

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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

EDWARD J. KERBER,  
NELSON B. PHELPS,  
JOANNE WEST,  
NANCY A. MEISTER,  
THOMAS J. INGEMANN, JR.,  
MARTHA A. LENSINK,  
SAMUEL G. STRIZICH,  
Individually, and as Representative of plan participants  
and plan beneficiaries of the QWEST GROUP LIFE INSURANCE PLAN,

Plaintiffs,

vs.

QWEST GROUP LIFE INSURANCE PLAN,  
QWEST EMPLOYEES BENEFIT COMMITTEE,  
QWEST PLAN DESIGN COMMITTEE,  
QWEST COMMUNICATIONS INTERNATIONAL, INC.,  
PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendants.

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**PLAINTIFFS' SECOND AMENDED MOTION FOR CLASS CERTIFICATION**

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During the "Status Hearing" held on March 20, 2008, Defendants' counsel stated they preferred Plaintiffs file a second amended motion for class certification, so that the Court may address this procedure before addressing a motion for a summary judgment, and the Court directed Plaintiffs to file their motion on or before April 1, 2008. (Courtroom Minutes, Docket 59). There has been compliance with Local Rule 7.1. Named Plaintiffs, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, hereby submit a Second Amended Motion for Class Certification and redefine the proposed class and subclasses.

1. **Class Definition.** Named Plaintiffs bring the First, Third, Fourth and Seventh Claims for Relief set forth in the Second Amended Complaint on behalf of a proposed class of all “Eligible Retirees,” as defined by the Governing PLAN Document (and beneficiaries thereof). In addition, there are three *subclasses* of Eligible Retirees (and beneficiaries thereof)

2. **Subclass ‘A’ Definition.** Plaintiffs KERBER and PHELPS brings the Second Claim for Relief on behalf of a subclass of Eligible Retirees classified as Pre-1991 Retirees to whom PLAN administrators sent Confirmation Notices stating their PLAN benefits were not subject to amendment, suspension or discontinuance. PLAN administrators also sent this subclass a SPD first issued in April 2003 which document has not yet been superceded by another SPD and contains this statement: “For retirees who retired on a service or disability pension, and who die on or after 1996, the minimum Basic Life insurance coverage is \$20,000 and *will not reduce below that amount.*” (emphasis added).

3. **Subclass ‘B’ Definition.** Plaintiff LENSINK brings the Fifth Claim for Relief on behalf of a subclass of beneficiaries of Eligible Retirees who died between the period January 1, 2006 and December 12, 2006 prior to the execution and adoption of the document labeled “Amendment 2006-1” by members of the QWEST PLAN DESIGN COMMITTEE.

4. **Subclass ‘C’ Definition.** Plaintiff STRIZICH brings the Sixth Claim for Relief on behalf of a subclass of beneficiaries of Eligible Retirees who died after January 1, 2007 and prior to the adoption of any PLAN amendment subsequent to “Amendment 2006-1.”

5. Since ‘Eligible Retirees’ is defined by the Governing PLAN Document executed in June 1998, the class is easily and objectively determinable.<sup>1</sup>

6. Named Plaintiffs move the Court to certify the Class under Rule 23(b)(1)(A), Rule 23(b)(1)(B) and/or Rule 23(b)(2). Alternatively, if the Court does not deem a class appropriate under those provisions, Named Plaintiffs move the Court to certify a Class under Rule 23(b)(3) or a combination of Rule 23(b)(2) and (b)(3).

7. All claims pertain to Qwest Group Life Insurance Plan, a welfare employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA). All claims will be tried to the Court. This case easily satisfies all the prerequisites of Fed.R.Civ.P. 23(a) and can be certified under any of Rule 23(b)’s three prongs (or any combination thereof).

8. Although this case easily meets the requirements of Rule 23(b)(3) (because

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<sup>1</sup> The Plan, at Sections 1.1 and 2.2, defines ‘Eligible Retiree,’ to be only those persons in the following classifications:

- (a) Retired Employees who are former Salaried Employees and whose service or disability pension commenced before January 1, 1997;
- (b) Retired Employees who were Occupational Employees and are granted a service or disability pension;
- (c) Retired Employees who are receiving a modified disability pension under either the U S WEST Pension Plan Modified Disability Pension Program with at least 15 years of service under that plan and have attained age 65;
- (d) Retired Employees whose service or disability pension commenced before January 1, 1987 and who receive Grandfathered Benefits; and
- (e) Retired Employees who are former Salaried Employees with the following age and service combinations:

<i>Retirement Age</i>	<i>Term of Employment</i>
Any Age	at least 30 years
50-54	at least 25 years
55-59	at least 20 years
60-64	at least 15 years
65 and older	at least 10 years

Plaintiffs’ proposed class necessarily includes the beneficiaries of those persons whom the Plan considers to be an “Eligible Retiree.”

common questions predominate and a class action is superior to individual actions for fairly and efficiently resolving the controversy), it should be certified under Rule 23(b)(1) (because individual actions risk inconsistent adjudications establishing incompatible standards of conduct for the Defendants and/or because individual adjudications would as a practical matter be dispositive of, or threaten, absent Class members' interests) and/or Rule 23(b)(2) (because the Defendants have acted in a way generally applicable to the Class, making final injunctive or declaratory relief appropriate with respect to the Class as a whole). Rule 23(b)(1) and/or (b)(2) case are preferred over (b)(3) actions since they have superior *res judicata* effects because they generally do not permit opt-outs.

9. In support of this motion, Named Plaintiffs adopt and incorporate Docket 62-1, their proposed Second Amended Complaint filed with the Court on March 31, 2008. Also, Named Plaintiffs incorporate herein their memorandum of authorities and arguments, together with Exhibit 1 filed therewith.

Dated: April 1, 2008.

s/ Curtis L. Kennedy  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of April, 2008, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and a courtesy copy was emailed to Defendants' counsel of record as follows:

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Also, copy of the same was delivered via email to Named Plaintiffs as follows:

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*/s Curtis L. Kennedy*  
Curtis L. Kennedy

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QWEST GROUP LIFE INSURANCE PLAN,  
QWEST EMPLOYEES BENEFIT COMMITTEE,  
QWEST PLAN DESIGN COMMITTEE,  
QWEST COMMUNICATIONS INTERNATIONAL, INC.,

Defendants.

