

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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

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

Plaintiffs,

vs.

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

Defendants.

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**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

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Named Plaintiffs, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, hereby respectfully move this Court for an order permitting them to maintain their ERISA claims herein on behalf of a Class, to be defined as "All Qwest Group Life Insurance Plan participants (and beneficiaries thereof)."

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).

The claims herein pertain to the basic group life insurance benefit provided under the 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).

Although this case 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.

In support of this motion, Named Plaintiffs adopt and incorporate herein their Amended Complaint (Docket 10) filed with the Court on May 15, 2007. In addition, Named Plaintiffs submit herewith their memorandum of authorities and arguments, together with Exhibits 1-2.

Pursuant to D.C.COLO.L.CivR 7.1(A), counsel for Named Plaintiffs discussed the matter with Qwest Defendants' attorney Chris Koenigs. Counsel agreed that this motion for class certification would simply report that Qwest Defendants have not yet decided whether or not to object and on what grounds to object but, they do expect to file a responsive legal brief. To date,

there has been no entry of appearance by counsel on behalf of Defendant Prudential Life Insurance Company of America and no counsel has been identified by that party.

Dated: May 30, 2007.

s/ Curtis L. Kennedy  
Curtis L. Kennedy  
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*Attorney for Named Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of May, 2007, 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:

<p>Christopher J. Koenigs, Esq. Michael B. Carroll, Esq. SHERMAN &amp; HOWARD, L.L.C. 633 17th Street, Suite 3000 Denver, CO 80202 Tele: 303-299-8458 Fax: 303-298-0940 ckoenigs@sah.com (Chris Koenigs, Esq.) mcarroll@sah.com (Michael Carroll, Esq.) <i>Counsel for Qwest Defendants</i></p>	
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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

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,  
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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' MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF THEIR 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 Amended Complaint (Docket 10) charges Defendants wrongfully reduced basic group life insurance benefits in violation of the rules set forth in the controlling PLAN document.

**INTRODUCTION**

1. U S WEST, the PLAN sponsor before being acquired by Qwest, memorialized in the governing PLAN document the following rules:

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

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

(See Exhibit 1, Appendix 7 and Appendix 8). (**emphasis added**)<sup>1</sup>

2. About five years after acquiring U S WEST, Qwest leadership decided to reduce life insurance coverage to \$10,000 and apply that change to Occupational Retirees. This planned change was announced in October 2005 as one “made with a great deal of thought and consideration.” A plan amendment was not adopted until December 13, 2006. (See Exhibit 2, PLAN Amendment 2006-1). The December 13, 2006 PLAN Amendment 2006-1 was retroactively applied to Occupational Retirees who died on or after January 1, 2006.

3. In the following year, Qwest Chief Executive Officer Richard Notebaert announced the Company had decided basic life insurance coverage for all retirees would be reduced to \$10,000 effective January 1, 2007.

4. Despite a massive outcry in which Qwest received countless written impassioned protestations from retirees, Defendants have refused and will continue to refuse to reverse course and comply with the rules which specifically forbid reductions below the stated thresholds. Thus far, hundreds if not a thousand beneficiaries and estates have already been cheated out of the proper amount of life insurance benefits payable at the deaths of retirees.

5. Therefore, Named Plaintiffs for themselves and all other PLAN Participants and Beneficiaries seek a panoply of declaratory, temporary, preliminary and permanent injunctive and other equitable relief, including removal of Qwest leadership from further PLAN

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<sup>1</sup> A straightforward reading of those rules can only lead any reasonable person to understand the company is prohibited from reducing life insurance below those stated levels.

administration.

6. It should be readily apparent why this case, brought under ERISA §§ 502(a)(1)(B), (a)(2), and (a)(3), 29 U.S.C. §§ 1132(a)(1)(B), (a)(2) 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. It involves one overarching question – whether the governing rules circumscribed the PLAN sponsor’s rights under the reservation of rights clause to reduce basic life insurance coverage below the minimum thresholds.

