

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. **05-cv-00478-BNB-PAC**

EDWARD J. KERBER,  
NELSON B. PHELPS,  
JOANNE WEST,  
NANCY A. MEISTER,  
THOMAS J. INGEMANN, JR.,  
Individually, and as Representative of Plan participants  
and Plan beneficiaries of the QWEST PENSION PLAN,

Plaintiffs,

vs.

QWEST PENSION PLAN,  
QWEST EMPLOYEES BENEFIT COMMITTEE,  
QWEST PENSION PLAN DESIGN COMMITTEE,  
QWEST COMMUNICATIONS INTERNATIONAL, INC.,

Defendants.

---

**FINAL PRETRIAL ORDER**

---

**1. DATE AND APPEARANCES**

A final pretrial conference in the above case was held on Monday, December 18, 2006, at 3:00 p.m. in Courtroom A501, 5<sup>th</sup> Floor of the United States Courthouse, 901 19<sup>th</sup> Street, Denver, CO. Appearing for the parties were:

<p>Curtis L. Kennedy, Esq. 8405 E. Princeton Avenue Denver, Colorado 80237-1741 Telephone: (303) 770-0440 Fax: (303) 843-0360 E-mail: <a href="mailto:CurtisLKennedy@aol.com">CurtisLKennedy@aol.com</a> <i>Attorney for Plaintiffs</i></p>	<p>Elizabeth I. Kiovsky, Esq. BAIRD &amp; KIOSKY, LLC 2036 E. 17th Avenue Denver, CO 80206-1106 Telephone: (303) 322-5334 Fax: (303) 813-4501 E-mail: <a href="mailto:bethk@bairdkiovsky.com">bethk@bairdkiovsky.com</a> <i>Attorney for Defendants</i></p>
---	---

## **2. JURISDICTION**

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 and 1337.

## **3. CLAIMS AND DEFENSES**

In this proposed class action, the primary dispute concerns the Pension Death Benefit (“PDB”), a fixed lump sum amount paid out of Qwest’s defined pension benefit plan, the successor to the pension plans previously sponsored by U S WEST and AT&T. The parties fully disagree whether or not the PDB, by virtue of historic Governing Plan documents, Summary Plan Descriptions, course of dealings since 1980 and Plan fiduciaries’ representations, became vested when an employee became service pension eligible.

**A. Summary of Plaintiffs’ Claims.** Named Plaintiffs are participants in the Qwest Pension Plan (Plan), each having more than 20 years employment service and having earned a retirement service pension. The Plaintiffs assert four claims for relief based upon ERISA. For many decades, a stable feature of the Plan (and predecessor Plans) has been a PDB payable upon the death of a retiree receiving a service pension and delivered to his or her surviving spouse or dependent beneficiaries. Plaintiffs contend that Qwest and its predecessors have a long history of treating the PDB as a protected or vested fixed pension benefit payable from trust fund assets.

In September 2003, Qwest formally announced to Plaintiffs that “Qwest is considering eliminating the death benefit for all retirees regardless of their retirement date.” A letter to be mass mailed was fully prepared and signed. This was contrary to Named Plaintiffs’

understanding, and they first realized they had been duped into believing the PDB was a protected benefit. Qwest's announced position on the PDB came too late for Plaintiffs to make other financial arrangements for their spouses and beneficiaries so as to replace the expected PDB. After Qwest Defendants' September 2003 announcement, there was a widespread uproar from U S WEST/Qwest retirees protesting Qwest leadership's threat to end the PDB. Thus, Defendants thought about the matter and, then, told Kerber and Phelps that the decision to completely eliminate the PDB was being delayed. It is noteworthy that the decision has not been formally rescinded; implementation has merely been delayed. The announcement to merely delay implementation of a decision to completely eliminate the PDB created more uncertainty and anguish amongst retirees.

In December 2003, Qwest amended the Plan so as to eliminate the PDB for persons ending employment after January 1, 2004. The PDB is so critical to not only Named Plaintiffs' families, but thousands of Qwest retirees and their spouses and their beneficiaries, and Qwest senior leadership continue to hold out with the threat that the company may some day take away that important expected benefit. Accordingly, an internal ERISA claim was submitted on behalf of Named Plaintiffs and a proposed class of retirees and sent to Qwest Defendants seeking a resolution that the PDB is a protected pension benefit and would neither be eliminated nor reduced. Qwest Defendants formally denied the request and confirmed that all administrative remedies have been exhausted and that an action under ERISA § 502)(a) may be commenced. (Second Amended Complaint at ¶ 41). Essentially, Qwest Defendants' took the position there is no need to further develop any administrative record.

Therefore, Named Plaintiffs in this civil action have exercised their rights under ERISA §

502)(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), to seek an order that will clarify Plan participants' rights to future PDB under the terms of the Plan and for other declaratory, injunctive and appropriate equitable relief.

**For their narrative summary of the First Claim** (Plaintiffs incorporate the Second Amended Complaint at ¶¶ 149-165), Plaintiffs state that this claim is based upon breach of fiduciary duty and equitable estoppel due to a failure to disclose material information and failure to issue SPDs containing correct information about the PDB. Named Plaintiffs contend Defendants Qwest and the Plan administrators had a duty to communicate material facts affecting the interests of Named Plaintiffs and other participants. Defendants had a duty to disclose material information, including whether the PDB could be reduced or eliminated in the absence of a Plan termination.

In all Summary Plan Descriptions ("SPDs") issued to Named Plaintiffs and proposed Class members during the years 1977 through at least the merger of U S WEST and Qwest, there were representations that retirees were *entitled* to the PDB and other written information was provided representing that benefit was not a "welfare" benefit, but was a protected defined pension Plan benefit. For instance, in all of the SPDs issued during years 1977 through at least 1996, under the heading "Type of Plan" the Plan fiduciaries affirmatively represented that under the definitions of ERISA, the Plan was "classified" as a "**defined** benefit Plan' for service and deferred vested pension purposes and for payment of certain sickness death benefits upon the death of a Pension Plan participant." <sup>1</sup> Plaintiffs contend that in **none** of those Plan publications

---

<sup>1</sup> The Plan sponsor deliberately chose not to classify the "payment of certain sickness death benefits" as a "welfare benefit." At the very least, that language appearing in all of the SPDs representing the "payment of certain sickness death benefits" as a "defined benefit Plan" is positive indication of ambiguity, something to make you scratch your head, thus, opening the door to consideration of extrinsic evidence, including testimony of former Plan

and SPDs issued by AT&T (Baby Bells), U S WEST and Qwest were there statements and disclosures to advise Plan participants that the sponsoring company reserved the right to reduce or eliminate the PDB after a Plan participant had retired, in the absence of a Plan termination.<sup>2</sup>

Plaintiffs contend that when the Plan sponsor and Plan administrators classified and represented the PDB to be a defined benefit Plan, they elected to treat the PDB to be an entitlement, an “accrued benefit” under ERISA Section 3(23), 29 U.S.C. § 1002(23), subject to strict vesting requirements. Furthermore, the Plan sponsor filed Form 5500s, executed by the Plan administrator under penalty of perjury, representing the PDBs were ‘vested’ benefits actuarially funded in the trust fund.

Prior to December 2003, neither the Plan sponsor nor Plan administrators ever made a *formal* disclosure in the SPDs distributed to Kerber and Phelps and putative Class members advising that the PDB was not a protected benefit or that it could either be reduced or eliminated by the sponsoring company. Now, Qwest Defendants are taking a position adverse to the

---

sponsor executives, former COMMITTEE members and former Plan administrators.

<sup>2</sup> For instance, in a SPD mass mailed to retirees in April 2003, Qwest Defendants reported the following: “Under what circumstances will Sickness/Accidental Death Benefits [PDB] not be paid?”

- If a claim for benefits is received more than one year following the death of an eligible participant;
- If a suit for damages on account of the death of an employee is brought against any Participating Company or against any other company with which arrangements have been made for the interchange of benefit obligations (for example, an Interchange Company under the MPA);
- If there are any claims (other than under the Plan) presented for damages on account of the death of an employee is brought against any Participating Company or against any other company with which arrangements have been made for the interchange of benefit obligations; or
- If the employee’s TOE [beginning term of employment] date is March 1, 1993 or later
- You are eligible for a Sickness, but no Accident, Death benefit if you de while on a transitional or surplus transitional leave, even if you are not terminated from employment.

Notably, Qwest Defendants did not include in this list of disqualifying circumstances a clear disclosure that Qwest Defendants considered the PDB to be an ancillary or welfare benefit subject to being reduced or eliminated at any time, at the whim of Qwest Defendants.

financial detriment of Named Plaintiffs and putative Class members. Kerber, Phelps and putative Class members reasonably and detrimentally relied upon written representations made by Plan administrators that there was a commitment to provide a PDB to the surviving spouse or dependent beneficiaries. If the PDB was always a “welfare” benefit, which it wasn’t, nevertheless, Kerber, Phelps and putative Class members were prejudiced from the lack of notice of material information contrary to the written representations in Plan publications and SPDs given to them about the PDB.

