

***Phelps v. Qwest EBC* (ERISA Documents Disclosure) case
Final Ruling and Settlement With Qwest**

By Settlement Agreement dated May 25, 2006, Qwest leadership and AUSWR leadership put an end to this almost three year old battle between AUSWR and the Administrators of the Qwest Pension Plan in the Employee Retirement Income Security Act (ERISA) case known as *Phelps v. Qwest Employee Benefits Committee*. The case resulted in a victory for AUSWR which had inquired into how pension plan administrators were investing billions of dollars of Qwest Pension Plan monies.

In August 2003, Nelson Phelps, Executive Director of AUSWR, submitted a written demand under ERISA for disclosure concerning the pension plan's operations. In January 2004, Mr. Phelps made a more specific request, demanding, for himself and the entire AUSWR group, transparency about how pension monies were being invested. The strong policy of ERISA is that a retiree should be allowed to police his or her pension plan. Contrary to ERISA, the persons in charge of the Qwest Pension Plan steadfastly refused to turn over any of the investment guidelines/policies. Mr. Phelps only recourse was to commence a formal lawsuit in the Denver Federal Court. Staying true to the conviction that retirees have no right to see investment information, Qwest argued for dismissal of the lawsuit. Chief Judge Babcock denied the request and he granted Phelps an order requiring the pension plan administrators to turn over the requested investment guidelines/policies. See: www.uswestretiree.org/Order120205Phelps.pdf

Nevertheless, even after that ruling, Qwest Pension Plan Administrators sent to Mr. Phelps "redacted" documents, withholding certain information. This caused Mr. Phelps to seek another order and he sought a penalty payment from Qwest as allowable under ERISA. On February 23, 2006, Federal Magistrate Judge Hegarty granted Mr. Phelps' request and he recommended Chief Judge Babcock order Qwest to pay a daily penalty running from February 9, 2004. See his ruling at: www.uswestretiree.org/Docket25-OrderGrantingMotiiontoCompel.pdf Chief Judge Babcock agreed and entered the same order.

In the end, on May 25, 2006, Qwest paid the ERISA imposed penalty in the total amount of \$18,925. Plus, Qwest paid attorney's fees and expenses which AUSWR agreed to reduce and limit to only \$25,0000. Of course, in the written settlement agreement, Qwest EBC will admit no wrongdoing.

The outcome of this case is very important for retirees. No other retiree group has made such a legal challenge. Certainly, there has been no other case like this one filed anywhere within the federal courts making up the 10th Circuit Court of Appeals (i.e., Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming). This legal issues resolved in the *Phelps* case are significant not only for AUSWR, but for other retiree groups and individual retirees who, too, want to police their pension plan and, therefore make written requests for information concerning pension plan investments and operations. Retirees should not have to pursue a federal lawsuit simply to learn how the pension plan is being managed or mismanaged. AUSWR will continue to seek information and disclosures about the Qwest Pension Plan. Certainly, we can expect better cooperation from those persons in charge of pension plan administration.