

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

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

EDWARD J. KERBER, *et al.*,

Plaintiffs,

vs.

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

Defendants.

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**ANSWER TO SECOND AMENDED COMPLAINT**

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Defendants Qwest Group Life Insurance Plan (the “Plan”), Qwest Employees Benefit Committee (“Qwest EBC”), Qwest Plan Design Committee (“Qwest PDC”), and Qwest Communications International Inc. (“Qwest”) (collectively, “Defendants”), through their attorneys, answer the Second Amended Complaint for Class Action Relief Under ERISA (the “Complaint”) as follows:

**ANSWER TO ALLEGATIONS TITLED “PRELIMINARY STATEMENT”**

Defendants affirmatively state that the text included in the Complaint under the title “Preliminary Statement” states conclusions of law concerning prior proceedings in this action, and concerning Plaintiffs’ characterization of their claims for relief, to which Defendants need not respond, and to the extent any such answer is required Defendants deny any averments contained in that text.

**ANSWER TO ALLEGATIONS TITLED “JURISDICTION AND VENUE”**

1. Admit that the Court has jurisdiction of the claims for relief under ERISA and 28 U.S.C. § 1331; deny all remaining averments of paragraph 1 on the ground that they state conclusions of law to which Defendants need not respond.

2. Admit that Plaintiffs seek relief under 28 U.S.C. §§ 2201 and 2202; deny all remaining averments of paragraph 2 on the ground that they state conclusions of law to which Defendants need not respond.

3. Admit.

**ANSWER TO ALLEGATIONS TITLED “THE PARTIES”**

4. Admit that Plaintiff Kerber was formerly employed as a Manager within the human resources department at U S WEST, that he retired from U S WEST on or about February 28, 1990, that he retired with 30 or more years of employment service, that he is receiving a service pension annuity from the Qwest Pension Plan, that Defendants classify him as a Pre-1991 Management Retiree for certain purposes, and that he is a Plan “participant” as defined by 29 U.S.C. § 1002(7); that the resolution of the litigation, Phelps v. U S WEST, Case No. 95-Z-2759 (D. Colo.), distinguished between Pre-1990 and Post-1990 Retirees for purposes of health care and prescription coverage, state that the settlement documents relating to the Phelps case speak for themselves, and deny the remaining averments of paragraph 4 for lack of knowledge or information.

5. Admit that Plaintiff Phelps was formerly employed as a Director at U S WEST, that he retired from U S WEST on or about February 28, 1990, that he retired with

more than 23 years of employment service, that he is receiving a service pension annuity from the Qwest Pension Plan, that Defendants classify him as a Pre-1991 Management Retiree for certain purposes, and that he is a Plan “participant” as defined by 29 U.S.C. § 1002(7); deny the remaining averments of paragraph 5 for lack of knowledge or information.

6. Admit that Plaintiff West was formerly employed as a Senior Process Analysis, that she retired on or about February 11, 2004 with approximately 35 years of service, that she received a lump sum service pension from the Qwest Pension Plan, that Defendants classify her as a Post-1990 Management Retiree for certain purposes, and that she is a Plan “participant” as defined by 29 U.S.C. § 1002(7); deny the remaining averments of paragraph 6 for lack of knowledge or information.

7. Admit that Plaintiff Meister was formerly employed as a Lead Process Analysis, that she retired on or about February 11, 2004 with approximately 25 years of service, that she received a lump sum service pension from the Qwest Pension Plan, that Defendants classify her as a Post-1990 Retiree for certain purposes, and that she is a Plan “participant” as defined by 29 U.S.C. § 1002(7); deny the remaining averments of paragraph 7 for lack of knowledge or information.

8. Admit that Plaintiff Ingemann was formerly employed as a Customer Account Consultant II, that he retired on or about March 2, 2005 with more than 35 years of service, that he receives a service pension annuity from the Qwest Pension Plan, that Defendants classify him as a Post-1990 Retiree for certain purposes, and that he is a Plan

“participant” as defined by 29 U.S.C. § 1002(7); deny the remaining averments of paragraph 8 for lack of knowledge or information.