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**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THEIR SECOND AMENDED MOTION  
FOR CLASS CERTIFICATION**

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This civil action under the Employee Retirement Income Security Act (ERISA) is ideally suited for class treatment. The Second Amended Complaint (Docket 62-2) asserts claims based upon alleged violations of ERISA's statutory provisions and non-compliance with controlling terms of the Governing PLAN Document.<sup>1</sup>

1. Named Plaintiffs for themselves and a class of "Eligible Retirees" (a term defined by the Governing PLAN Document) seek a panoply of declaratory, injunctive and other equitable relief concerning PLAN administration.

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<sup>1</sup> The Eighth Claim for Relief based on failure to provide documents under which the PLAN is established or is operated need not be class certified.

2. Upon review of the Second Amended Complaint (Docket 62-1), it should be readily apparent why this case, brought under ERISA §§ 502(a)(1)(B), and (a)(3), 29 U.S.C. §§ 1132(a)(1)(B), and (a)(3) is a paradigmatic class action. It will adjudicate in one action the claims of thousands of individual participants, and their beneficiaries, ensuring judicial economy and avoiding the possibility of inconsistent verdicts.

3. The basic group life insurance benefit is common to the Named Plaintiffs and almost 48,000 other absent Class members, thousands of whom are actively supporting this legal action. The case focuses exclusively on the actions and inactions of PLAN sponsor Qwest and PLAN administrators and their duties under ERISA and the controlling terms of the Governing PLAN Document.

4. This case easily satisfies all the prerequisites of Fed.R.Civ.P. 23(a) and can be certified under any of Rule 23(b)'s three prongs (or any combination thereof). Although it easily meets the requirements of Rule 23(b)(3) (because common questions predominate and a class action is superior to individual actions for fairly and efficiently resolving the controversy), it should be certified under Rule 23(b)(1) (because individual actions risk inconsistent adjudications establishing incompatible standards of conduct for the Defendants and/or because individual adjudications would as a practical matter be dispositive of, or threaten, absent Class members' interests) and/or Rule 23(b)(2) (because the Defendants have acted in a way generally applicable to the Class, making final injunctive or declaratory relief appropriate with respect to the Class as a whole). Rule 23(b)(1) and/or (b)(2) case are preferred over (b)(3) actions since they have superior *res judicata* effects because they generally do not permit opt-outs.

**STATEMENT OF FACTS**

5. Plaintiff EDWARD J. KERBER, NELSON B. PHELPS, JOANNE WEST, NANCY A. MEISTER, and THOMAS J. INGEMANN, Jr., are “participants,” as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), of the Qwest Group Life Insurance Plan. Each is fully qualified to have benefits paid to his or beneficiaries upon his or her death.

6. Plaintiff MARTHA A. LENSINK is the sole beneficiary of Joseph M. Lensink’s entitlement to Basic Group Life Insurance Plan benefits. After Joseph Lensink died, she received a flat payment of \$10,000, pursuant to the terms of a document referred to in the Second Amended Complaint as “PLAN Amendment 2006-1” which purported amendment is legally challenged.

7. Plaintiff SAMUEL G. STRIZICH is the sole beneficiary of Sharon Strizich’s entitlement to Basic Group Life Insurance Plan Benefits. After Sharon Strizich died, Mr. Strizich received a flat payment of \$10,000, and he contends there was no adopted PLAN amendment prior to Mrs. Strizich’s death authorizing a reduction in Mr. Strizich’s expected benefit payment.

8. QWEST GROUP LIFE INSURANCE PLAN (“PLAN”) is an “employee welfare benefit plan,” pursuant to ERISA § 3(1), 29 U.S.C. § 1002(1). The PLAN provides a life insurance benefit payable to the estate or beneficiaries of PLAN participants who retired from QWEST or predecessor companies after becoming eligible for a service pension. U S WEST, the former PLAN sponsor, memorialized PLAN terms in which document the parties to this case refer to as the Governing PLAN Document, a document executed in June 1998.



9. The Governing PLAN Document in Article X, Section 10.1 contains the following “reservation of rights” provision:

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

(emphasis added). The highlighted text is referred to in the Court’s Amended Order entered February 27, 2008 (Docket 47) as the “Prior Loss Proviso.”

10. The Governing PLAN Document does not provide either a procedure for amendment of the PLAN or a procedure for adopting PLAN amendments. Yet, the Prior Loss Proviso prohibits PLAN administrators from applying a PLAN amendment that reduces the amount of life insurance benefits to be paid to beneficiaries of PLAN Participants who die before the PLAN amendment is adopted.

11. On October 14, 2005, at least two members of the QWEST PLAN DESIGN COMMITTEE met and documented a recommendation and resolution, but the document was not formally adopted and incorporated into the Governing PLAN Document. The document was neither labeled nor published as a PLAN amendment. The document did not remove any inconsistent language appearing in the Governing PLAN Document. A reasonable PLAN participant would not consider the document to be an adopted PLAN amendment.

12. There are December 13, 2006 dated minutes and resolutions of the QWEST

PLAN DESIGN COMMITTEE meeting reflect that a document attached thereto and labeled as “AMENDMENT 2006-1” was executed and adopted by QWEST PLAN DESIGN COMMITTEE members on December 13, 2006 (hereinafter “PLAN Amendment 2006-1”). PLAN Amendment 2006-1 states that “Effective January 1, 2006, with respect to Post-1990 Occupational Retirees, the Basic Life Coverage is a flat \$10,000 Benefit.” The document does not remove from the Governing PLAN Document any terms inconsistent with the terms of PLAN Amendment 2006-1, including those terms set forth in Section 2.6, Appendix 2 and Appendix 7 which have terms more favorable to Eligible Retirees than those terms set forth in PLAN Amendment 2006-1.

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

14. Upon information and belief, to date, QWEST Defendants have not *adopted* another PLAN Amendment since the members of the QWEST PLAN DESIGN COMMITTEE executed and adopted PLAN Amendment 2006-1 on December 13, 2006, which document Plaintiffs contend is ineffective to reduce Eligible Retirees’ PLAN benefits.<sup>2</sup>

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

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

16. Pursuant to ERISA Section 502(a)(3)(A) and (B), 29 U.S.C. Section 1132(a)(3)(A) and (B), Named Plaintiffs and the proposed class of PLAN participants are entitled to ask this Court to enjoin any act or practice which violates any provision of the terms of the PLAN and to obtain other appropriate equitable relief, including removal of PLAN Administrators who operate under a conflict of interest.