The omissions and written misrepresentations about the PDB were material to Kerber, Phelps and putative Class members, because a reasonable Plan participant considered the information important in making retirement elections and estate planning decisions about whether to buy life insurance on the market. When Kerber and Phelps retired from U S WEST and made their respective retirement elections and had to choose the structure of benefits to be received for themselves and their spouses, they specifically and detrimentally relied upon representations and assurances classifying the PDB to be protected, not a “take away” benefit. The PDB was a *huge* financial component of Kerber’s and Phelps’s respective financial and estate planning. For Kerber and Phelps and most similarly situated retirees, the PDB is the equivalent of the retiree’s last annual salary while employed at a U S WEST company.

In July 2000, U S WEST merged with Qwest, the surviving named company. Named Plaintiffs contend that after U S WEST’s merger with QWEST and until September 2003, Plan administrators continued to treat the PDB and disseminate formal information to lead retirees in to believing the PDB was a protected vested or defined pension benefit.

Now, due to a combination of age, health condition, and meager financial factors, Kerber,

Phelps and thousands of putative Class members cannot possibly afford the cost of purchasing life insurance on the market so as to replace the face amount of the expected PDB.

**Elements of First Claim and Relief Requested.** With the exception of element No. 3 below, Plaintiffs have the burden of proof and will establish the following elements:

- (1) Qwest Defendants (as successor in interest to U S WEST entities), the party to be estopped, was aware of the true fact and legal obligations. Former Plan sponsors and Plan Administrators (U S WEST, Mountain Bell, Northwest Bell and Pacific Northwest Bell) had a fiduciary duty, pursuant to the ERISA statute and associated regulations to include certain information in the Summary Plan Descriptions (SPDs). See ERISA Section 102(b), 29 U.S.C. § 1022(b); 29 C.F.R. § 2520.102-3. Under the statute, a SPD must explain the “circumstances which may result in disqualification, ineligibility, or denial or loss of benefits,” 29 U.S.C. § 1022(b). Under the regulation, a SPD must contain:

“a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery (e.g., by exercise of subrogation or reimbursement rights) of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by paragraphs (j) and (k) of this section. In addition to other required information, plans must include a summary of any plan provisions governing the authority of the plan sponsors or others to terminate the plan or amend or eliminate benefits under the plan and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated; a summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on termination of the plan or amendment or elimination of benefits under the plan, including, in the case of an employee pension benefit plan, a summary of any provisions relating to the accrual and the vesting of pension benefits under the plan upon termination; and a summary of any

plan provisions governing the allocation and disposition of assets of the plan upon termination. Plans also shall include a summary of any provisions that may result in the imposition of a fee or charge on a participant or beneficiary, or on an individual account thereof, the payment of which is a condition to the receipt of benefits under the plan. The foregoing summaries shall be disclosed in accordance with the requirements under 29 CFR 2520.102-2(b)."

29 C.F.R. § 2520-102-3(*I*). Former Plan sponsors and Plan administrators had a duty to disclose to Plaintiffs Kerber, Phelps and others similarly situated all material information about PDBs and any right on the part of the Plan sponsor and successor Plan sponsor to reduce, amend or eliminate the PDBs. The Former Plan sponsors and Plan administrators had a duty not to make misrepresentations or give out misleading information about the benefits or any 'reservation of rights' on the part of the Plan sponsor.

- (2) If a corporate Plan sponsor believes it has the right to amend a pension Plan so as to reduce or eliminate certain Plan benefits then, that right to adversely affect the Plan participant's expected future benefits constitutes one of the "circumstances which may result in denial of benefits" within the meaning of 29 U.S.C. § 1022(b) and, therefore, that "circumstance" ought to be clearly and conspicuously disclosed and stated within the SPD issued to Plan participants;
- (3) Qwest Defendants must present evidence that an updated SPD was timely delivered to Plaintiffs Kerber, Phelps and others similarly situated, so that they could make an informed decision about their retirement elections and know their rights to the PDBs as of their respective employment separation dates and next day commencement of retirement pay status. In other words, the burden is on



Qwest Defendants to show there was compliance with the requirements of ERISA Section 104(b), 29 U.S.C. § 1024(b), 29 C.F.R. § 2520.104b-2(b) and 29 C.F.R. § 2520.104b-4(a)(2)(iv) on February 28, 1990 the date both Plaintiffs Kerber and Phelps ended employment at U S WEST and commenced receiving service pension benefits;

- (4) Neither the former Plan sponsors nor Plan administrators provided Plaintiffs Kerber, Phelps, and others similarly situated, with a SPD at the time of their election of service pension benefits a SPD which conspicuously and adequately informed the Plan participants that the Plan sponsor retained the right to amend , reduce or eliminate PDBs after Plan participants' respective retirements;
- (5) The nonperformance or failure to make such disclosure on the part of the former Plan sponsors or Plan Administrators violated 29 U.S.C. § 1022(b); 29 C.F.R. § 2520.102-3 and constituted a breach of fiduciary, if, the PDBs were then considered mere welfare or ancillary benefits when Plaintiffs Kerber, Phelps and others similarly situated class members separated employment and commenced retirement pay status;
- (6) The former Plan sponsors and Plan administrators treated the PDBs as, not welfare or ancillary benefits, but funded defined benefit Plan benefits that could not be reduced or taken away after Plaintiffs Kerber, Phelps and others similarly situated commenced. To the extent that PDBs were mere welfare or ancillary benefits that could be reduced or eliminated, then the former Plan sponsor and Plan administrators made material misrepresentations as they counseled and

represented to Plaintiffs Kerber, Phelps and others similarly situated that they could count on the PDBs when making their retirement choices and future financial planning and that their mandatory beneficiaries were entitled to receive the PDBs. Qwest Defendants (as successor in interest to U S WEST entities), the party to be estopped intended that the representations or misrepresentations or lack of disclosure of material information be acted upon or had reason to believe that Plaintiffs Kerber, Phelps and others similarly situated would rely on the same and would not know otherwise;

- (7) Plaintiffs Kerber, Phelps and others similarly situated did not know nor should they have known, the true facts; and they reasonably and detrimentally relied on the misrepresentation or contrary representations about the PDBs and made irrevocable retirement decisions and other financial planning decisions;
- (8) Plaintiffs seek an order declaring that, if the PDB was always a “welfare” benefit, Defendants, by making omissions and failing to make necessary disclosures in the SPDs, failed to discharge duties to act solely in the interests of Named Plaintiffs and putative class members, as required by ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1). Named Plaintiffs request this Court to apply principles of federal common law equitable estoppel, in as much as the Plan publications and SPDs contained ambiguous representations about whether the PDB should be considered an “entitlement”, or a vested protected and accrued “defined pension benefit”, and prior Plan fiduciaries and Plan administrators made representations which constitute an oral interpretation of the ambiguities;

- (9) Plaintiffs seek further class-wide appropriate equitable relief, including a declaration that due to the aforesaid actions by prior Plan fiduciaries and Plan administrators, the PDB is deemed under the Plan to be a vested, protected or accrued pension benefit, not subject to reduction or elimination absent a Plan termination. This Court is asked to apply principles of equitable estoppel, under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and issue an order forbidding Qwest Defendants and successors from ever altering, modifying, eliminating or terminating Named Plaintiffs' and putative Class members' expected PDBs in the absence of a Plan termination.

**For their narrative summary of the Second Claim,** (Plaintiffs incorporate the Second Amended Complaint at ¶¶ 166-188), Plaintiffs state that beginning in 1998, the Plan sponsor acted to take advantage of the provisions of Sections 401(h) and 420 of the Internal Revenue Code, 26 U.S.C. §§ 401(h), 420, which enable sponsors of defined benefit Plans, under certain strictly defined circumstances, to make a "qualified transfer" and use certain "excess assets" in the pension Plan to fund retiree medical benefits for persons who are retired participants in the same pension Plan. Among the conditions and limitations imposed by Section 401(h) and 420(c)(2) of the Internal Revenue Code is that the pension benefits of all participants and beneficiaries which were accrued under the Plan before the date of transfer must become vested and nonforfeitable, just as they would have in the event that the Plan had terminated immediately before the IRC Section 420 transfer.

The Plan has always stated that, in the event of a Plan termination, PDBs have second payment priority ahead of certain deferred vested Plan benefits which have third and subsequent

payment priorities.

The Plan sponsor made several consecutive Section 420 transfers of pension assets in the Plan as follows: in December 1998 approximately \$60 million; in November-December 1999 approximately \$120 million; in December 2000 approximately \$111 million; and in December 2001 approximately \$120 million. Each time the Plan witnessed a transfer of pension assets pursuant to IRC § 420, the Plan required (in Section 11.2(b)(ii)) that, upon Plan termination or partial termination, Plan assets are to be applied, after making the payments required by ERISA Section 4044, 29 U.S.C. § 1344, “to make provision for the payment of death benefits attributable to deaths occurring prior to the date of termination which would have been payable from the Trust Fund, and for the payment, upon the deaths of retired employees who are on the pension roll as of the date of termination and of employees eligible as of that date for retirement, of death benefits which would have been payable from the Trust Fund, had the Plan not been so terminated.” The Plan *next* required (in Sections 11.2(b)(iii), (iv), (v) and (vi)) that Plan assets be applied for the payment of deferred vested pensions starting at age sixty-five and continuing until the death of the former employee.