9. Admit that Joseph M. Lensink was a former Occupational employee of U S WEST who retired effective on or about March 1, 1997; admit that Defendants classified Mr. Lensink for certain purposes as a Post-1990 Occupational Retiree; admit that records in Defendants’ possession indicate that Mr. Lensink died on January 5, 2006; admit that Plaintiff Martha A. Lensick received a \$10,000 life insurance payment under the Plan as amended; deny all remaining averments of paragraph 9 for lack of knowledge or information.

10. Admit that Sharon Strizich was a former Management employee of U S West who commenced a service pension on or about February 28, 1990; admit that Defendants classified Mrs. Strizich for certain purposes as a Pre-1991 Retiree; admit that Plaintiff Samuel G. Strizich received a \$10,000 life insurance payment under the Plan as amended; admit that records in Defendants’ possession indicate that Mrs. Strizich died on March 20, 2007; deny all remaining averments of paragraph 10 for lack of knowledge or information.

11. Admit that U S WEST was a corporation qualified to do business in Colorado and that its principal place of business was within the District of Colorado; admit that at various times, but not “at all times relevant to this complaint,” U S WEST was an “employer,” “plan administrator”, “plan sponsor” and, to the extent authority was not delegated elsewhere, a “fiduciary” as those terms are defined by ERISA; deny all remaining and inconsistent averments of paragraph 11.

12. Admit that on June 30, 2000, U S West, Inc. merged into Qwest Communications International Inc. with Qwest Communications International Inc. the surviving corporation.

13. Admit that Qwest is a Delaware corporation qualified to do business in Colorado with its principal place of business within the District of Colorado; admit that Qwest is a “plan sponsor” of the Plan and, to the extent authority has not been delegated, a “fiduciary”. Defendants deny all remaining averments of paragraph 13 on the ground that they state conclusions of law to which Defendants need not respond.

14. Defendants affirmatively state that the Plan itself sets forth the Plan History in its Preamble, and deny any averments in paragraph 14 inconsistent with that Plan provision.

15. Admit that the Plan is an “employee welfare benefit plan” as defined by 29 U.S.C. § 1002(1); deny all remaining averments of paragraph 15 on the ground that they state conclusions of law to which Defendants need not respond.

16. Defendants affirmatively state that the Plan sets forth benefits payable under it and to whom the benefits may be paid and that the Plan speaks for itself, and deny all remaining and inconsistent averments of paragraph 16.

17. Admit that the Qwest EBC is, pursuant to 29 U.S.C. §§ 1002(2) and (16), a “fiduciary” and “administrator” of the Plan; admit that the Qwest EBC’s principal place of business is Denver, Colorado; admit that, as the named fiduciary, the Qwest EBC

does perform certain designated fiduciary and administrative functions in Denver, Colorado; deny all remaining and inconsistent averments of paragraph 17.

18. Admit that the U S WEST Employee Benefits Committee was the plan administrator and named fiduciary for life insurance benefit plans sponsored by U S WEST, Inc. between approximately January 1, 1984 through June 2000, and deny all remaining and inconsistent averments of paragraph 18.

19. Admit that the Qwest EBC is the current Plan Administrator and the named fiduciary for the Plan; deny all remaining and inconsistent averments of paragraph 19.

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20. Admit.

21. Admit that currently two members of the Qwest EBC are also members of the Qwest PDC. Deny all remaining and inconsistent averments of paragraph 21.

22. Deny.

23. Defendants need not respond to Paragraph 23 because it concerns claims and a Defendant that have been dismissed.

24. Defendants affirmatively state that paragraph 24 states a legal conclusion requiring no answer, and to the extent any such answer is required Defendants deny the averments of paragraph 24 for lack of knowledge or information as to the meaning of those averments.

**ANSWER TO ALLEGATIONS TITLED “FACTS”**

25. Deny.

26. Deny.

27. Deny.

28. Deny.

29. Defendants affirmatively state the terms under which AT&T and successor companies agreed to provide life insurance benefits are set forth in Plan documents promulgated by such companies and that such documents speak for themselves; deny all remaining and inconsistent averments of paragraph 29.