17. Also, pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. Section 1132(a)(1)(B), Named Plaintiffs and the proposed class of Eligible Retirees are entitled to bring this action to have this Court, *inter alia*, “enforce [their] rights under the terms of the plan, or to clarify [their] rights to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B).

**BRIEF STATEMENT OF CLAIMS and RELIEF REQUESTED** <sup>3</sup>

18. In their Second Amended Complaint, Plaintiffs assert class claims for declaratory, injunctive and other equitable relief available under ERISA, which claims are summarized as follows:

- a) a FIRST claim for declaratory relief under ERISA Section 502(a)(1)(B) and injunctive and equitable relief under ERISA Section 502(a)(3) ordering that since the Governing PLAN Document fails to specify a procedure for making PLAN amendments, and Qwest corporate by-laws and corporate resolutions do not specify a PLAN amendment procedure, the PLAN fails to comply with ERISA Section 403(b), and, therefore, all Eligible Retirees’ rights to PLAN benefits remain governed by the unaltered terms of the Governing PLAN Document;

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<sup>3</sup> This is a mere summary and is not a substitute for the detailed facts and claims set forth in the Second Amended Complaint (Docket 62-2) which document filed on March 31, 2008 Named Plaintiffs incorporate herein.

- b) a SECOND claim for an order declaring PLAN fiduciaries and administrators breached their fiduciary duty under ERISA Section 404(a)(1) to act in the best interests of PLAN participants, since PLAN fiduciaries and administrators repeatedly sent Plaintiffs Kerber, Phelps and all other Pre-1991 retirees official written confirmation falsely representing that their basic life insurance benefits could not be amended, suspended or discontinued;
- c) a THIRD claim for declaratory relief under ERISA Section 502(a)(1)(B) that no document created prior to December 13, 2006, including the October 14, 2005 dated recommendation and resolution executed by members of the Qwest Plan Design Committee, constitutes a bona fide and effective PLAN amendment so as to reduce Eligible Retirees' basic life insurance benefits;
- d) a FOURTH claim for declaratory relief under ERISA Section 502(a)(1)(B) that the document labeled as Amendment 2006-1 executed and adopted by the Qwest Plan Design Committee on December 13, 2006 left in place inconsistent terms within the Governing PLAN Document and, accordingly, due to the conflicting terms and ambiguity, the more favorable terms concerning Eligible Retirees' basic life insurance coverage continued to govern;
- e) a FIFTH claim for declaratory relief under ERISA Section 502(a)(1)(B) that the document labeled as Amendment 2006-1 executed and adopted by the Qwest Plan Design Committee on December 13, 2006 was illegally applied retroactively to beneficiaries of retirees who deceased during January 1, 2006 through December 12,

2006, contrary to the “Prior Loss Proviso” set forth within the “reservation of rights” clause in the Governing PLAN Document;

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

### ARGUMENT

#### **The Court Should Certify the Proposed Class and Permit the Named Plaintiffs to Maintain Their ERISA Claims on Behalf of the Class.**

19. Class actions serve an important function in our system of civil justice.” *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981). Rule 23 should be liberally construed. *Eisen v. Carlisle*

& *Jacquelin*, 417 U.S. 156, 168 (1974). Class certification should be granted under Federal Rule of Civil Procedure 23 when a plaintiff demonstrates that the action satisfies all four requirements of 23(a), as well as at least one of Rule 23(b)'s three alternatives are met.

*Adamson v. Bowen*, 855 F.2d 668, 675 (10th Cir. 1988). While courts have broad discretion in determining whether a class should be certified, courts should favor class certification even if some doubt remains after a Rule 23 review. *In re Williams Cos. ERISA Litig.*, 231 F.R.D. 416,420 (N.D. Okla. 2005). In utilizing that discretion, courts properly construe Rule 23 by considering its purpose to promote the class-wide resolution of similar claims against a common defendant. *Esplin v. Hirschi*, 402 F.2d 94,99 (10th Cir. 1968). This case readily meets the four prerequisites of Rule 23(a) for all types of relief, and satisfies Rule 23(b)(1) and/or Rule 23(b)(2) for the PLAN claims and Rule 23(b)(3) for the benefits claims.

**A. All the Requirements of Rule 23(a) are Satisfied.**

20. In determining whether a class should be certified, a district court must consider each of the four factors set forth in Rule 23(a). Fed. R. Civ. P. 23(a); *see Neiberger v. Hawkins*, 208 F.R.D. 301, 312 (D. Colo. 2002). The prerequisites set forth in Rule 23(a) are as follows:

- (a) PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

This case readily satisfies the requirements of Rule 23(a) (numerosity, commonality, typicality and adequacy).

**1. The Members of the Class are Sufficiently Numerous that Joinder is Impracticable.**

21. Here, Defendants will not dispute numerosity. Indeed, the IRS Form 5500 filing with the United States Department of Labor and the Internal Revenue Service confirms there are approximately 48,000 PLAN participants who meet the PLAN's definition of "Eligible Retiree." Subclass "A", the group of Pre-1991 Retirees, is well over two thousand. Subclass "B" and Subclass "C" each have over a hundred beneficiaries. "There is no magic number of members which would require class certification," but in the Tenth Circuit, classes of more than forty members have been deemed to satisfy the numerosity requirement. *In re Farmers Ins. Co., Inc., FCRA Litigation*, No. Civ.-03-158-F, MDL 1564, 2006 WL 1042450, \* 3 (W.D. Okla. Apr. 13, 2006); see *Baker v. Comprehensive Employee Solutions, Inc.*, 227 F.R.D. 354, 359 (D. Utah 2005) (finding numerosity requirement met where "proposed class would include hundreds of participants and beneficiaries" in ERISA case met numerosity requirement).

22. Likewise, joinder is impracticable. This Court has repeatedly explained that there are "a number of factors . . . relevant in determining whether joinder is impracticable," including: (1) class size; (2) geographic diversity of class members; (3) the ability to identify class members for purpose of joinder, (4) the financial resources of class members and their ability to institute separate lawsuits, and (5) whether the plaintiff seeks declaratory or injunctive relief. *Colorado Cross-Disability Coalition v. Taco Bell Corp.*, 184 F.R.D. 354,357 (D. Colo. 1999); see *Neiberger*, 208 F.R.D. at 312. Not all of these factors need to be present. See *Id.* In this case, however, most of these factors favor a finding of numerosity.