7. The basic group life insurance benefit is common to the Named Plaintiffs and almost 48,000 other absent Class members, the majority of whom are actively supporting this legal action. The case focuses exclusively on the actions and inactions of Qwest and PLAN Administrators and their agents in illegally reducing minimum coverage and illegally carrying out a PLAN amendment and making it retroactive so as to take away promised benefits. While the amount of each putative Class member’s entitlement to minimum basic life insurance benefits may vary as between two groups: 1) Pre-1996 Retirees - \$20,000; and 2) Post-January 1, 1996 Retirees - \$30,000, such amount will be the product of an entirely ministerial simple calculation to be performed once liability is established and an order directing such relief is entered.

8. 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**

9. 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.

10. 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 PLAN Amendment 2006-1 discussed hereinbelow.

11. 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 was told by PLAN administrators that he will receive a flat payment of only \$10,000.

12. U S WEST, Inc., was at all times relevant to this complaint: an "employer" as defined by ERISA § 3(5), 29 U.S.C. § 1002(5); a "fiduciary" of the Qwest Group Life Insurance Plan (formally called U S WEST Group Life Insurance Plan), pursuant to ERISA § 3(21), 29

U.S.C. § 1002(21); a "plan administrator" and "plan sponsor" of the life insurance plan, pursuant to ERISA § 3(16)(A)(i) & (B), 29 U.S.C. § 1002(16)(A)(i) & (B).

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

14. Defendant QWEST COMMUNICATIONS INTERNATIONAL, Inc. ("Qwest") is, an "employer," as defined by ERISA § 3(5), 29 U.S.C. § 1002(5); a "fiduciary" of the Qwest Group Life Insurance Plan, pursuant to ERISA § 3(21), 29 U.S.C. § 1002(21); a "plan administrator" and "plan sponsor" of the Qwest Group Life Insurance Plan, pursuant to ERISA § 3(16)(A)(I) & (B), 29 U.S.C. § 1002(16)(A)( I) & (B); and a Delaware corporation qualified to do business in Colorado. Qwest's principle place of business is within this District.

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

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

16. QWEST GROUP LIFE INSURANCE PLAN ("PLAN") is an "employee welfare benefit plan," pursuant to ERISA § 3(1), 29 U.S.C. § 1002(1).

17. *In general*, the PLAN provides that participants would receive life insurance coverage roughly equivalent to his or her last annual salary working for Qwest or a predecessor company, but that coverage would be reduced 10% each year starting at age 66 until age 70 after which age there would be no further reduction of coverage.

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

19. U S WEST Employee Benefits Committee was the named fiduciary and PLAN administrator during January 1984 through June 2000. The COMMITTEE is the successor named fiduciary and PLAN administrator.

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

21. Defendant PRUDENTIAL INSURANCE COMPANY OF AMERICA ("PRUDENTIAL") is an insurance company organized and existing under the laws of the State of New Jersey and has done business and continues to do business in this District. Qwest and PRUDENTIAL entered into group insurance contract **G-93634** to provide NAMED PLAINTIFFS and other qualified employee and retiree PLAN participants coverage and benefits. PRUDENTIAL, the insurance carrier, is also the claims administrator and performs certain fiduciary responsibilities, including determining claims, and delivering payment of the proper amount of PLAN benefits to beneficiaries. PRUDENTIAL qualifies under ERISA's definition of a "fiduciary" as a person who "exercises any discretionary authority or

discretionary control respecting management of such plan” and any person who “has any discretionary authority or discretionary responsibility in the administration of such plan.” 29 U.S.C. § 1002(21)(A).

22. Former PLAN sponsor U S WEST mass mailed a letter dated September 25, 1997 to its retirees which letter contained, in part, the following text:

Dear Retiree and Beneficiary:

\* \* \*  
\* We are also raising the minimum retiree basic life insurance benefit to \$20,000 for the beneficiaries of retirees dying on or after December 31, 1996. This represents an increase for more than 80% of our current retirees. If you retired after December 31, 1995, your current minimum retiree basic life insurance benefit will remain unchanged.

