, and to order appropriate equitable relief, including removal of PLAN fiduciaries and PLAN administrators, appointment of an independent fiduciary, and notice to the proposed class.

EIGHTH CLAIM FOR RELIEF
(Failure to Comply with Document Request Pursuant to ERISA Section 104(b)(4))

108. Named Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 107, as if they were fully set forth herein.

109. ERISA Section 104(b)(4), 29 U.S.C. § 1024(b)(4), requires Defendant QWEST EMPLOYEES BENEFIT COMMITTEE, as PLAN Administrator, to honor within 30 days a written request of any participant or beneficiary for a copy of “instruments under which the plan is established or is operated.” Said defendant did not comply with this ERISA requirement.

110. A documents providing for an amendment procedure or an adoption procedure under the PLAN constitutes an “instrument” under which the PLAN is “established or is operated,” within the meaning of ERISA Section 104(b)(4).

111. Despite PHELPS’s written requests of November 15, 2006 and February 28, 2007, said Defendant failed to timely provide PHELPS the documents providing for an amendment and adoption procedure, instruments under which the PLAN is established or is operated.

112. To the extent said Defendant contends QWEST’s corporate resolutions are documents under which the PLAN is established or is operated, corporate resolutions were not provided to PHELPS until many months past the due date. On March 18, 2008, said Defendant, via outside legal counsel, provided PHELPS’s counsel certain corporate resolutions which documents, upon information and belief, Defendants contend identify persons at QWEST with authority to make PLAN amendments. To date, said Defendant has not provided PHELPS documents providing for or establishing an adoption procedure for PLAN amendments.

113. Pursuant to ERISA Section 502(c)(1)(B), 29 U.S.C. § 1132(c)(1)(B), this Court should assess penalties up to \$110 a day against said Defendant for the failure or refusal to timely provide PHELPS all instruments under which the PLAN is established or is operated.

CLASS ACTION ALLEGATIONS

114. **Class Definition.** Named Plaintiffs bring the First, Third, Fourth and Seventh Claims for Relief on behalf of a proposed class of all Eligible Retirees, as defined by the Governing PLAN Document (and beneficiaries thereof). In addition, there are the following *subclasses* of Eligible Retirees (and beneficiaries thereof):

- A. Plaintiffs KERBER and PHELPS brings the Second Claim for Relief on behalf of a subclass of Eligible Retirees to whom Qwest sent the Confirmation Notices (See paragraph 34) stating their PLAN benefits were not subject to amendment, suspension or discontinuance at any time.
- B. Plaintiff LENSINK brings the Fifth Claim for Relief on behalf of a subclass of beneficiaries of Eligible Retirees who died between the period January 1, 2006 and December 12, 2006 prior to the execution and adoption of the document labeled “Amendment 2006-1” by members of the QWEST PLAN DESIGN COMMITTEE.
- C. Plaintiff STRIZICH brings the Sixth Claim for Relief on behalf of a subclass of beneficiaries of Eligible Retirees who died after January 1, 2007 and prior to the adoption of any PLAN amendment subsequent to “Amendment 2006-1.”

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

116. **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 of

Eligible Retirees is approximately 48,000 persons.⁵ The class is so numerous that joinder of all the members of the class is impractical.

117. **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 PLAN 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 provisions of the Governing PLAN Document; C) whether PLAN fiduciaries and the PLAN Administrator breached the ERISA Section 404(a)(1) duty of loyalty and ERISA Section 404(a)(1)(D) duty to act in accordance with the terms of the Governing PLAN Document; and D) whether PLAN participants are entitled to declaratory and injunctive relief and the form and extent of the relief to which they should receive.

118. **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.

5

The 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.

119. **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.

120. Plaintiffs' counsel Curtis L. Kennedy is experienced counsel who has served as Class counsel in ERISA cases litigated in the District of Colorado, including multi-plaintiff civil actions involving the QWEST and the former U S WEST.