23. It is undisputed that thousands of putative Class members are geographically dispersed all over Qwest's 14-state region of primary operations and throughout the United States. A showing that "the class numbers in the thousands and there is some geographical

dispersion of class members” is sufficient to demonstrate that numerosity exists. *Cook v. Rockwell Int 'I Corp.*, 151 F.R.D. 378,384 (D. Colo. 1993); see *Schwartz v. Celestial Seasonings, Inc.*, 178 F.R.D. 545, 550 (D. Colo. 1998) (concluding that joinder was impracticable for a class for which it was “fair to assume, in the absence of contrary evidence that the purported class, contains hundreds if not thousands” of members). Thus, geographic diversity of the Class members favors a finding of impracticability of joinder.

24. Accordingly, the Class meets the requirements of Rule 23(a)(1).

## **2. The Claims Present Common Questions of Law and Fact.**

25. The commonality provision of Rule 23(a)(2) is also easily met. The Rule does not require that *all* questions of law and fact be common to every member of the class; rather, at least one question of law or fact needs to be common among the class members. As the Court observed in *Realmonde v. Reeves*, 169 F.3d 1280, 1285-86 (10th Cir. 1999), the commonality test is met where there is at least one issue - even a significant legal issue - the resolution of which will affect all or a significant number of the putative class members. Indeed, in this regard ERISA cases are often ideally suited for class treatment because they typically involve a course of conduct by defendants that affects numerous or all class members, inevitably raising common questions of law and/or fact satisfying the requirement of Rule 23(a)(2). See, e.g., *Coleman v. PBGC*, 196 F.R.D. 193, 198 (D.D.C. 2000) (whether plan amendment complied with ERISA was a question affecting all class members, commonality requirement satisfied). See also *Joseph v. General Motors Corp.*, 109 F.R.D. 635,640 (D. Col. 1986) (concluding “factual differences are irrelevant” for commonality where “there are common questions of law”); *Musto v. American Gen. Corp.*, 615 F.Supp. 1483, 1493 (M.D. Tenn. 1985) (certifying a



class in an ERISA suit even though members of the class received different summary plan descriptions), *rev'd on other grounds*, 861 F.2d 897 (6<sup>th</sup> Cir. 1988).

26. This case is especially suitable under Rule 23(a)(2) because the claims raise primarily common questions of law and fact, both as to liability and relief. The commonality requirement can be met by a “common nucleus of operative fact.” *Skinner v. Uphoff*, 209 F.R.D. 484, 488 (D. Wy. 2002). One way that a common nucleus of operative fact exists is where a common course of conduct by defendants that affects the entire class. *Queen Uno Ltd. Partnership v. Coeur D'Alene Mines Corp.*, 183 F.R.D. 687, 691 (D. Colo. 1998). As the *Skinner* court explained, a common nucleus of operative fact clearly exists where plaintiff challenges defendant’s policies and customs” regarding plaintiff and the class. *Skinner*, 209 F.R.D. at 486. Plaintiffs set forth in ¶ 117 of their Second Amended Complaint a synopsis of common questions of law and fact. Some, but not all, of the common questions in this case are:

- A) whether the PLAN fails to comply with ERISA Section 402(b)(3) and fails to provide for an adoption process and the appropriate relief for Eligible Retirees due to the failure to comply with ERISA Section 402(b)(3);
- B) whether PLAN fiduciaries and administrators breached ERISA’s duty of loyalty and they failed to failed to perform as a prudent fiduciary of the PLAN and investigate and advocate the best interests of Eligible Retirees and their beneficiaries in so far as obtaining for Eligible Retirees a means for them to either: 1) convert their promised group life insurance benefit coverage into an individual policy, so as to mitigate against the drastic loss of group coverage; or 2) pay premiums associated with the cost of continuing the same level of PLAN benefit coverage, so as to mitigate against the drastic loss of group coverage; and the appropriate equitable relief for Eligible Retirees due to the failure to comply with ERISA Section 404(a)(1);
- C) whether Qwest Defendants violated their fiduciary duties under ERISA Section 404 when making representations and providing PLAN Confirmation Notices and an SPD (still in effect) that leads reasonable PLAN participants to conclude that PLAN benefits for Pre-1991 Retirees

cannot be reduced, amended, suspended or discontinued;

- D) whether the terms of the October 14, 2005 dated minutes of the QWEST PLAN DESIGN COMMITTEE suffice for an effective PLAN amendment document adopted and incorporated into the Governing PLAN Document;
- E) whether the terms of the October 14, 2005 dated minutes of the QWEST PLAN DESIGN COMMITTEE and the terms of the Amendment 2006-1 left in place conflicting more favorable terms for Eligible Retirees which more favorable terms within the Governing PLAN Document should have been applied by PLAN administrators when determining benefits payable to beneficiaries of Eligible Retirees;
- F) whether the terms of Amendment 2006-1 or any other purported amendment applied retroactively so as to reduce PLAN benefits payable to beneficiaries of PLAN participants who died before the execution and adoption of the purported amendment is null and void, and whether PLAN administrators acted contrary to Prior Loss Proviso within the “reservation of rights” provision of the Governing PLAN document;
- G) whether Eligible Retirees are entitled to declaratory and injunctive relief and the form and extent of the relief to which they should receive.

27. Clearly, these shared issues – central questions in this case – are more than sufficient to meet the commonality prerequisites of Rule 23(a)(2).

**3. Named Plaintiffs’ Claims Are Typical of the Claims of the Class.**

28. Rule 23(a)(3) requires that “the claims . . . of the representative parties [be] typical of the claims. . . of the class.” As with commonality, it is not necessary that the claims of the representative plaintiffs be identical to the claims of the class to satisfy typicality. “So long as there is a nexus between the class representatives’ claims or defenses and the common questions of fact or law which unite the class, the typicality requirement is satisfied.” *Cook v. Rockwell Int ’l Corp.*, 15 1 F.R.D. 378 (D. Colo. 1993). Indeed, as the Supreme Court has noted, because both commonality and typicality focus on the similarity of the claims, the two

requirements “tend to merge.” *General Tel. Co. v. Falcon*, 457 U.S. 147, 157 n. 13 (1982).