\* \* \*

Sincerely,

(signed)  
Antonia Ozeroff, Vice President - Corporate Human Resources

23. In the governing PLAN document, as amended and restated effective June 12, 1998 and executed by U S WEST Vice President - Corporate Human Resources Antonia Ozeroff, PLAN sponsor U S WEST memorialized the following minimum commitments for PLAN participants: <sup>2</sup>

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

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

24. Plaintiffs and the proposed class contend that the aforesaid rules reflect PLAN

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This document (Exhibit 1) executed by U S WEST Vice President Antonia Ozeroff is the only known governing PLAN document, whereas numerous versions of SPDs were issued by PLAN sponsors U S WEST and Qwest.

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

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

26. Plaintiffs and the proposed class contend that to the extent that any PLAN document includes a "reservation of rights" statement, the private anti-amendment statement set forth in the governing PLAN document declaring Basic Coverage shall not be reduced below the established minimum amounts is controlling and the Court must construe the restrictions against the drafters and PLAN sponsor in favor of PLAN participants and their beneficiaries.

27. The governing PLAN document provides that no PLAN amendment can effectively reduce life insurance coverage for beneficiaries of PLAN Participants who die before the amendment is adopted. The governing PLAN document states in Article X, Section 10.1:

Amendment. Except to the extent limited by any applicable collective bargaining agreement, the Company reserves the right, in its sole discretion, to amend the Plan at

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

(Exhibit 1 p. 26) (**emphasis added**).

28. On December 13, 2006, Amendment 2006-1 was adopted and executed by Qwest PLAN DESIGN COMMITTEE members Teresa Taylor, Erik Ammidown and Felicity O'Herron. This PLAN amendment is intended to reduce Basic Life Insurance coverage payable upon the deaths of *Post-1990* Occupational Retirees to a flat \$10,000. (See Exhibit 2).

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

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

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

application of Amendment 2006-1 applied to the deaths of Occupational Retirees who died during the period January 1, 2006 through December 12, 2006.

32. Upon information and belief, to date, Qwest Defendants have not adopted another PLAN Amendment since the adoption of Amendment 2006-1 on December 13, 2006.<sup>3</sup> Therefore, other than Amendment 2006-1 which prescribes a reduction of PLAN benefits for *Post-1990* Occupational Retirees, there is no other duly adopted PLAN amendment prescribing a reduction of PLAN benefits for other groups of retirees, including *Pre-1991* Occupational Retirees and both *Pre-1991* and *Post-1990* Management Retirees.

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

34. Plaintiffs and proposed class members contend that since PLAN administrators reduced PLAN benefits payable to beneficiaries of *Pre-1991* Occupational Retirees and Management Retirees who died since January 1, 2007, prior to adoption of a PLAN amendment, they failed to act in conformity with the terms of Article 10.1 of the governing PLAN document. Accordingly, PLAN fiduciaries and administrators breached fiduciary duties under ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D).

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

**BRIEF STATEMENT OF CLAIMS and RELIEF REQUESTED**<sup>4</sup>

35. Since the basic group life insurance benefit is so critical to not only Plaintiffs' families, but thousands of U S WEST/Qwest retirees and their beneficiaries, and Defendants refuse to honor prior commitments for minimum coverage established by U S WEST, Plaintiffs 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 basic life insurance benefits under the terms of the PLAN and for other declaratory, injunctive and appropriate equitable relief. 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), and upon 28 U.S.C. §§ 1331 and 1337.

36. **To summarize, the first claim** is based upon breach of fiduciary duty and equitable estoppel. Named Plaintiffs seek an order declaring that Qwest, the COMMITTEE and PLAN administrators failed to discharge duties to act solely in the interests of Named Plaintiffs, PLAN participants and beneficiaries in accordance with the rules of the governing PLAN document, as required by ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Named Plaintiffs request this Court to apply principles of federal common law equitable estoppel, and grant class-wide appropriate equitable relief, including a declaration that the reduction of PLAN benefits to only \$10,000 violates the anti-amendment provisions providing for minimum coverage. This Court should apply principles of equitable estoppel, under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and issue an order nullifying any amendment in derogation of the

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<sup>4</sup> This is a mere summary and is not a substitute for the detailed facts and claims set forth in the Amended Complaint. Named Plaintiffs incorporate herein the Amended Complaint (Docket 10) filed on May 15, 2007.