In short, the Plan’s provisions at the time of each IRC Section 420 transfer assigned at termination of the Plan a higher priority to the payment of PDBs than payment of deferred vested pension benefits. This provision was a standard feature of the Plan and Named Plaintiffs West, Meister and Ingemann contend it reflects unambiguous Plan sponsor intent to treat the PDB as an accrued nonforfeitable vested benefit when a participant retired or was eligible for a retirement service pension. In accordance with the requirements of IRC § 420, and applicable federal regulations, each time the Plan witnessed the IRC § 420 transfer, Plaintiffs’ West’s, Meister’s,

Ingemann's and proposed class members' pension benefits became nonforfeitable in the same manner which would have been required if the Plan had been terminated immediately before each IRC § 420 transfer. Therefore, in conformity with the requirements of IRC § 420, the Plan included terms that vested all accrued benefits as of the date of each IRC § 420 transfer.

For example, when the first IRC § 420 transfer occurred in December 1998, the Plan stated at Section 14.4 (a) that "[t]he Accrued Benefit of each Participant who had not terminated employment with the Company and all Participant Companies as of the date of a Qualified Transfer shall become Vested and nonforfeitable in the same manner which would be required if the Plan had terminated immediately before such Qualified Transfer." The same Plan language existed during the 1999, 2000 and 2001 IRC § 420 transfers. Therefore, Named Plaintiffs contend that, due to the combined operation of the IRC § 420 transfers and the governing Plan language, all service pension eligible Plan participants became fully vested in their PDBs.

Notwithstanding prior SPD representations and the Plan sponsors actions, including representation under penalty of perjury made in Form 5500 filings and the operative affect of the IRC Section 420 transfers during years 1998-2001, Qwest Defendants decided to partially eliminate the PDB. On December 5, 2003, the Plan sponsor executed Plan Amendment 2003-5 which changed Plan Section 7.3, *inter alia*, as follows: "... no Death Benefits shall be made under Section 7.3(a), (b), or (d) with respect to a Former Participant who Terminates on or after January 1, 2004. ... no lump sum payments shall be made under Section 7.3(c) on or after January 1, 2004, except to the extent the Participant Terminates prior to January 1, 2004. . . ." (Second Amended Complaint at ¶177). As of the date of execution of Plan Amendment 2003-5, all Named Plaintiffs had earned a retirement service pension, all had become entitled to receive

the PDB and none consented to the partial termination of the PDB.

Plan Amendment 2003-5 is contrary to Plan provisions controlling when Plaintiffs Kerber and Phelps retired in year 1990. When Plaintiffs Kerber and Phelps retired, the controlling Plan document stated at Section 4.8: . . . “The Company undertakes to preserve the integrity of the U S WEST Management Pension Fund as a fund held in trust or by an insurance company or companies as permitted by law to be applied solely to pension and death benefits purposes and to take such action as may be necessary or appropriate to insure the application of the entire fund to such purposes.” Plan Amendment 2003-5 was created so as to remove millions of dollars of liabilities for PDBs and allow QWEST to show a curtailment income gain for corporate income reporting purposes. Plan Amendment 2003-5 is completely contrary to the long standing purposes of the Plan.

Therefore, Plaintiffs Meister, West and Ingemann contend Plan Amendment 2003-5 which partially terminated PDBs conflicts with the Plan’s prior commitments and is null and void. Those Plaintiffs contend this Plan amendment violates the anti-cutback provisions of ERISA Section 204(g), 29 U.S.C. § 1054(g), since PDBs, part of the accrued retirement service pensions earned by numerous Plan participants, have been eliminated. Plaintiffs West, Meister and Ingemann contend the actions by Defendants were a violation of the Plan provisions which expressly provided for the full vesting of all benefits under the Plan which were accrued as of each IRC § 420 transfer of pension assets. Those Plaintiffs challenge Plan Amendment 2003-5 and they seek an order reforming the Plan and striking that amendment. Pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), Plaintiffs seek an order declaring Qwest Pension Plan Amendment 2003-5 which purported to eliminate the PDB as illegal, in violation of the terms

and conditions of the 1998-2001 I.R.C. Section 420 transfers, and order the Plan amendment stricken and the Plan reformed to reinstate the PDB for persons retiring on or after January 1, 2004, with or without a lump sum distribution. Plaintiffs, request this Court enter an order requiring the Plan to notify and make payment of the correct amount of the PDB, together with interest, to each Plan participant and qualified mandatory beneficiaries for whom the PDB became payable after January 1, 2004. Named Plaintiffs seek removal from the Plan administration those persons who supported, assisted and acquiesced in and defended the Plan sponsor's efforts to eliminate the PDB for persons commencing retirement pay status on or after January 1, 2004.

**Elements of Second Claim and Relief Requested.** Plaintiffs have the burden of proof and will establish the following elements:

- (1) Former Plan sponsor and Plan Administrators (U S WEST, Mountain Bell, Northwestern Bell and Pacific Northwest Bell) represented and classified the PDBs to be defined pension benefits, not welfare benefits and they treated the PDBs as vested benefits and an entitlement upon a Plan participant becoming service pension eligible;
- (2) When making IRC Section 420 transfers of monies from the pension Plan to pay retiree medical health care costs, the Plan sponsors and Plan administrators represented that Plan participants' vested benefits were protected in the same manner as if the Plan had terminated at the time of each IRC Section 420 transfer;
- (3) At the time of each IRC Section 420 transfer, the Plan governing documents provided that upon termination the PDBs were vested and had a second payment

priority;

- (4) By virtue of having made IRC Section 420 transfers during years 1998-2001, and the termination priorities then stated under the Plan governing documents, the PDBs could not be eliminated or reduced for any person who was service pension eligible within one year of any of the 1998-2001 IRC Section 420 transfers;
- (5) Qwest Defendants illegally amended the Plan so as to eliminate PDBs for persons including Plaintiffs West, Meister and Ingemann who, although service pension eligible, had not yet ended employment service before January 1, 2004. Plan Amendment 2003-5 runs afoul of the operative effect of the IRC Section 420 transfers and the governing Plan language before Plan Amendment 2003-5 and, therefore, is null and void and violates the anti-cutback provisions of ERISA Section 204(g), 29 U.S.C. § 1054(g), since PDBs, part of the accrued retirement service pensions earned by numerous Plan participants, have been eliminated;
- (6) Plaintiffs Meister, West, and Ingemann, pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), seek an order declaring Qwest Pension Plan Amendment 2003-5 which purported to eliminate the PDB as illegal, in violation of the terms and conditions of the 1998-2001 I.R.C. Section 420 transfers, and order the Plan amendment stricken and the Plan reformed to reinstate the PDB for persons retiring on or after January 1, 2004, with or without a lump sum distribution;
- (7) Plaintiffs West, Meister and Ingemann request this Court enter an order requiring the Plan to notify and make payment of the correct amount of the PDB, together with interest, to each Plan participant and qualified mandatory beneficiaries for



whom the PDB became payable after January 1, 2004; and

- (8) Plaintiffs West, Meister and Ingemann seek removal from the Plan administration those persons who supported, assisted and acquiesced in and defended the Plan sponsor's efforts to eliminate the PDB for persons commencing retirement pay status on or after January 1, 2004.

**For their narrative summary of the Third Claim,** (Plaintiffs incorporate the Second Amended Complaint at ¶¶ 189-192) Named Plaintiffs, pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), request this Court to clarify their rights to future payment of PDBs under the terms of the Plan. Named Plaintiffs seek a declaration that their mandatory beneficiaries, to the extent there are any at time of death, are entitled to the PDB payable from the Plan. Named Plaintiffs seek a declaration that persons who retired on or after January 1, 2004 and received a lump sum distribution, minus the value of the PDB, are entitled to receive an additional lump sum payment representing the unpaid PDB, plus interest.

**Elements of Third Claim and Relief Requested.** Plaintiffs have the burden of proof and will establish the following elements:

- (1) Plaintiffs Kerber and Phelps completely exhausted internal administrative remedies and submitted written claims which they asked Qwest Defendants to treat as class-wide claims; all claims were denied;
- (2) The parties disagree as to Plaintiffs Kerber's Phelps's and Ingemann's future rights to PDBs;
- (3) The parties disagree as to Plaintiffs West's and Meister's right to receive the present value of the PDB, with interest, as part of their entitlement to lump sum

distribution of their pension benefits; and

- (4) Pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), all Plaintiffs request this Court to clarify their rights to future payment of PDBs under the terms of the Plan. Plaintiffs Kerber, Phelps and Ingemann seek a declaration that their mandatory beneficiaries, to the extent there are any at time of death, are entitled to the PDB. Plaintiffs West and Meister seek a declaration that persons who retired on or after January 1, 2004 and received a lump sum distribution, minus the value of the PDB, are entitled to receive an additional lump sum payment representing the unpaid PDB, plus interest.