29. Typicality is satisfied in cases where, as here, the Plaintiffs’ claims arise out of the same course of conduct as the claims of the other class members. Plaintiffs’ incentives in this action are aligned with those of the absent putative class members so as to assure their interests will be fairly represented.

30. Accordingly, the typicality requirement of Rule 23(a)(3) is satisfied.

**4. Named Plaintiffs Will Fairly and Adequately Protect the Interests of the Class.**

31. Under Rule 23(a)(4), a class may be certified only if “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). To determine whether the Plaintiffs are adequate class representatives under Rule 23(a)(4), the Court is to consider whether any conflicts of interests exists between them and absent Class members, and whether the Plaintiffs’ attorney is qualified, experienced and generally able to conduct the litigation. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187-88 (10th Cir. 2002). It is the Defendants who have the burden to establish that representation by Plaintiffs does not meet the requirements of Rule 23(a)(4). *Johns v. Rozet*, 144 F.R.D. 211, 217 (D.D.C. 1992).

32. Here, the Plaintiffs have the same interests as does each and every member of the putative Class. They share a mutual incentive to safeguard their rights to PLAN benefits. There is no reason to believe that they will not continue to zealously represent the interests of the Class in this case. Given this unitary interest, no questions arise of peculiarities of the Plaintiffs, unique defenses to their claims, or antagonistic interests between Plaintiffs and other putative

Class members. Plaintiffs have the same interest as every other Class member in proving the claims and securing appropriate relief.

33. Fed.R.Civ.Proc. Rule 23(g)(1)(c) requires that class counsel must fairly and adequately represent the interests of the Class. This Court must consider the work counsel has done in identifying or investigating potential claims in the action, counsel's experience in handling class actions and other complex litigation and claims of the type asserted in the present action, counsel's knowledge in the applicable law, and the resources counsel will commit to representing the class. See also *In re Universal Serv. Fund Tel. Billing Practices Litig.*, 219 F.R.D. 661, 684 (D. Kan. 2004). Certainly, the Second Amended Complaint is most telling about the effort to identify and investigate the claims.

34. As for Plaintiffs' counsel, Defendants will not contend he is unqualified to represent the Class. Attorney Curtis L. Kennedy has extensive experience in class actions, and particularly ERISA class action litigation against Qwest Defendants and a predecessor company, U S WEST. See his resume filed herewith as Exhibit 1.<sup>4</sup> Coterminous with this litigation, Mr. Kennedy engaged in other litigation beneficial to Class members' interests, including a successful conclusion to: 1) a hard fought Freedom of Information Act case against the Department of Labor concerning the government's investigation of the Qwest Pension Plan. See *Hull v. United States Department of Labor*, Civil Action No. 04-cv-01264 (D. Colo)

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Judge Lewis Babcock appointed Mr. Kennedy to be sole Class counsel in the case of *Unger v. U S WEST*, Case No. 94-B-2598 (D. Colo), a case he successfully concluded on behalf of over 100,000 U S WEST Pension Plan participants.

Three years ago, Otero County District Court Judge Michael Schiferl certified Mr. Kennedy as sole Class counsel on behalf of about 3,000 Qwest retirees in another successfully concluded case, *Colvin v. Qwest Communications International, Inc.*, Case No. 04-CV-39 (16th Judicial District, Otero County, Colorado)

(Dockets 53 and 28 therein); 2) an ERISA disclosure case resulting in favorable rulings and an award assessed against a Named Defendant herein. See *Phelps v. Qwest Employees Benefit Committee*, 2005 WL 3280239 (D. Colo. 2005); and 3) on-going litigation to restore and preserve Eligible Retirees' rights to the Pension Death Benefit provided in the Qwest Pension Plan. See *Kerber, et al v. Qwest Pension Plan, et al*, Civil Action No. 05-cv-00478-BNB-KLM.

35. In addition to responding to thousands of putative class members' emails, letters and telephone calls, Plaintiffs' counsel has regularly updated putative Class members about the ongoing litigation by conducting retiree meetings in numerous cities across the nation. He has regularly submitted email updates to Plaintiffs and authored extensive writings about the issues and progress of this case published in newsletters mailed out by the Association of U S WEST Retirees (AUSWR) to tens of thousands of PLAN participants. Plaintiffs and their counsel will continue to fairly and adequately represent the interests of the Class. Accordingly, Rule 23(a)(4) is satisfied.

**B. The Class is Properly Certified Under Rule 23(b).**

36. A proposed class that meets the four requirements of Rule 23(a) should be approved if it complies with any one of the three provisions of Rule 23(b). See generally C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure: Civil 3d* § 1785 (West 2005). As noted, if the proposed class satisfies multiple sections of Rule 23(b), it should be approved under Rule 23(b)(1) or (b)(2) rather than (b)(3) because of the superior *res judicata* effect of the litigation as to all members of the class.

**1. Certification Under Rule 23(b)(1) is Proper.**

37. Rule 23(b)(1) defines two related types of class actions designed to prevent prejudice to the parties from multiple potential suits arising from the same matter. The first type occurs when multiple lawsuits would create a risk of “inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class,” Fed.R.Civ.P. 23(b)(1)(A); the second occurs when multiple lawsuits would create the risk that the judgment with respect to some members of the proposed class would, “as a practical matter, be dispositive of the interests of . . . other members . . . or otherwise impair or impede their ability to protect their interests.” *Id.*, Rule 23(b)(1)(B).