PLAN's minimum coverage provisions. In addition, Named Plaintiffs Kerber and Phelps contend this Court should apply principles of equitable estoppel, under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and issue an order nullifying any amendment in derogation of the PLAN sponsor's additional commitment to Pre-1991 Retirees.

37. **To summarize, for their second claim**, Plaintiffs seek an order reforming the PLAN, striking any PLAN amendment which purports to reduce coverage below the promised minimum coverage limits. In addition, Plaintiffs seek an order striking or reforming any PLAN amendment, including Amendment 2006-1, retroactively applied before its adoption date. Also, Plaintiffs seek an order requiring the PLAN to notify estates and beneficiaries of PLAN Participants who have received only \$10,000 in benefits that they are entitled to demand payment of the correct amount of PLAN benefits, together with prejudgment and post-judgment interest. 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 Plan Design Committee, the COMMITTEE and Qwest, as PLAN sponsor, to issue a corrected SPD with language disclosing minimum basic group life insurance coverage cannot be reduced below the stated thresholds. 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).

38. More specifically, Named Plaintiff Martha Lensink on behalf of herself and all other similarly situated PLAN beneficiaries asks this Court, pursuant to ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), to: 1) enter an order declaring Amendment 2006-1 executed and adopted on December 13, 2006 to be null and void as applied to the estates and beneficiaries of any Occupational Retirees who died during January 1, 2006 through December 12, 2006; 2)

enter an order reforming or striking Amendment 2006-1; 3) enter an order requiring PLAN Administrators or an appointed independent fiduciary to notify all of the estates and beneficiaries of Occupational Retirees who died during January 1, 2006 through December 12, 2006 that, if they received only \$10,000 in PLAN benefits, they are entitled to demand and promptly receive a corrected payment of PLAN benefits, together with prejudgment and post-judgment interest.

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

40. **To summarize, for their third claim,** 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 Basic Group Life Insurance Benefits under the terms of the PLAN. Named Plaintiffs seek a declaration that beneficiaries are entitled to the minimum basic life insurance coverage as set forth in the governing PLAN document rules.

**ARGUMENT**

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

41. 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, which seeks relief on behalf of the PLAN and a declaration of a right to receive minimum PLAN benefits, and where applicable, recovery of unpaid minimum benefits for individual Class members 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.**

42. 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.**

43. Here, Defendants will not dispute numerosity. Indeed, the latest IRS Form 5500 filing with the United States Department of Labor and the Internal Revenue Service confirms there are more than 48,000 PLAN participants, now retired.

44. 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.

45. 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.*, 15 1 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.

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

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

47. 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 *Realmonte 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).

48. 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. Plaintiffs set forth in ¶ 125 of their 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 Qwest Defendants violated their fiduciary duties under ERISA Section 404 when making representations and providing PLAN publications and SPDs that led reasonable PLAN participants to conclude that PLAN benefits for Pre-1991 Retirees could not be reduced;
- B) whether the rules for minimum basic life insurance coverage circumscribed the PLAN sponsor's rights to make reductions under any reservation of rights provision;
- C) whether Qwest Defendants are judicially or equitably estopped to reduce the PLAN benefits;
- D) whether Amendment 2006-1 and any other amendment applied retroactively so as to reduce PLAN benefits payable to beneficiaries of PLAN participants who died before the adoption of the particular amendment is null and void, contrary to the express provisions of the governing PLAN document;
- E) whether purported PLAN amendments reducing coverage to \$10,000 for all retirees violate the PLAN's terms and conditions and other ERISA provisions;
- F) Whether or not the COMMITTEE and PLAN administrators have breached fiduciary duties under ERISA and applicable Department of Labor federal regulations by issuing PLAN participants an incorrect and inaccurate current Summary of Material Modifications and/or SPD which falsely represents there are no minimum coverage levels and that basic coverage may be further reduced in the future, thus, causing harm to the PLAN and misleading PLAN participants. Another way of framing this common core issue is whether Defendants must reform the current governing PLAN document and SPD and re-incorporate a written commitment to provide minimum basic life insurance coverage to PLAN participants' beneficiaries;