**For their narrative summary of the Fourth Claim,** (Plaintiffs incorporate the Second Amended Complaint at ¶¶ 193-198) Named Plaintiffs, pursuant to ERISA Section 502(a)(2), 29 U.S.C. Section 1132(a)(2), seek equitable and remedial relief for the benefit of the Plan as a whole including an order requiring the Qwest Defendants to correct faulty language in the Plan's current SPD and issue a corrected SPD with language disclosing the PDB is a vested, protected or accrued defined pension benefit, not subject to reduction or elimination absent a Plan termination. Plaintiffs contend Qwest Defendants must reform the current Governing Plan document and the SPD and incorporate a written commitment to provide the vested Pension Death Benefit to Named Plaintiffs' qualified beneficiaries and Class members' qualified beneficiaries.

**Elements of Fourth Claim and Relief Requested.** Plaintiffs have the burden of proof and will establish the following elements:

- (1) Plaintiffs Kerber and Phelps completely exhausted internal administrative

remedies, to no avail;

- (2) The current Plan governing document and SPD, contrary to historical governing documents and SPDs state the PDB is a mere ancillary, welfare or take-away benefit, not an accrued benefit. In the most recent Summary of Material Modifications which edits the SPD, Qwest Defendants have characterized the PDB to be subject to a general reservation of rights clause and *not* a vested, protected *defined* pension benefit as it was historically represented, thus causing harm to the Plan and misleading Plan participants. Since November 2005, Qwest Defendants have been sending out a 'form' letter to retirees who inquire about the Pension Death Benefit telling them:

“Please be advised the Company has reserved its right, in its sole and absolute discretion, to change the terms of the Frozen Death Benefit or eliminate it at any time. Unlike the pension benefits under the Plan, the Frozen Death Benefit is not a vested, accrued or guaranteed benefit under the Qwest Pension Plan.”

- (3) Pursuant to ERISA Section 502(a)(2), 29 U.S.C. Section 1132(a)(2), Plaintiffs seek equitable and remedial relief for the benefit of the Plan as a whole including an order requiring the Qwest Pension Plan Design Committee, the Qwest Employee Benefits Committee and Qwest, as Plan sponsor, to correct faulty language in Governing Plan document and the Plan's current SPD and issue corrected Plan documents, including an SPD and SMM disclosing the Pension Death Benefit is a vested, protected or accrued defined pension benefit, not subject to reduction or elimination absent a Plan termination.
- (4) In the alternative, Plaintiffs seek the same declaratory, injunctive and equitable

relief pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3).

**B. Summary of Defenses.**

1. The death benefit is an ancillary employee welfare benefit (which can be reduced or eliminated), not an accrued pension benefit (which cannot be). Defendants' decision to terminate the death benefit was a settlor, not a fiduciary, decision.
2. The Plan (and Summary Plan Documents describing it) expressly authorize the plan sponsor to (and its designees) to eliminate non-vested Plan benefits such as the death benefit. The 2003 Plan amendment was consistent with this authorization.
3. QCI's transfer of excess Plan assets to pay certain benefits for retired employees was authorized by 26 U.S.C. §§ 401 and 420. Contrary to Plaintiffs' allegation, such transfers do not transform ancillary benefits funded by Plan assets into accrued benefits.
4. Plaintiffs' breach of fiduciary duty claim(s) fail because there is no evidence that any fiduciary misled or misinformed any plan participant into believing that the death benefit was an "accrued" rather than an "ancillary" benefit.
5. Plaintiffs' estoppel claim is not permitted by ERISA or the Tenth Circuit. Plaintiffs have not and cannot show that the relevant Plan documents are ambiguous. In a case where plan documents are clear, no oral statements

(even if such statements had been made) can amend the written terms of the plan.

#### **4. STIPULATIONS**

1. Qwest Communications International, Inc. (QCI) is a Delaware corporation in good standing in Colorado, with its principal place of business in the District of Colorado. QCI was created in 1995 when SP Telecom (a subsidiary of Southern Pacific Railroad) combined with Qwest Corporation, a Dallas-based digital microwave firm. In 2000, QCI acquired and merged with U S WEST, which at that time provided local telephone services in 14 Western States.

2. As a result of the merger, QCI became and remains to this day the Plan sponsor of the Qwest Pension Plan, which is the successor to U S WEST's pension plan. The Plan provides eligible QCI employees with "employee pension benefits" and "employee welfare benefits."

3. The "Qwest Employee Benefit Committee" is the Plan's "named fiduciary" and is responsible for, among other things, administration of the Plan including appointment of other fiduciaries and interpretation of the Plan's provisions. The "Qwest Pension Plan Design Committee" has been given authority by the Plan sponsor to make amendments to the Plan. The Plan Design Committee is not a Plan fiduciary.

4. Edward J. Kerber was formerly employed as a Manager within U S WEST's Human Resources Department and he retired after 30 years of service effective February 28, 1990. He receives a Qwest service pension.

5. Nelson B. Phelps was formerly employed as a Director within U S WEST's Human Resources Department and he retired with more than 23 years of service effective February 28, 1990. He receives a Qwest service pension.

6. Named Plaintiff Thoms J. Ingemann, Jr., was formerly employed as an "Account Consultant" at QWEST. He retired with more than 35 years service from QWEST effective March 2, 2005. He is a retiree receiving a service pension annuity from the Qwest Pension Plan.

7. Kerber, Phelps and Ingemann are each Plan "participants," as defined by ERISA § 3(7), 29 U.S.C. § 1002(7).

8. Named Plaintiff Joanne West was formerly employed as an "Senior Process Analyst". She retired after about 35 years of service effective February 11, 2004 and received a lump sum service pension payment which did not include the value of the PDB she seeks.

9. Named Plaintiff Nancy A. Meister was formerly employed as a Qwest "Lead Project Analyst." She retired after over 25 years of service effective February 11, 2004 and received a lump sum service pension payment which did not include the value of the PDB she seeks.

10. U S WEST, Inc., was at various times, but not at all times: an "employer" as defined by ERISA § 3(5), 29 U.S.C. § 1002(5); "plan administrator" and "plan sponsor" of the pension plan, pursuant to ERISA § 3(16)(A)(i) & (B), 29 U.S.C. § 1002(16)(A)(i) & (B); and was a corporation qualified to do business in Colorado. In July 2000, U S WEST, Inc. merged with Qwest Communications International, Inc., the surviving corporation which is an "employer," as defined by ERISA, and the current "plan sponsor" of the Qwest Pension Plan.

11. Years before its acquisition by QCI, U S WEST, Inc. ("Old U S WEST") had established two pension plans, effective January 1, 1984, as successors to the Bell System Pension Plan: the U S WEST Pension Plan (the "Occupational Plan") and the U S WEST Management Pension Plan (the "Management Plan").

12. The Occupational Plan and the Management Plan merged into a single plan, named the U S WEST Pension Plan (the "U S WEST Plan"), effective January 1, 1993. In 1998, Old U S WEST transferred sponsorship of the U S WEST Plan to USW-C, Inc. (which was renamed U S WEST, Inc.) ("U S WEST").

13. On or about July 1, 2000, U S WEST merged into QCI, which became the sponsor of the U S WEST Plan. QCI became a "participating company" on January 1, 2001.

14. Effective January 1, 2001, the U S WEST Plan was renamed the Qwest Pension Plan.

15. The Qwest Pension Plan ("Plan") is an "employee pension benefit plan," pursuant to ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

16. Defendant Qwest Employees' Benefit Committee ("EBC") 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 U S WEST Employees Benefit Committee was the named fiduciary January 1984 through June 2000.

17. Defendant Qwest Pension Plan Design Committee is the entity to which the Qwest Board of Directors has currently delegated certain authority to amend the PLAN.

18. In December 2003, Qwest Pension Plan Amendment 2003-5 was adopted which partially eliminated the PDB.

19. The Qwest Pension Plan was amended, effective December 1, 2003, to eliminate the death benefit for employees retiring after January 1, 2004:

(e)(1) Notwithstanding any other provision of this Article VII, no Death Benefits shall be made under Section 7.3(a), (b) or (d) with respect to a Former Participant who Terminates on or after January 1, 2004. Accordingly, no Death Benefit shall be paid under Section 7.3 (or otherwise) with respect to any Former Participant who Terminates on or after January 1, 2004 and who dies on or after January 1, 2004.

(2) Notwithstanding any other provision of this Article VII, no lump sum payments shall be made under Section 7.3(c) on or after January 1, 2004, except to the extent the Participant Terminates prior to January 1, 2004 and meets the conditions for a payment under Section 7.3(c) (other than an election of a lump sum or partial lump sum) prior to January 1, 2004, provided that the Participant elects a lump sum or partial lump sum with respect to his regular pension benefit during the Special Election Period as specified in Section 6.5 (as amended by Amendment 2003-2). Accordingly, no lump sum shall be paid under Section 7.3(c) to any Participant who Terminates on or after January 1, 2004.