38. As another court explained in certifying an ERISA case as a class action, Rule 23(b)(1)(A) focuses on “possible prejudice to the defendants” in contrast to (b)(1)(B) which considers possible prejudices to members of the proposed class. *In re Ikon Office Solutions, Inc.*, 191 F.R.D. 457, 466 (E.D. Pa. 2000) (certifying under Rule 23(b)(1)(A) an ERISA case involving allegations of improper plan assets, because contradictory rulings as a result of multiple suits would make implementing the decisions different for the plan’s fiduciaries). A Rule 23(b)(1)(A) class is appropriate if multiple actions would result in the risk of inconsistent verdicts. See *Williams*, 231 F.R.D. at 425. The Advisory Committee Notes explain that certification under Clause A is appropriate when one person has duties toward numerous persons where a determination of one individual's claim would be positioned so as to create conflicting or varying adjudications in different lawsuits. 1966 Advisory Committee Notes. As examples, the Advisory Committee suggests using this Clause when an individual seeks a determination concerning particular rights or duties which affect other individuals in order to achieve a “unitary adjudication.” *Id.*

39. The prosecution of separate actions about whether Defendants have complied with ERISA's statutory provisions and the controlling terms of the Governing PLAN Document creates the risk of inconsistent adjudications - namely that one court could find that the minimum coverage levels are enforceable and another court could find the opposite. The effect of such inconsistent adjudications would create incompatible standards for Defendants. Thus, class certification is appropriate under Rule 23(b)(1)(A).

40. Rule 23(b)(1)(B) is appropriate to use when a judgment in non-class action, while not technically concluding the rights of other members, might do so as a practical matter without providing them with adequate representation in the lawsuit. 1966 Advisory Committee Notes. One of the examples cited by the Advisory Committee Notes is when the plaintiff seeks an injunction against the opposing party. *Id.*; *Devine v. Combustion Engineering, Inc.*, 760 F. Supp. 989, 995 (D. Conn. 1991) (certifying ERISA Section 510 claims under Rule 23(b)(1)(B)). As in *Devine*, the adjudication of Plaintiffs claims will, as a practical matter, impact the interests of all Class members. See *In re Integra Realty Res., Inc.*, 354 F.3d 1246, 1263-66 (10th Cir. 2004). See also *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 833-34 (1999) (noting that "actions charging 'a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class' of beneficiaries, requiring an accounting or similar procedure 'to restore the subject of the trust,'" are among the "[c]lassic examples" of Rule 23(b)(1)(B) class actions (quoting Advisory Committee's Notes on Fed. R. Civ. P. 23)).

41. Accordingly, many courts granting class certification of ERISA claims do so under Rule 23(b)(1)(B). See, e.g., *Forbush v. J.C. Penney Co.*, 994 F.2d 1101, 1106 (5<sup>th</sup> Cir. 1993) (reversing district court and ordering case challenging employer's method of estimating

participants' social security offsets in defined benefit plan certified under Rule 23(b)(1)(B)).

**2. Certification Under Rule 23(b)(2) Is Proper.**

42. Rule 23(b)(2) permits certification where a plaintiff (1) alleges the party opposing the class has acted or refused to act on grounds generally applicable to the class and (2) seeks predominately injunctive or declaratory relief. Fed. R. Civ. P. 23(b)(2); *Adamson v. Bowen*, 855 F.2d 668,676 (10th Cir. 1988); *Vaszlavik v. Storage Tech. Corp.*, 183 F.R.D. 264,272 (D. Colo. 1998). Class certification is appropriate under Rule 23(b)(2) where the requested relief does not relate exclusively or predominantly to money damages. See *Morgan v. Laborers Pension Trust Fund for N. Cal.*, 81 F.R.D. 669, 681 (N.D. Cal. 1979) (certification appropriate under Rule 23(b)(2) “[w]here the monetary relief sought is integrally related to and would directly flow from the injunctive or declarative relief sought”).

43. Here, Defendants have “acted or refused to act on grounds generally applicable to the class.” Specifically, Plaintiffs allege, and Defendants must admit that the representations made to Pre-1991 Retirees that their PLAN benefits could not be reduced, amended, suspended or discontinued were uniform written representations. Plaintiffs allege, and Defendants must admit that PLAN administrators did not investigate and provide Eligible Retirees with options to convert or continue their loss of PLAN coverage. Defendants refuse to acknowledge the terms PLAN Amendment 2006-1 conflict with the coexisting terms of the Governing PLAN Document and the terms of PLAN Amendment 2006-1 were illegally applied retroactively in violation of the Prior Loss Proviso. This stance taken against Class members makes certification appropriate under Rule 26(b)(2).



44. The primary relief sought against Defendants is declaratory and injunctive relief, including an order reforming the PLAN and removing a cadre of misbehaving PLAN fiduciaries and PLAN administrators. The Tenth Circuit has expressly approved of the certification of classes “where the relief sought is injunctive and declaratory.” *Horn v. Associated Wholesale Grocers, Inc.*, 555 F.2d 270, 275-76 (10th Cir. 1977).

45. Here, although some beneficiaries have already received less than the promised minimum basic group life insurance benefits and they, like Plaintiffs Martha Lensink and Samuel Strizich, wish to be paid the additional benefits they believe are due, the monetary relief sought will flow from the predominant relief sought – a declaration that Defendants violated ERISA’s statutory duties and failed to comply with more favorable and controlling terms of the Governing PLAN Document, including the Prior Loss Proviso. In short, it is clear that Plaintiffs’ requests for injunctive and declaratory relief predominate over any request for monetary relief and that, therefore, this case should be certified under Rule 23(b)(2).

**3. This Case Also Satisfies the Requirements of Rule 23(b)(3).**

46. Rule 23 of the Federal Rules of Civil Procedures allows class certification of *issues*, not just entire “claims.” For instance, Rule 23(c)(1)(B) states: “An order certifying a class action must define the class claims, **issues**, or defenses, and must appoint class counsel under Rule 23(g).” Likewise, Rule 23(c)(s)(B) states that class notice “must state in plain, easily understood language . . . • the class claims, **issues**, or defenses.” Just as there can be a class action based upon a common “defense” there can be a class action based upon common *issues*.

47. This Court should certify and pass judgment upon the central issues to this case

which central issues are subject to generalized proof. The central issues are not subject to individualized proof.

48. Therefore, the proposed Class meets the requirements of Rule 23(b)(3). Certification of a (b)(3) class requires the Court to find “that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed.R.Civ.P. 23(b)(3). The Rule identifies four factors relevant to the superiority finding: “(A) the interest of members of the class in individually controlling the prosecution. . . of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by. . . members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of the class.” *Id.*

49. Courts have not adopted a single test for determining whether common issues predominate, but, under any enunciated standards, such as whether there is a common nucleus of operative facts or whether the common issues are the central or overriding questions, *see* Herbert Newberg & Alba Conte, 1 *Newberg on Class Actions*, § 4.25 (3d ed. 1992 & December 2000 Supp.), common issues clearly predominate in this case.