30. Admit that the parties to this case have referred to the Plan document executed on June 12, 1998 as the Governing Plan Document; deny all remaining averments of paragraph 30.

31. Defendants affirmatively state that the basic life insurance benefit provided under the Plan and its predecessors is described in Plan documents and that such documents speak for themselves; deny all remaining and inconsistent averments of paragraph 31.

32. Admit that from time to time U S West offered special retirement incentives. Admit that in 1990 U S West provided a special retirement incentive to certain then-existing employees including Plaintiffs Kerber and Phelps. Admit that U S West issued a letter dated March 26, 1990, which letter speaks for itself. Deny all remaining averments of paragraph 32 for lack of knowledge or information.

33. Deny that the Named Plaintiffs and putative class members were promised minimum life insurance coverage; deny all remaining averments of paragraph 33 for lack of knowledge or information, including lack of knowledge or information as to the meaning of several of the phrases included therein.

34. Admit that Qwest regularly sent Confirmation Statements to retirees who retired before 1991, which Confirmation Statements speak for themselves. Deny the remaining averments of paragraph 34.

35. Defendants affirmatively state that both Section 10.1 of the governing Plan document and the Court's Amended Order entered February 27, 2008 speak for themselves, and deny all remaining and inconsistent averments of paragraph 35.

36. Defendants affirmatively state that the governing Plan document speaks for itself, and deny all remaining and inconsistent averments of paragraph 36.

37. Defendants affirmatively state that the governing Plan document speaks for itself, and deny all remaining and inconsistent averments of paragraph 37.

38. Defendants affirmatively state that paragraph 38 states a legal conclusion requiring no answer, and to the extent any such answer is required Defendants deny the averments of paragraph 38.

39. Deny.

40. Defendants affirmatively state that paragraph 40 states a legal conclusion requiring no answer, and to the extent any such answer is required Defendants



deny the averments of paragraph 40 for lack of knowledge or information as to the meaning of those averments.

41. Deny.

42. Defendants affirmatively state that paragraph 42 states a legal conclusion requiring no answer, and to the extent any such answer is required Defendants deny the averments of paragraph 42 for lack of knowledge or information as to the meaning of those averments.

43. Defendants affirmatively state that paragraph 43 states a legal conclusion requiring no answer, and to the extent any such answer is required Defendants affirmatively state that the governing Plan document is the document that sets forth the Plan's amendment procedure, and Defendants deny the remaining averments of paragraph 43 for lack of knowledge or information as to the meaning of those averments.

44. Defendants affirmatively state that paragraph 44 states a legal conclusion requiring no answer, and to the extent any such answer is required Defendants affirmatively state that the governing Plan document is the document that sets forth the Plan's amendment procedure, and Defendants deny the remaining averments of paragraph 44 for lack of knowledge or information as to the meaning of those averments.

45. Defendants affirmatively state that the governing Plan document speaks for itself, and deny the remaining averments of paragraph 45.

46. Admit that on October 14, 2005 the Qwest PDC amended the Plan by adopting a document titled "Plan Design Committee Minutes and Resolutions October 14, 2005," which document speaks for itself. Deny the remaining averments of paragraph 46.

47. Deny.

48. Defendants affirmatively state that on March 18, 2008 their outside counsel disclosed a copy of the October 14, 2005 document referenced in paragraph 48, along with several other documents, in this litigation and mistakenly designated such documents "Confidential." Defendants affirmatively state that on March 19, 2008 their outside counsel sent an email to Plaintiffs' counsel that expressly retracted such mistaken designation of this document as "Confidential," with the result that such mistaken designation existed for only one day. Deny the remaining averments in paragraph 48.

49. Defendants affirmatively state that the October 14, 2005 document speaks for itself, and deny the remaining averments of paragraph 49.

50. Defendants affirmatively state that the October 14, 2005 document speaks for itself, and deny the remaining averments of paragraph 50.