- G) Another common question of law is subsumed within Plaintiffs' ERISA Section 502(a)(1)(B) claim to clarify their rights to future payment of PLAN benefits. Also at issue is whether a PLAN amendment not adopted until December 13, 2006 could be applied retroactively to January 1, 2006; and
- H) whether PLAN participants are entitled to declaratory and injunctive relief and the form and extent of the relief to which they should receive.

49. 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.**

50. 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).

51. 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. Here, putative class members and Plaintiffs seek to restore the minimum coverage levels and to have PLAN Amendment 2006-1 declared null and void in view of the governing PLAN document rules. 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.

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

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

53. 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).

54. Here, the Plaintiffs have the same interests as does each and every member of the putative Class. They share a mutual incentive to safeguard the minimum basic group life insurance benefits they were promised. 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.

55. 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 Amended Complaint is most telling about the effort to identify and investigate the claims. As for Plaintiffs' counsel, he is well qualified 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 3.<sup>5</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) (Dockets 53 and 28 therein); and 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).

56. 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. He has regularly submitted email updates to

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Chief 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.

Two 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)

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).**

57. 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.**

58. 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).

59. 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.*

60. The prosecution of separate actions about whether Defendants must comply with the minimum basic group life insurance rules memorialized by prior PLAN sponsor U S WEST 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).

61. 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)).

62. 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.**

63. 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”).

64. Here, Defendants have “acted or refused to act on grounds generally applicable to the class.” Specifically, Plaintiffs allege, and Defendants must admit they are no longer complying with the prior rules mandating minimum basic group life insurance coverage and they refuse to acknowledge PLAN Amendment 2006-1 has been illegally applied retroactively and they refuse to amend the PLAN documents so as to correct existing misrepresentations that there is no minimum basic group life insurance coverage. This stance taken against Class members makes certification appropriate under Rule 26(b)(2).

65. 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).

66. 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 the rules declaring there shall be no reduction of basic life insurance coverage below the stated thresholds. 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).**

67. 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*.

68. This Court should certify and pass judgment upon the central issue to this case - whether Defendants must comply with the rules for minimum basic group life insurance coverage established by prior PLAN sponsor U S WEST and made part of the governing PLAN document. That central issue is subject to generalized proof.

69. 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.*

70. 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.

71. 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 arising out of Defendants’ failure to comply with the long established rules for minimum basic life insurance coverage and the harm resulting from retroactive implementation of PLAN Amendment 2006-1. 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 the key issue is common and centered on the language of the governing PLAN document, the SPDs and other official publications issued by the PLAN sponsors - AT&T, U S WEST and Qwest.

### CONCLUSION

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

- (1) certify the key *issues*/elements of proof (except detrimental reliance) of the First Claim For Relief in this case as a class action pursuant to Rule 23(a), and Rules 23(b)(1) and/or (b)(2); and, in the alternative, certify those issues under Rule 23(b)(3);
- (2) certify the Second and Third Claims for Relief in this case as a class action pursuant to Rule 23(a), and Rules 23(b)(1) and/or (b)(2); and, in the alternative,

certify those claims as a class action under Rule 23(b)(3);

- (3) certify the Class to be defined as “All Qwest Group Life Insurance PLAN participants (and beneficiaries thereof)”;
- (4) appoint Plaintiffs as Class representatives; and
- (5) appoint Curtis L. Kennedy as Class Counsel.

Dated: May 30, 2007

*s/ Curtis L. Kennedy*  
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*Attorney for Plaintiffs*

**Index of Exhibits Filed Herewith**

<u>Exhibit 1</u>	Governing Plan document
<u>Exhibit 2</u>	Amendment 2006-1
<u>Exhibit 3</u>	Curtis L. Kennedy resume

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30<sup>th</sup> day of May, 2007, 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 Plaintiffs as follows:

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