50. The second criterion of Rule 23(b)(3) also is satisfied because a class action would be the fairest and most efficient procedure for adjudicating this matter. To the best of Plaintiffs’ knowledge, no Class member other than the seven persons herein have filed an individual lawsuit against the PLAN challenging any document Defendants contend to be an effective PLAN amendment reducing Eligible Retirees’ PLAN benefits. Defendants will

concede that this Court is the most desirable forum for the litigation of this civil action. This case is likely to be one of the more easily managed class actions because key issues are common and centered on the language of the Governing PLAN document, ERISA's statutory provisions and documents which Defendants contend are effective PLAN amendments.

### CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court:

- (1) certify the First, Third, Fourth and Seventh Claims For Relief in the Second Amended Complaint as a class action on behalf of Eligible Retirees pursuant to Rule 23(a), and Rules 23(b)(1) and/or (b)(2); and, in the alternative, certify those claims under Rule 23(b)(3);
- (2) certify the Second Claim for Relief in the Second Amended Complaint on behalf of a subclass of Eligible Retirees to whom Qwest sent the Confirmation Notices (See paragraph 34 of the Second Amended Complaint) and the existing SPD stating their PLAN benefits were not subject to amendment, suspension or discontinuance at any time;
- (3) certify the Fifth Claim for Relief in the Second Amended Complaint on behalf of a subclass of beneficiaries of Eligible Retirees who died between the period January 1, 2006 and December 12, 2006 prior to the execution and adoption of the document labeled "Amendment 2006-1" by members of the QWEST PLAN DESIGN COMMITTEE;
- (4) certify the Sixth Claim for Relief in the Second Amended Complaint on behalf of a subclass of beneficiaries of Eligible Retirees who died after January 1, 2007 and prior to the adoption of any PLAN amendment subsequent to "Amendment 2006-1;"
- (5) appoint Plaintiffs as Class representatives; and
- (6) appoint Curtis L. Kennedy as Class Counsel.

Dated: April 1, 2008

*s/ Curtis L. Kennedy*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of April, 2008, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system and a courtesy copy was emailed to Defendants' counsel of record as follows:

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1982 J.D., University of Colorado College of Law  
Boulder, Colorado

1979 B.A., University of Oklahoma  
Norman, Oklahoma

**LEGAL EXPERIENCE**

1983 - Present Solo Practice. Emphasizing federal employee benefits law (Employee Retirement Income Security Act), federal age discrimination (Age Discrimination in Employment Act), and other employment related issues on behalf of plaintiff workers and retirees. Providing pro bono legal representation in federal COBRA law related claims.

1982 - 1983 Associate, Calkins, Kramer, Grimshaw & Haring, Denver, CO. General business litigation and employment litigation.

1981 Law Clerk, Hall & Evans, Denver, CO. Natural Resources litigation.

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State of Arizona  
State of Colorado  
State of Oklahoma  
State of Texas  
District of Columbia

United States Supreme Court  
Tenth Circuit Court of Appeals  
Ninth Circuit Court of Appeals  
Sixth Circuit Court of Appeals  
Fifth Circuit Court of Appeals  
District of Columbia Court of Appeals  
United States Tax Court  
District of Arizona  
Northern District of California  
District of Colorado  
Northern District of Oklahoma  
Western District of Oklahoma  
Northern District of Texas  
Southern District of Texas

### **ASSOCIATIONS**

Arizona Bar Association  
Colorado Bar Association  
District of Columbia Bar Association  
Oklahoma Bar Association  
Texas Bar Association  
National Employment Lawyers Association  
Plaintiff's Employment Lawyers Association - Colorado

### **REPRESENTATIVE SPEECHES / PAPERS PRESENTED**

Various speeches / papers before the National Employment Lawyers Association annual meetings and Colorado Bar Association sponsored continuing legal education seminars on Employee Retirement Income Security Act litigation.

### **SIGNIFICANT LABOR LAW CIVIL ACTIONS INVOLVING U S WEST/QWEST SUCCESSFULLY CONCLUDED**

- ( \* Denotes either a class certification in part or class-wide settlement)
- ( \*\* Denotes consolidation of several cases)
- ( \*\*\* Denotes where served as special or pro hac vice co-counsel)