20. Plan participants were advised in a "summary of material modification" to the Plan dated December 2003 that the death benefit would be eliminated for all eligible participants who terminate employment on or after January 1, 2004:

Under the Plan, employees hired prior to March 1, 1993 have generally been eligible for a Sickness Death Benefit if they die while actively employed or, in some cases, after termination of employment. The Plan has been amended to eliminate the Sickness Death Benefit for employees who terminate employment on or after January 1, 2004. Thus, participants who are eligible to receive service pensions who retire on or after January 1, 2004, will no longer be eligible for a Sickness Death Benefit in the event of death on or after January 1, 2004.

Similarly, participants who terminate on or after January 1, 2004 and elect a lump sum or partial lump sum with respect to their regular pension will not receive a lump sum attributable to the Sickness Death Benefit even if they qualify for a



service pension. Eligible participants who terminate prior to that date will receive an amount attributable to the death benefit in a lump sum if they elect a lump sum or partial lump with respect to their regular pension on a timely basis (generally no later than 120 days after termination of employment.)

The Plan has provided an Accidental Death Benefit to certain active employees hired before March 1, 1993 who die solely as a result of accident or injury during the course of employment. As noted above, the Plan has also provided a Sickness Death Benefit for certain eligible employees hired before March 1, 1993 who die while in active employment for reasons other than accident or injury. These two benefits for eligible active employees have not been changed. In addition, life insurance benefits for employees provided through the Qwest Group Life Insurance Plan are not affected by this change.

Please note that these changes do not affect the survivor benefits that may be payable under the form of pension you elected. For example, if you retired with a service pension and you elected a 50% survivor annuity for your spouse, the 50% survivor annuity will still be paid after your death. However, if you terminate employment on or after January 1, 2004, your spouse will not receive the Sickness Death Benefit upon your death.

21. Plaintiffs Kerber and Phelps individually exhausted their administrative remedies.

22. The Plan does not provide for an internal administrative claim process to overturn

Plan amendments.

## 5. PENDING MOTIONS

- A. Defendants' **Motion for Summary Judgment** (Docket No. 68 filed 08/30/06)
- B. Defendants' Memorandum in Support of Their Motion for Summary Judgment (filed 08/31/06)
- B. Plaintiffs' **Motion for Class Certification** (Docket No. 75 filed 09/08/06)
- D. Plaintiffs' Memorandum of Points and Authorities in Support of Their Motion for Class Certification (filed 09/08/06)
- E. Plaintiffs' Brief in Opposition to (Docket No. 68) Qwest Defendants' Motion for Summary Judgment (filed 10/03/06)

- F. Defendants' Response to Plaintiffs' Motion for Class Certification (Filed 10/10/06)
- G. Plaintiffs' Reply Brief in Support of (Docket No. 75) Motion for Class Certification (filed 10/20/06)
- H. Defendants' Reply Memorandum in Support of Their Motion for Summary Judgment (filed 11/02/06)
- C. **Defendants' Motion to Strike the Report of Plaintiffs' Putative Expert** (Docket No. 98 filed 11/02/06)
- J. Memorandum Brief in Support of Defendants' Motion to Strike the Report of Plaintiffs' Putative Expert (filed 11/02/06)
- K. Plaintiff's Response Brief in Opposition to (Docket No. 98) Qwest Defendants' Motion to Strike Expert Opinion (filed 11/14/06)
- L. Defendants' Reply Brief in Support of Motion to Strike the Report of Plaintiffs' Putative Expert (Docket No. 107 filed November 29, 2006)
- M. Defendants' **Motion to Strike [the Affidavit of David I. Brenner]** (Docket No. 104 filed 11/17/06)
- N. Defendants' **Motion in Limine to Exclude Testimony of Leonard Garofolo** (Docket No. 112 filed 12/8/06)
- O. Defendants' **Motion in Limine to Exclude Certain Testimony of Proposed Witnesses Barbara Doherty and Richard Remington** (Docket No. 113 filed 12/08/06)

## 6. WITNESSES

List the nonexpert witnesses to be called by each party. List separately:

**A. Plaintiff will call the following witnesses:**

(1) Barry Allen, Executive Vice President Operations, Qwest Services Corporation will testify in person. Mr. Allen will testify in accordance with his deposition testimony including his discussions and written communications with other Qwest officers concerning elimination of the PDB during 2003 and his discussions and written communications with Qwest retirees concerning elimination of the PDB.

(2) Margarita Dobis, Lead Benefits Professional, Qwest Services Corporation will testify in person. Ms. Dobis will testify in accordance with her deposition testimony.

(3) Barbara Doherty, former U S WEST Chief Human Resources Officer and member of the U S WEST Employees Benefits' Committee (EBC) will testify in person. She will testify in accordance with her deposition testimony, her affidavit and regarding the role of the EBC and U S WEST's representations and commitments about the PDB.

(4) Felicity O'Herron, Vice President Compensation and Benefits, Qwest Services Corporation will testify in person. She will testify in accordance with her deposition testimony including her discussions and written communications with other Qwest officers concerning elimination of the PDB during 2003 and her discussions and written communications with Qwest retirees concerning elimination of the PDB.

(5) Plaintiff Thomas Ingemann will testify in person. Mr. Ingemann will testify about the allegations and claims set forth in the Second Amended Complaint and about his responses to

Qwest Defendants' Interrogatories and documents received during his employment about the PDB and his separation from employment and decisions about retirement benefits.

(6) Plaintiff Edward Kerber will testify in person. Mr. Kerber will testify about the allegations and claims set forth in the Second Amended Complaint, in accordance with his affidavit, and about his responses to Qwest Defendants' Interrogatories and documents received during his employment about the PDB and his separation from employment and decisions about retirement benefits.

(7) Plaintiff Nancy Meister will testify in person. Ms. Meister will testify about the allegations and claims set forth in the Second Amended Complaint and about her responses to Qwest Defendants' Interrogatories and documents received during his employment about the PDB and his separation from employment and decisions about retirement benefits.

(8) Judy Osse, Lead Benefits Professional, Qwest Services Corporation, will testify in person. Ms. Osse will testify in accordance with her deposition testimony.

(9) Plaintiff Nelson Phelps will testify in person. Mr. Phelps will testify about the allegations and claims set forth in the Second Amended Complaint, in accordance with his affidavit, and about his responses to Qwest Defendants' Interrogatories and documents received during his employment about the PDB and his separation from employment and decisions about retirement benefits.

(10) Richard Remington, former U S WEST Chief Human Resources Officer and member of the U S WEST Employees Benefits' Committee (EBC) will testify in person. He will testify in accordance with his deposition testimony and regarding the role of the EBC and U S WEST's representations and commitments about the PDB.

(11) Jill Sanford, former Senior Vice President Human Resources, Qwest Services Corporation will testify in person in accordance with her deposition testimony including regarding the role of the EBC and the PDC, her membership on the EBC and PDC and actions taken by the PDC regarding the death benefit. She may also testify regarding the treatment of the death benefit under the Plan.

(12) Plaintiff Joanne West will testify in person. Ms. West will testify about the allegations and claims set forth in the Second Amended Complaint and about her responses to Qwest Defendants' Interrogatories and documents received during her employment about the PDB and her separation from employment and decisions about retirement benefits.

**B. Plaintiffs *may* call the following witnesses at trial if the need arises:**

(1) David Brenner, former U S WEST Controller and member of the U S WEST Employees Benefits' Committee (EBC) will testify in person. He will testify in accordance with his affidavit and regarding the role of the EBC and U S WEST's representations and commitments about the PDB.

(2) Macy C. Davis, former U S WEST Pension Plan Administrator will testify in person. She will testify in accordance with her affidavit and evidence presented to Judge Wiley Daniel in the case of *Bronk, et al v. U S WEST, et al.*

(3) Richard Notebaert, Chief Executive Officer, Qwest Communications International, Inc. will testify in person. Mr. Notebaert may need to testify as a rebuttal witness concerning his discussions and written communications with other Qwest officers concerning

elimination of the PDB during 2003 and his discussions and written communications with Qwest retirees concerning elimination of the PDB.

(4) Orem Shaffer, Chief Financial Officer, Qwest Communications International, Inc. will testify in person. Mr. Shaffer may need to testify as a rebuttal witness concerning his discussions and written communications with other Qwest officers concerning elimination of the PDB during 2003.

(5) James Stever, former U S WEST Chief Human Resources Officer and member of the U S WEST Employees Benefits' Committee (EBC) will testify in person. He will testify regarding the role of the EBC and U S WEST's representations and commitments about the PDB. He will give testimony supportive of Named Plaintiffs' claims that the PDB was considered to be and administered as a vested, protected, accrued benefit, not an ancillary or takeaway benefit at the whim of the pension plan sponsor.

**C. Defendants *will* call the following witnesses:**

(1) Felicity O'Herron, Vice President Compensation and Benefits, Qwest Services Corporation will testify in person. She may testify regarding the role of the Qwest Pension Plan Employee Benefits Committee ("EBC") and the Plan Design Committee ("PDC") and the actions of the PDC and the EBC regarding the death benefit. She may also testify regarding the manner in which the death benefit is treated under the Qwest Pension Plan ("Plan") and considerations regarding that benefit.