51. Defendants affirmatively state that the October 14, 2005 document speaks for itself, and deny the remaining averments of paragraph 51.

52. Defendants affirmatively state that the October 14, 2005 document speaks for itself, and deny the remaining averments of paragraph 52.

53. Deny.

54. Deny.

55. Deny.

56. Admit that attorney Curtis Kennedy sent Qwest a letter dated November 15, 2006 on behalf of Named Plaintiff Phelps and others, which letter speaks for itself. Admit that the responsive letter is dated December 18, 2006. Defendants affirmatively state that these two letters speak for themselves. Deny the remaining averments of paragraph 56.

57. Defendants affirmatively state that the December 18, 2006 letter referenced in paragraph 57 speaks for itself. Deny the remaining averments of paragraph 57.

58. Defendants affirmatively state that both the December 18, 2006 letter and the December 13, 2006 document referenced in paragraph 58 speak for themselves. Deny the remaining averments of paragraph 58.

59. Admit that by means of a document entitled "Resolutions of the Qwest Plan Design Committee Qwest Group Life Insurance Plan Amendment 2006-1" attached to December 13, 2006 Minutes and Resolutions of the Qwest PDC, the Qwest PDC confirmed its adoption of Plan amendments effective January 1, 2006; deny all remaining and inconsistent averments of paragraph 59.

60. Defendants affirmatively state that the December 13, 2006 document referenced in paragraph 60 speaks for itself. Deny the remaining averments of paragraph 60.

61. Defendants affirmatively state that the December 13, 2006 document referenced in paragraph 61 speaks for itself. Deny the remaining averments of paragraph 61.

62. Defendants affirmatively state that the December 13, 2006 document referenced in paragraph 62 speaks for itself. Deny the remaining averments of paragraph 62.

63. Defendants affirmatively state that the December 13, 2006 document referenced in paragraph 63 and footnote 3 speaks for itself. Deny the remaining averments of paragraph 63 and footnote 3.

64. Defendants affirmatively state that the documents referenced in paragraph 64 speak for themselves. Deny the remaining averments of paragraph 64.

65. Deny.

66. Deny.

67. Admit that beneficiaries of certain post-1990 retirees who died between January 1, 2006 and December 12, 2006 were properly paid \$10,000 in life insurance benefits pursuant to the Plan. Deny the remaining averments of paragraph 67.

68. Deny.

69. Deny.

70. Deny.

71. Admit that the Plan administrators have provided beneficiaries of certain retirees who have died since January 1, 2007 a \$10,000 life insurance benefit. Deny the remaining averments of paragraph 71.

72. Deny.

73. Deny.

74. Deny.

75. Deny.

**ANSWER TO FIRST CLAIM FOR RELIEF**

76-80. Defendants state that they have filed a motion to dismiss Plaintiffs' First Claim for Relief and therefore need not answer same. To the extent Defendants are deemed obligated to answer the averments in Plaintiffs' First Claim for Relief, Defendants deny those averments.

**ANSWER TO SECOND CLAIM FOR RELIEF**

81-88. Defendants state that they have filed a motion to dismiss Plaintiffs' Second Claim for Relief and therefore need not answer same. To the extent Defendants are deemed obligated to answer the averments in Plaintiffs' Second Claim for Relief, Defendants deny those averments.

**ANSWER TO THIRD CLAIM FOR RELIEF**

89. Defendants incorporate by reference their responses to paragraphs 1-88.

90. Admit that the Named Plaintiffs ask this Court for the proposed relief described in paragraph 90, but deny that this Court should grant such relief and deny all remaining averments of paragraph 90.

**ANSWER TO FOURTH CLAIM FOR RELIEF**

91. Defendants incorporate by reference their responses to paragraphs 1-90.

92. Admit that the Named Plaintiffs ask this Court for the proposed relief described in paragraph 92, but deny that this Court should grant such relief and deny all remaining averments of paragraph 92.

93. Admit that the Named Plaintiffs ask this Court for the proposed relief described in paragraph 93, but deny that this Court should grant such relief and deny all remaining averments of paragraph 93.