- \* Walker, et al v. The Mountain States Tel. & Tel. Co.,  
Case No. 84-M-790, District of Colorado  
ERISA / ADEA / Common Law
- Holder, et al v. The Mountain States Tel. & Tel. Co.,  
Case No. 85-M-122, District of Colorado  
ERISA / ADEA / Common Law
- Reed v. The Mountain States Tel. & Tel. Co.,  
Case No. 85-M-1368, District of Colorado  
ERISA / Common Law
- Kendall, et al v. The Mountain States Tel. & Tel. Co.,  
Case No. 85-M-2004, District of Colorado  
ERISA / Common Law
- Martin, et al v. The Mountain States Tel. & Tel. Co.,  
Case No. 85-M-2696, District of Colorado  
ERISA / Common Law
- Mulcahy, et al v. The Mountain States Tel. & Co.,  
Case No. 86-M-596, District of Colorado  
ERISA / Common Law
- Mead, et al v. The Mountain States Tel. & Tel. Co.,  
Case No. 86-M-869, District of Colorado  
ERISA / Common Law
- Baker, et al v. The Mountain States Tel. & Tel. Co.,  
Case No. 86-M-1102, District of Colorado  
ERISA / Common Law
- Bryant, v. The Mountain States Tel. & Tel. Co.,  
Case No. 86-M-1103  
ERISA / ADEA / Common Law
- Davis v. The Mountain States Tel. & Co.,  
Case No. 85-M-1857, District of Colorado  
ERISA / Common Law
- Counts, et al v. The Mountain States Tel. & Tel. Co.,  
Case No. 86-M-2087, District of Colorado  
ERISA / Common Law
- Wilson, et al v. The Mountain States Tel. & Tel. Co.,  
Case No. 86-399 PHX, CAM, District of Arizona  
Common Law / Arizona wage statute
- Crowder v. The Mountain States Tel. & Tel. Co.,  
Case No. 86-M-2259, District of Colorado  
ERISA / Common Law
- Hancock et al v. The Mountain States Tel. & Tel. Co.,  
Case No. 87-M-177, District of Colorado  
ERISA / Common Law
- Fillingham v. The Mountain States Tel. & Co.,  
Case No. 87-1538 PHX RGS, District of Arizona  
ERISA / Common Law
- Savage, et al v. The Mountain States Tel. & Co.,  
District of Montana (MDL 798 transfer to)  
Case No. 89-M-282, District of Colorado  
ERISA / Common Law
- Barker, et al v. U S WEST Communications, Inc.,  
District of New Mexico (MDL 798 transfer to)  
Case No. 89-M-585, District of Colorado  
ERISA / Common Law
- Rivera, et al v. U S WEST Communications, Inc.,  
District of New Mexico (MDL 798 transfer to)  
Case No. 89-M-621, District of Colorado  
ERISA / Common Law
- Vigil, et al v. U S WEST Communications, Inc.,  
District of New Mexico (MDL 798 transfer to)  
Case No. 89-M-628, District of Colorado  
ERISA / Common Law
- Adcock, et al v. U S WEST Communications, Inc.,  
District of New Mexico (MDL 798 transfer to)  
Case No. 89-M-640, District of Colorado  
ERISA / Common Law
- Bush, et al v. U S WEST Communications, Inc.,  
District of Utah (MDL 798 transfer to)  
Case No. 89-M-622, District of Colorado  
ERISA / Common Law
- Cormani, et al v. U S WEST Communications, Inc.,  
District of Utah (MDL 798 transfer to)  
Case No. 89-M-653, District of Colorado  
ERISA / Common Law
- Boyd, et al v. U S WEST Communications, Inc.,  
District of Wyoming (MDL 798 transfer to)  
Case No. 89-M-654, District of Colorado  
ERISA / Common Law
- Johnson, et al v. U S WEST Communications, Inc.,  
District of Arizona (MDL 798 transfer to)  
Case No. 89-M-661, District of Colorado  
ERISA / Common Law
- Blodgett, et al. v. U S WEST Communications, Inc.,  
District of Arizona (MDL 798 transfer to)  
Case No. 89-M-662, District of Colorado  
ERISA / Common Law
- Engstrom, et al v. U S WEST Communications, Inc.,  
District of Arizona (MDL 798 transfer to)  
Case No. 89-M-663, District of Colorado  
ERISA / Common Law
- Koonce, et al. v. U S WEST Communications, Inc.,  
District of Arizona (MDL 798 transfer to)  
Case No. 89-M-664, District of Colorado  
ERISA / Common Law
- Holz, et al. v. U S WEST Communications, Inc.,  
District of Arizona (MDL 798 transfer to)  
Case No. 89-M-665, District of Colorado  
ERISA / Common Law
- Lynch, et al. v. U S WEST Communications, Inc.,  
District of Idaho (MDL 798 transfer to)  
Case No. 89-M-703, District of Colorado  
ERISA / Common Law

	<u>Jedlick, et al v. U S WEST Communications, Inc.</u> , District of Idaho (MDL 798 transfer to) Case No. 89-M-704, District of Colorado ERISA / Common Law	*	<u>U S WEST, Inc. Employees' Benefit Committee v. Alexander, et al</u> , Case No. 93-N-1318, District of Colorado ERISA
**	<u>Andersen, et al v. U S WEST Communications, Inc.</u> , Case No. 86-CV-8735, Denver County District Court (Case No. 88-CA-1798, Colorado Court of Appeals Common Law		<u>Musso v. U S WEST Communications, Inc., et al</u> Case No. CIV 93-0172 PHX RCB, District of Arizona ERISA / ADEA
	<u>Payne, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-2334, Denver County District Court Common Law	*	<u>Unger v. U S WEST, Inc., et al</u> Case No. 94-B-2598, District of Colorado ERISA
	<u>Aab, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-2335, Denver County District Court Common Law	*	<u>Phelps v. U S WEST, Inc., et al</u> Case No. 95-Z-2759, District of Colorado ERISA
	<u>Brady, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-2336, Denver County District Court Common Law		<u>Henry v. U S WEST Communications, Inc.</u> Case No. 96-N-724, District of Colorado ERISA / ADEA / Common Law
	<u>Coppen, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-2337, Denver County District Court Common Law		<u>Matthews-Forney v. Qwest Communications International, Inc.</u> Case No. 01-WM-0592, District of Colorado ERISA
	<u>Donahoo, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-2338, Denver County District Court Common Law		<u>Tingley v. Qwest Communications International, Inc.</u> Case No. 02-M-0726, District of Colorado ERISA
	<u>Fagerquist, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-2339, Denver County District Court Common Law		<u>Helton v. Qwest Communications International, Inc.</u> Case No. 02-M-1578, District of Colorado ERISA
	<u>McComas, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-2340, Denver County District Court Common Law		<u>Nearing v. Qwest Disability Plan</u> , Case No. 02-D-828, District of Colorado ERISA
	<u>Millard, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-2341, Denver County District Court Common Law		<u>Wolff v. Qwest Communications International, Inc.</u> Case No. 02-WY-777, District of Colorado Title VII, Equal Pay Act
	<u>Sandeman, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-2342, Denver County District Court Common Law		<u>Lauck v. Qwest Disability Plan</u> Case No. 04-WM-0139, District of Colorado ERISA
	<u>Hoffman, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-4447, Denver County District Court Common Law		<u>Strauss v. Anschutz</u> Case No. 02-CV-8188, Denver County District Court Qwest shareholder derivative action
	<u>Fisher, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-0813, El Paso County District Court Common Law	*	<u>Colvin v. Qwest Communications International, Inc.</u> Case No. 04-CV-39, Otero County District Court Common Law / ERISA
	<u>Hawksworth, et al v. U S WEST Communications, Inc.</u> , Case No. 89-CV-97, Mesa County District Court Common Law		<u>Osborn v. Qwest Services Corporation</u> Case No. 04-cv-01987-PSF-PAC, District of Colorado ERISA
*	<u>Walker, et al v. U S WEST Communications, Inc.</u> , Case No. 90-F-108, District of Colorado Common Law		<u>Phelps v. Qwest Employee Benefits Committee</u> Case No. 04-cv-02042-LTB-MEH ERISA
	<u>Shepard v. U S WEST Communications, Inc.</u> , Case No. 92-C-2291, District of Colorado ERISA		