121. QWEST Defendants' violations of the terms of the Governing PLAN Document and violation of ERISA statutory provisions makes appropriate an award of final injunctive and declaratory plan-wide and class-wide relief. Likewise, the 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.

122. 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.

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

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

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

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

127. 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. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), declare the PLAN fails to comply with the requirements of ERISA Section 402(b)(3), § 1102(b)(3), and, pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), declare Named Plaintiffs' and Eligible Retirees' rights to PLAN benefits are not governed by documents purporting to be PLAN amendments reducing their benefits;

C. Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), declare the Named Plaintiffs' and Eligible Retirees' rights to PLAN benefits and, applying principles of *contra proferentum* to conflicting terms of the Governing PLAN Document and the terms of any

document (including the October 14, 2005 dated minutes and PLAN Amendment 2006-1)

Defendants contend served as a PLAN amendment reducing Eligible Retirees' PLAN benefits, declare that the more favorable terms of the Governing PLAN Document govern the rights of Eligible Retirees and their beneficiaries;

D. Declare that PLAN fiduciaries and administrators, due to misrepresentations about the "Minimum Benefits Promise," including the Confirmation Notices repeatedly sent to KERBER, PHELPS and Pre-1991 Retirees, failed to discharge duties to act solely in the interests of PLAN participants and beneficiaries, as required by ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1);

E. Declare that PLAN fiduciaries and administrators 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);

F. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), enter an order declaring PLAN Amendment 2006-1 executed and adopted by QWEST PLAN DESIGN COMMITTEE members 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 PLAN Amendment 2006-1, 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 are entitled to demand and receive a corrected payment of PLAN benefits together with prejudgment and post-judgment interest, and order the PLAN

Administrators or independent fiduciary to make corrected payments, together with prejudgment and post-judgment interest;

G. 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 *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, 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 are entitled to promptly receive a corrected payment of PLAN benefits together with prejudgment and post-judgment interest, and order the PLAN administrators or independent fiduciary to make corrected payments, together with prejudgment and post-judgment interest;

H. 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 Administrator's breaches of ERISA fiduciary duties and non compliance with terms of the Governing PLAN Document, and appoint an independent fiduciary at the expense of QWEST;

I. Declare that Plan administrators violated their ERISA duty of loyalty and did not act as a prudent fiduciary, for the reasons alleged in the Seventh Claim for Relief, and, therefore, violated ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1);

J. 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;

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

L. Grant Plaintiffs and the proposed class members such other and further class-wide and plan-wide relief under ERISA § 502(a)(1)(B) as more specifically pled and requested within their Claims for Relief, including declaratory relief, 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;

M. Pursuant to ERISA Section 502(c)(1)(B), 29 U.S.C. § 1132(c)(1)(B), assess penalties up to \$110 a day against the PLAN Administrator for the failure or refusal to timely provide PHELPS all instruments under which the PLAN is established or is operated;

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

O. 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 31st day of March, 2008.

Respectfully submitted,

/s/ Curtis L. Kennedy

Curtis L. Kennedy
8405 East Princeton Avenue
Denver, CO 80237-1741
Telephone: 303-770-0440
Facsimile: 303-843-0360
e-mail CurtisLKennedy@aol.com
ATTORNEY FOR PLAINTIFFS

Named Plaintiffs:

Edward J. Kerber
33302 Neacoxie Lane
Warrenton, OR 97146

Nelson B. Phelps
1500 So. Macon St.
Aurora, CO 80012-5141

Joanne West
10172 South Miner Drive
South Jordan, UT 84095-2421

Nancy A. Meister
12400 48th Ave., N.
Plymouth, MN 55442-2008

Thomas J. Ingemann, Jr.
955 Ford Road
Newport, MN 55055-1515

Martha A. Lensink
1309 Campbell Ave.
Prescott, AZ 86301-1503

Samuel G. Strizich
27605 N. 61st Place
Scottsdale, AZ 85262-6741