(2) Jill Sanford, former Senior Vice President Human Resources, Qwest Services Corporation will testify in person regarding the role of the EBC and the PDC, her membership

on the EBC and PDC and actions taken by the PDC regarding the death benefit. She may also testify regarding the treatment of the death benefit under the Plan.

(3) Judy Osse, Lead Benefits Professional, Qwest Services Corporation, will testify in person. Ms. Osse may testify regarding the maintenance of Plan documents and the administration of the death benefit pursuant to Plan documents.

**D. Defendants *may* call the following witnesses at trial if the need arises:**

(1) Barry Allen, Executive Vice President Operations, Qwest Services Corporation will testify in person. Mr. Allen may testify regarding considerations regarding elimination of the death benefit by the PDC during 2003.

(2) Margarita Dobis, Lead Benefits Professional, Qwest Services Corporation will testify in person. Ms. Dobis may testify regarding the maintenance of Plan documents and the administration of the Plan from 2002 to the present.

(3) Gene Wickes will testify in person. He may testify regarding actuarial assumptions used in preparing Form 5500s for Defendants and the relationship of those assumptions to Plan administration.

List the expert witnesses to be called by each party. List separately:

**A. Plaintiff *will* call the following witnesses:**

(1) Leonard Garofolo will testify in person. He will testify in accordance with his deposition testimony and concerning his expert report findings and conclusions.

**B. Defendants will not call an expert witness.**

## 7. EXHIBITS

Copies of listed exhibits must be provided to opposing counsel and any *pro se* party no later than ~~five days after the final pretrial conference~~ *January 22, 2007*. The objections contemplated by Fed. R. Civ. P. 26(a)(3) shall be filed with the clerk and served by hand delivery or facsimile no later than ~~11 days after the exhibits are provided~~ *February 12, 2007*.

**A. Plaintiffs' list of exhibits is attached hereto.**

**B. Defendants' list of exhibits:**

1. U S WEST Pension Plan effective January 1, 1984, as amended effective January 1, 1985, (Bates Stamp 3221-3387)
2. U S WEST Management Pension Plan, effective January 1, 1984 as amended effective January 1, 1985 (Bates Stamp 3543-3661). STIPULATED – DUPLICATE OF P # 9
3. U S West Pension Plan amended and restated effective January 1, 1993, Bates Stamp 4453-4561). STIPULATED – DUPLICATE OF P #36 (WITH DIFFERENT BATES NUMBERS)
4. Board of Director Minutes Dated December 4, 1992 (Exhibit E, DMSJ).
5. EBC Minutes dated January 19, 1993 (Exhibit U, DMSJ)
6. U S West Pension Plan effective January 1, 1997, Bates Stamp 3989-4143) STIPULATED – DUPLICATE OF P# 42.
7. Qwest Pension Plan (without appendices) effective January 1, 2001, (Bates Stamp 4562-4751). STIPULATED – DUPLICATE OF P # 48).



8. Qwest Pension Plan Amendment 2003-5, Bates Stamp 4961-4963.
9. 1977 Mountain States Telephone and Telegraph Co. Summary of Plan For Employees' Pensions, Disability Benefits and Death Benefits, (Bates Stamp 1836-1873).
10. Summary of Plan for Employees' Pensions Disability Benefits and Death Benefits Eff. January 1, 1979 (Northwestern Bell version) (Bates Stamp 1891 – 1909).
11. Bell System Pension Plan SPD, Eff. Oct. 1, 1980 (appendices and identical Northwestern Bell version not included), (Bates Stamp 1651 – 1691) STIPULATED – DUPLICATE OF P # 4.
12. Bell System Management Pension Plan SPD, Eff. Oct. 1, 1980 (Mountain Bell version) (identical Malheur Bell and Northwestern Bell versions and appendices not included), (Bates Stamp 1710-1750) STIPULATED – DUPLICATE OF P # 6.
13. U S WEST Pension Plan SPD, Eff. Jan 1. 1984, Rev. Jan 1, 1985 (identical Pacific Northwest Bell version not included), (Bates Stamp 1521- 1557) STIPULATED – DUPLICATE OF P #10.
14. U S WEST Management Pension Plan SPD, Eff. Jan 1. 1984, Rev. Jan 1, 1985 (identical Pacific Northwest Bell version not included), (Bates Stamp 1558 – 1590). STIPULATED – DUPLICATE OF P # 12.
15. U S WEST Pension Plan SPD, Eff. Jan. 1, 1984, Rev. Jan. 1, 1987 (identical Northwest Bell version not included) (Bates Stamp 1074 – 1123). STIPULATED – DUPLICATE OF P # 17.

16. U S WEST Management Pension Plan SPD, Eff. Jan. 1, 1984, Rev. Jan. 1, 1987 (identical Northwest Bell, Pacific Bell versions not included),(Bates Stamp 5662-5704).

STIPULATED – DUPLICATE OF P # 18.

17. U S WEST Management Pension Plan SPD, Eff. Jan. 1, 1989 (Bates Stamp 1145-1161). STIPULATED – DUPLICATE OF P#20.

18. U S WEST Pension Plan SPD (found in Benefits Today Handbook), Eff. Jan. 1, 1990, (Bates Stamp 1127-1145). STIPULATED – DUPLICATE OF P# 26.

19. U S WEST Pension Plan SPD, Eff. Jan. 1, 1990 (Bates Stamp 747-792).STIPULATED – DUPLICATE OF P# 27.

20. U S WEST Management Pension Plan SPD, Eff. Jan. 1, 1990 (Bates Stamp 712-740) STIPULATED – DUPLICATE OF P#28..

21. U S WEST Pension Plan SPD, Amended Sept. 1, 1993 (Bates Stamp 515-541).

22. U S WEST Benefits Handbook Including Pension Plan SPD, January 1996 (Bates Stamp 409-514) STIPULATED – DUPLICATE OF P# 39.

23. U S WEST Pension Plan Retiree SPD, January 1996 Bates Stamp 352-408) STIPULATED – DUPLICATE OF P# 40.

24. U S WEST Pension Plan Benefits Handbook Update, July 1997 Bates Stamp 6620-6664).

25. U S WEST Pension Plan SPD, Amended Jan 1. 1999 (Bates Stamp 5532-5610) STIPULATED – DUPLICATE OF P# 43.

26. U S WEST Benefits Handbook Including Pension Plan SPD, August 1999 (Bates Stamp 0001-79) STIPULATED – DUPLICATE OF P# 44.

27. Qwest Pension Plan SPD, Eff. Jan. 1, 2001 with Summary of Material

Modifications dated 12/2003, (Bates Stamp 0080 – 0169).

28. The following Minutes of the EBC, 1984-1993 (if necessary for impeachment or rebuttal):

29. January 30, 1984 EBC minutes (including EBC By-Laws)

30. April 23, 1984 EBC minutes

31. July 30, 1984 EBC minutes

32. October 15, 1984 EBC minutes

33. December 21, 1984 EBC minutes

34. January 28, 1985 EBC minutes

35. May 16, 1985 EBC minutes

36. July 22, 1985 EBC minutes

37. October 9, 1985 EBC minutes

38. November 22, 1985 EBC minutes

39. March 17, 1986 EBC minutes

40. April 9, 1986 EBC minutes

41. June 6, 1986 EBC minutes

42. August 14, 2006 EBC minutes

43. September 22, 1986 EBC minutes

44. December 8, 1986 EBC minutes

45. February 4, 1987 EBC minutes

46. April 1, 1987 EBC minutes

47. February 10, 1988 EBC minutes
48. April 4, 1988 EBC minutes
49. June 1, 1988 EBC minutes
50. September 2, 1988 EBC minutes
51. September 21, 1988 EBC minutes
52. October 5, 1988 EBC minutes
53. December 6, 1988 EBC minutes
54. January 11, 1989 EBC minutes
55. February 1, 1989 EBC minutes
56. March 1, 1989 EBC minutes
57. April 5, 1989 EBC minutes
58. May 1, 1989 EBC minutes
59. June 2, 1989 EBC minutes
60. June 23, 1989 EBC minutes
61. June 12, 1989 EBC minutes.
62. Notice of Motion to Dismiss and for Summary Judgment, Defendants'

Statement of Material Facts not in Dispute and Brief in Support of Defendants' Motion to Dismiss and for Summary Judgment (with attachments) filed by Defendants in In Re Lucent Death Benefits Litigation on December 30, 2005.

63. Plaintiffs' response and opposition to Defendants' Motion to Dismiss and for Summary Judgment (with attachments) filed by Plaintiffs in In Re Lucent Death Benefits Litigation.

## **8. DISCOVERY**

Discovery has been completed. *Unless otherwise ordered, upon a showing of good cause in an appropriate motion, there will be no discovery after entry of the final pretrial order.*

## **9. SPECIAL ISSUES**

None.