**ANSWER TO FIFTH CLAIM FOR RELIEF**

94. Defendants incorporate by reference their responses to paragraphs 1-93.

95. Admit that Named Plaintiff Lensink asks this Court for the proposed relief described in paragraph 95, but deny that this Court should grant such relief and deny all remaining averments of paragraph 95.

96. Admit that Named Plaintiff Lensink asks this Court for the proposed relief described in paragraph 96, but deny that this Court should grant such relief and deny all remaining averments of paragraph 96.

**ANSWER TO SIXTH CLAIM FOR RELIEF**

97. Defendants incorporate by reference their responses to paragraphs 1-96.

98. Admit that Named Plaintiff Strizich asks this Court for the proposed relief described in paragraph 98, but deny that this Court should grant such relief and deny all remaining averments of paragraph 98.

99. Admit that Named Plaintiff Strizich asks this Court for the proposed relief described in paragraph 99, but deny that this Court should grant such relief and deny all remaining averments of paragraph 99.

**ANSWER TO SEVENTH CLAIM FOR RELIEF**

100-107. Defendants state that they have filed a motion to dismiss Plaintiffs' Seventh Claim for Relief and therefore need not answer same. To the extent

Defendants are deemed obligated to answer the averments in Plaintiffs' Seventh Claim for Relief, Defendants deny those averments.

**ANSWER TO EIGHTH CLAIM FOR RELIEF**

108. Defendants incorporate by reference their responses to paragraphs 1-107.

109. Defendants affirmatively state that the first sentence of paragraph 109 states a legal conclusion requiring no answer, and to the extent any such answer is required Defendants deny the averments of the first sentence of paragraph 109 for lack of knowledge or information as to the meaning of those averments. Deny the remaining averments of paragraph 109.

110. Defendants affirmatively state that paragraph 110 states legal conclusions requiring no answer, and to the extent any such answer is required Defendants deny the averments of paragraph 110 for lack of knowledge or information as to the meaning of those averments.

111. Deny.

112. Deny.

113. Deny.

**RESPONSE TO CLASS ACTION ALLEGATIONS**

114. Admit that the Named Plaintiffs purport to bring this action on behalf of the alleged classes and sub-classes identified in their averments, but deny that certification

of any such alleged classes or sub-classes is appropriate. Deny the remaining averments of paragraph 114.

115. Deny.

116. Admit that the precise size of the putative class is presently unknown; deny all remaining averments of paragraph 116.

117. Deny.

118. Deny.

119. Deny.

120. Admit.

121. Deny.

122. Deny.

123. Deny.

124. Deny for lack of knowledge or information.

125. Deny for lack of knowledge or information.

126. Deny.

127. Deny.

#### **SEPARATE DEFENSES**

128. The Complaint fails to state a claim upon which relief may be granted.

129. This action should not be certified or maintained as a class action because the requirements for a class action including those in Fed. R. Civ. Pro. 23 have not been and cannot be satisfied.



130. Plaintiffs' claims are barred by a failure to exhaust other remedies.

131. Plaintiffs' First through Sixth Claims for Relief fail to state claims on which relief may be granted because Plaintiffs have not alleged and cannot establish bad faith, active concealment or detrimental reliance.

132. Ratification.

133. Defendants reserve the right to assert additional defenses as they may be discovered.

134. Defendants deny all averments in the Complaint not specifically admitted above.

WHEREFORE, Defendants respectfully request that this Court dismiss the Second Amended Complaint, award Defendants their costs, expert witness fees, and attorney fees, and grant Defendants such other and further relief as this Court deems proper.

DATED: May 16, 2008.

s/ Christopher J. Koenigs

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Christopher J. Koenigs

Michael B. Carroll

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ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on May 16, 2008, I electronically filed the foregoing **Answer to Second Amended Complaint** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Curtis L. Kennedy, Esq. at [CurtisLKennedy@aol.com](mailto:CurtisLKennedy@aol.com)

s/Patricia Eckman \_\_\_\_\_

Patricia Eckman