## **10. SETTLEMENT**

- a. Counsel for the parties met in person on December 6, 2006, to discuss in good faith the settlement of the case.
- b. The participants in the settlement conference, included counsel, party representatives, and any *pro se* party.
- c. The parties were promptly informed of all offers of settlement.
- d. Counsel for the parties and any *pro se* party (do) (do not) intend to hold future settlement conferences.
- e. It appears from the discussion by all counsel and any *pro se* party that there is no possibility of settlement.
- f. The date of the next settlement conference before the magistrate judge or other alternative dispute resolution method.
- g. Counsel for the parties and any *pro se* party considered ADR in accordance with D.C.COLO.LCivR.16.6.

## **11. OFFER OF JUDGMENT**

Counsel and any *pro se* party acknowledge familiarity with the provision of rule 68

(Offer of Judgment) of the Federal Rules of Civil Procedure. Counsel have discussed it with the clients against whom claims are made in this case.

## **12. EFFECT OF FINAL PRETRIAL ORDER**


Hereafter, this Final Pretrial Order will control the subsequent course of this action and the trial, and may not be amended except by consent of the parties and approval by the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged herein. This Final Pretrial Order supersedes the Scheduling Order. In the event of ambiguity in any provision of this Final Pretrial Order, reference may be made to the record of the pretrial conference to the extent reported by stenographic notes and to the pleadings.

## **13. TRIAL AND ESTIMATED TRIAL TIME; FURTHER TRIAL PREPARATION PROCEEDINGS**

All the claims and defenses in this case will be tried to the Court. The four day trial to the Court set for January 22-25, 2007 was vacated by Order dated December 11, 2006.

DATED this 19<sup>th</sup> day of December 2006.

BY THE COURT:

  
United States Magistrate Judge

APPROVED:

<p>Curtis L. Kennedy, Esq. 8405 E. Princeton Avenue Denver, Colorado 80237-1741 Telephone: (303) 770-0440 Fax: (303) 843-0360 E-mail: <a href="mailto:CurtisLKennedy@aol.com">CurtisLKennedy@aol.com</a> <i>Attorney for Plaintiffs</i></p>	<p>Elizabeth I. Kiovsky, Esq. BAIRD &amp; KIOSKY, LLC 2036 E. 17th Avenue Denver, CO 80206-1106 Telephone: (303) 322-5334 Fax: (303) 813-4501 E-mail: <a href="mailto:bethk@bairdkiovsky.com">bethk@bairdkiovsky.com</a> <i>Attorney for Defendants</i></p>
---	---

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et alCASE NUMBER 05-cv-00478-BNB-PACCASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et alPAGE 1*List Plaintiffs Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
---------	-------------	------	-----	-----	-----------	----------

Bates Nos, or  
Deposition Exhibit No.

1	<b>Second Amended Class Action Complaint</b>	Depo. Ex. 51				
2	<b>PRINTOUT</b> - List of stipulations of undisputed facts in the <i>Kerber v. Qwest</i> case.					
3	<b>1980</b> Bell System Pension Plan (With Amendments Effective October 1, 1980)					
4	<b>Bell System Pension Plan - SPD</b> (With Amendments Effective October 1, 1980)	1651-1691	X			
5	<b>Bell System Management Pension Plan</b> (Effective October 1, 1980)					
6	<b>Bell System Management Pension Plan - SPD</b> (With Amendments Effective October 1, 1980)	1707-1750 (exclude 1708-1709)	X			
7	<b>Family Protection Benefits brochure - SPD</b>	5085-5087				
8	<b>1982</b> Bell System Management Pension Plan Includes Special Increases in Pensions Amendment Effective 10-1-82	3066-3158	X			



EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et al CASE NUMBER 05-cv-00478-BNB-PAC

PAGE 2

CASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et al  
*List Plaintiff's Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
<i>Bates Nos. or Deposition Exhibit No.</i>						
9	<b>1984</b> U S WEST Management Pension Plan Effective January 1, 1984	X				
10	<b>1985</b> U S WEST Pension Plan - SPD (With Amendments Effective January 1, 1985)	X				
11	U S WEST Management Pension Plan Effective January 1, 1984 As Amended Effective January 1, 1985	X				
12	U S WEST Management Pension Plan - SPD (With Amendments Effective January 1, 1985)	X				
13	November 8, 1985 letter from Mountain Bell President Robert Blanz to management employees					
14	<b>1986</b> U S WEST Pension Plan Effective January 1, 1984 As Amended Effective January 1, 1986	X				
15	U S WEST Management Pension Plan Effective January 1, 1984 As Amended Effective January 1, 1986	X				

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et alCASE NUMBER 05-cv-00478-BNB-PACCASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et alPAGE **3***List Plaintiffs Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
<i>Bates Nos. or Deposition Exhibit No.</i>						
16	November 26, 1986 Mountain Bell Benefits and Compensation NEWS					
17	<b>1987</b> U S WEST Pension Plan - SPD (With Amendments Effective January 1, 1987)	X				
18	U S WEST Management Pension Plan - SPD With Amendments Effective January 1, 1987	X				
19	<b>1989</b> March 1989 Description U S WEST Management Pension Plan					
20	U S WEST Management Pension Plan - SPD (With Amendments Effective January 1, 1989) Note: Distributed with "Benefits Today" notice by U S WEST John G. Shear <i>after</i> July 1, 1989	X				
21	U S WEST Pension Plan September 1989					
22	U S WEST Management Pension Plan September 1989					
23	December 1, 1989 U S WEST TODAY Bulletin					

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et al CASE NUMBER 05-cv-00478-BNB-PAC

PAGE 4

CASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et al  
*List Plaintiffs Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
24	December 15, 1989 letter from U S WEST Chief Human Resources Officer J. Thomas Bouchard sent to service pension eligible employees explaining "5+5" special retirement offer					
25	<b>1990</b> March 26, 1990 Letter from John G. Shea, U S WEST, Inc. to "Dear U S WEST Retiree"	6397				
26	U S WEST Pension Plan - SPD (With Amendments Effective January 1, 1990) <u>Note:</u> Distributed <i>after</i> December 1, 1990	1127-1144	X			
27	<b>1991</b> U S WEST Pension Plan - SPD (With Amendments Effective January 1, 1990) <u>Note:</u> Distributed <i>after</i> July 1, 1991	0747-0795	X			
28	U S WEST Management Pension Plan - SPD (With Amendments Effective January 1, 1990) <u>Note:</u> Distributed <i>after</i> July 1, 1991	0713-0740	X			
29	<b>1993</b> March 1993 Description U S WEST Pension Plan	Depo. Ex. 69				
30	July 1993 U S WEST Retirement Plans BULLETIN and SMM for U S WEST Pension Plan	Depo. Ex. 61	X			

Bates Nos. or  
Deposition Exhibit No.

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et alCASE NUMBER 05-cv-00478-BNB-PACCASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et alPAGE **5***List Plaintiff's Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
---------	-------------	------	-----	-----	-----------	----------

Bates Nos. or  
Deposition Exhibit No.

31	<b>1994</b> U S WEST Pension Plan - SPD (With Amendments Effective January 1, 1990) <b>Note:</b> This version of the January 1, 1994 SPD was placed in the "Your U S WEST Benefits" handbook distributed <i>only</i> to active U S WEST Employees See pg. A3 - Bates 0521	0515-0638				
32	February 1994 Description U S WEST Pension Plan	5041-5042				
33	September 1994 Description U S WEST Pension Plan	Depo. Ex. 71				
34	Form 5500 Annual Report/Return of U S WEST Pension Plan for year end 1993 filed October 14, 1994					
35	Form 5500 year end 1993 Instructions	Opposition to SJ Exhibit 15				
36	U S WEST PENSION PLAN Amended Restated Effective January 1, 1993 <b>Note:</b> This plan document was not executed until December 29, 1994 and the U S WEST's effort was to make it retroactive to January 1, 1993 See pg. 67 - Bates 4298	4228-4317 <b>X</b>				

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et alCASE NUMBER 05-cv-00478-BNB-PACCASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et alPAGE 6*List Plaintiff's Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
<i>Bates Nos. or Deposition Exhibit No.</i>						
37	<b>1995</b> September 1995 U S WEST TODAY RETIREES ("Benefit tips: How to report a death")	5924-5927				
38	<b>1996</b> January 1996 Description U S WEST Pension Plan	Depo. Ex. 72				
39	U S WEST Pension Plan - SPD (With Amendments Through December 31, 1995) <b>Note:</b> This version of the January 1, 1996 SPD was placed in the "Your U S WEST Benefits" handbook distributed only to active U S WEST Employees during July 1996	0409-0514	X			
40	U S WEST Pension Plan - SPD (With Amendments Through December 31, 1995) <b>Note:</b> This version of the January 1, 1996 SPD was distributed to U S WEST Retirees during July 1996	0352-0408	X			
41	November 13, 1996 Description U S WEST Pension Plan	Depo. Ex. 73				
42	<b>1998</b> U S WEST PENSION PLAN Amended and Restated Effective January 1, 1997 <b>Note:</b> This plan document was not executed until January 25, 1998 and the U S WEST's effort was to make it retroactive to January 1, 1997 See pg. 147 - Bates 4143	3989-4227				

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et al CASE NUMBER 05-cv-00478-BNB-PAC

PAGE 7

CASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et al  
*List Plaintiff's Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
---------	-------------	------	-----	-----	-----------	----------

Bates Nos, or  
Deposition Exhibit No.

43	<b>1999</b> U S WEST Pension Plan - SPD (With Amendments Through January 1, 1999) <b>Note:</b> This SPD was labeled for internal use only See pg. 76 - Bates 5607	X				
44	<b>U S WEST Pension Plan - SPD</b> (With Amendments Through January 1, 1999) <b>Note:</b> This version of the August 1, 1999 SPD was placed in the "U S WEST Benefits" Handbook distributed <i>only</i> to active U S WEST Employees	X				
45	July 23, 1999 letter from U S WEST Senior Vice President Law and Human Resources Toni Qzeroff to "Dear Retiree"					
46	September 22, 1999 letter from U S WEST CEO Solomon Trujillo "To Retirees and Employees"					
47	<b>2001</b> February 2001 letter from Qwest EVP Ian Zisken to "Dear Retiree"					
48	<b>2002</b> Qwest Pension Plan Amended and Restated Effective January 1, 2001 <b>Note:</b> This plan document was not executed until December 19, 2002 and QWEST's effort was to make it retroactive to January 1, 2001 See pg. 183 - no Bates No.	X				

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et al CASE NUMBER 05-cv-00478-BNB-PACCASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et al **PAGE 8**  
*List Plaintiff's Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
<i>Bates Nos. or Deposition Exhibit No.</i>						
49	<b>2003</b> Qwest Pension Plan - SPD (With Amendments Through January 1, 2003) <b>Note:</b> This SPD Was Distributed after April 1, 2003	5444-5531 Depo. Ex. 70				
50	September 2, 2003 Letter/Notice by VP Jill Sanford	6564 Depo. Ex. 8				
51	September 2, 2003 internal email at Qwest	JS009-JS010 Depo. Ex. 9				
52	September 25, 2003 email between CEO Dick Notebaert and Retiree Murvyn West	6435 Depo. Ex. 15				
53	October 3, 2003 Email, memo and chart re: Update on Pension Trust ABO Funded Status	7637-7639 Depo. Ex. 18				
54	October 3, 2003 Qwest Management Separation Plan Q&A's distributed to Nancy Meister and Joanne West					
55	October 30, 2003 report from Qwest Pension Plan Service Center to Plaintiff Thomas Ingemann with "Calculation Summary Management Estimate"					
56	November 4, 2003 email between VP Jill Sanford and EVP Barry Allen	JS110-JS115 Depo. Ex. 64				

CASE CAPTION      Edward J. Kerber, et al      v.      Qwest Pension Plan, et al

**PAGE 9**

List Plaintiff's Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)

EX. NO.	DESCRIPTION	Bates Nos. or Deposition Exhibit No.	STIP	REC	REJ	RUL. RES.	COMMENTS
57	November 5, 2003 email between VP Jill Sanford, Felicity O'Herron and EVP Barry Allen	JS044-JS045 Depo. Ex. 65					
58	November 25, 2003 letter from Qwest Pension Plan Service Center to Plaintiff Nancy Meister with "Calculation Summary Estimate Management"						
59	Amendment 2003-5 Qwest Pension Plan executed November 24, 2003 to December 5, 2003	4961-4963 Depo. Ex. 29	X				
60	December 3 and 9, 2003 Email Notice to Employees re: Elimination of Pension Death Benefit	SC-031-034 Depo. Ex. 36 Depo. Ex. 38	X				
61	December 4, 2003 letter from Richard Remington to EVP Barry Allen	Depo. Ex. 86					
62	December 12, 2003 Surplus notification - termination of employment letter to Plaintiff Nancy Meister						
63	December 21, 2003 email between CEO Dick Notebaert and EVP Barry Allen	6426					



EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et alCASE NUMBER 05-cv-00478-BNB-PACCASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et alPAGE **10***List Plaintiff's Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
<b>Bates Nos, or Deposition Exhibit No.</b>						
64	December 18, 2003 letter from Retiree Stuart Gunkel to Felicity O'Herron and O'Herron response letter					7230-7231 Depo. Ex. 42
65	December 23, 2003 election form signed by Plaintiff Nancy Meister and David Meister - "Qwest Pension Plan Benefit Option Election Form"					
66	December 2003 Summary of Material Modifications Qwest Pension Plan	X				0175-0178 Depo. Ex. 78
67	Administrative Claim and Denial papers: September 26, 2003 letter CLK to Qwest October 22, 2003 letter Qwest to CLK December 10, 2003 letter CLK to Qwest December 18, 2003 Agenda for EBC December 22, 2003 letter Qwest to CLK March 5, 2004 letter CLK to Qwest May 28, 2004 letter Qwest to CLK					Depo. Ex. 16 Depo. Ex. 21 Depo. Ex. 39 Depo. Ex. 40 Depo. Ex. 44 Depo. Ex. 46 Depo. Ex. 50
68	<b>2004</b> March 31, 2004 letter from Qwest Felicity O'Herron to Donald Archibald, President Montan AUSWR					
69	May 8, 2004 email between CEO Dick Notebaert and Jill Sanford					6428-6429

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et alCASE NUMBER 05-cv-00478-BNB-PACPAGE **11**CASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et al  
*List Plaintiffs Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
<b>Bates Nos. or Deposition Exhibit No.</b>						
70	June 7, 2004 email between Watson Wyatt and Qwest (Felicity O'Herron, et al)					JS0124-JS0135 Depo. Ex. 48 Depo. Ex. 49
71	<b>2005</b> May 11, 2005 email chain between Mimi Hull, President Association of U S WEST Retirees and Qwest Attorney Cindy Delaney (c: Ed Kerber, Nelson Phelps, et al)					
72	September 9, 2005 letter from Qwest counsel Beth Kivsky to CLK with attached copies of letters that were sent out when IRC Section 420 transfers occurred					420 Transfer Letters 001-005
73	November 14, 2005 email between Qwest Margie Dobis and Retiree Bob Day - "Response to 'Frozen Death Benefit' Inquiry"					8278-8280
74	November 28, 2005 form letters "Response to 'Frozen Death Benefit' Inquiry"					Depo. Ex. 58
75	Qwest Defendants' Amended Responses to First Set of Interrogatories					Depo. Ex. 52 Depo. Ex. 1
76	Qwest Defendants' Responses to First Set of Request for Admissions					Depo. Ex. 53

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et alCASE NUMBER 05-cv-00478-BNB-PAC

PAGE 12

CASE CAPTION Edward J. Kerber, et al v. Qwest Pension Plan, et al  
*List Plaintiff's Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
---------	-------------	------	-----	-----	-----------	----------

Bates Nos. or  
Deposition Exhibit No.

77	Plaintiff Nelson Phelps's January 30, 2006 Response to First Set of Interrogatories					
78	Plaintiff Edward Kerber's January 17, 2006 Response to First Set of Interrogatories					
79	Plaintiff Joanne West's January 17, 2006 Response to First Set of Interrogatories					
80	Plaintiff Nancy Meister's January 17, 2006 Response to First Set of Interrogatories					
81	Plaintiff Thomas Ingemann's January 16, 2006 Response to First Set of Interrogatories					
82	Plaintiff Edward Kerber's April 11, 2006 Response to Second Set Interrogatories					
83	Plaintiff Nelson Phelps's April 13, 2006 Response to Second Set Interrogatories					
84	Plaintiff Joanne West's April 12, 2006 Response to Second Set Interrogatories					
85	Plaintiff Nancy Meister's April 12, 2006 Response to Second Set Interrogatories					

EXHIBIT LIST OF Plaintiffs EDWARD J. KERBER, et al CASE NUMBER 05-cv-00478-BNB-PAC

PAGE 13

CASE CAPTION Edward J. Kerber, et al v. Owest Pension Plan, et al  
*List Plaintiff's Exhibits by Number (1, 2, 3, etc.) and Defendant's Exhibits by Letter (A, B, C, etc.)*

EX. NO.	DESCRIPTION	STIP	REC	REJ	RUL. RES.	COMMENTS
<i>Bates Nos, or Deposition Exhibit No.</i>						
86	Plaintiff Thomas Ingemann's April 11, 2006 Response to Second Set Interrogatories					
87	Leonard Garofolo expert witness curriculum vitae					
88	Leonard Garofolo expert report	Depo. Ex. 55				
89	Summary of Governing Plan Documents and SPDs	Depo. Ex. 79				
90	Affidavit of Barbara Doherty	Doherty Ex. 4				
91	Affidavit of Richard Remington	Depo. Ex. 82				
92	Affidavit of David Brenner	SJ Opposition Exhibit 25				
93	Bronk case hearing transcript and Affidavit by Mary Davis	SJ Opposition Exhibit 14				
94	Jarvis case reply brief by U S WEST	SJ Opposition Exhibit 19				
95	Jarvis case hearing transcript reply brief by U S WEST	SJ Opposition Exhibit 20				