

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Case No. 05-cv-00478-MSK-PAC

EDWARD J. KERBER,
NELSON B. PHELPS,
Individually, and as Representative of plan participants
and plan beneficiaries of the QWEST PENSION PLAN,

Plaintiffs,

v.

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

Defendants.

**ORDER GRANTING MOTION FOR EXTENSION OF TIME AND PAGE LIMITS,
AND DENYING, WITHOUT PREJUDICE, MOTION TO DISMISS**

THIS MATTER comes before the Court pursuant to the Defendants' Motion to Dismiss (# 12); and the Defendants' Unopposed Motion for Extension of Time to Answer and Motion to Extend Page Limits (# 31).

The Defendants' Motion for Extension of Time indicates that, in light of the filing of the Plaintiffs' Amended Complaint (# 29), arguments made in their Motion to Dismiss (# 12) may require re-evaluation. Although the Defendants appear to intend to incorporate that motion by reference in a subsequent motion to dismiss, such incorporation presents needless procedural and docketing complications for the Court, and shall not be permitted. Instead, the pending Motion to

Dismiss (# 12) is **DENIED** without prejudice, as moot. The Defendants' Motion for Extension of Time to Answer (# 31) is **GRANTED**, and the Defendants shall Answer or move¹ against the Amended Complaint on or before December 22, 2005. The Defendants' motion, if any, shall address all grounds upon which dismissal or judgment is sought, and shall not incorporate prior substantive arguments by reference. Should the Defendants so move, the Defendants' request (# 31) for an extension of the Court's page limitations to 30 pages is **GRANTED**.

Dated this 29th day of November, 2005

BY THE COURT:



Marcia S. Krieger
United States District Judge

¹The Defendants indicate that they intend to file a "motion to dismiss and/or motion for summary judgment." The Defendants are advised that, because the analytical framework, scope of review, and required format, *see* MSK Practice Standard H.2 and H.3, applicable to the two types of motions are different, a consolidated motion seeking both types of relief in the alternative is not acceptable.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:05-cv-00478-MSK-PAC

EDWARD J. KERBER,
NELSON B. PHELPS,
Individually, and as Representative of plan participants
and plan beneficiaries of the QWEST PENSION PLAN,

Plaintiffs,

vs.

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

Defendants.

**UNOPPOSED MOTION FOR EXTENSION OF TIME IN WHICH TO FILE AN
ANSWER OR OTHERWISE RESPOND TO PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR PROPOSED CLASS ACTION RELIEF UNDER ERISA and
MOTION SEEKING TO EXTEND PAGE LIMITATIONS**

Defendants Qwest Pension Plan, *et al.* ("Qwest" or "Defendants"), by and through undersigned counsel, hereby submit their motion for extension of time and motion to exceed page limitations as follows:

1. An Answer or other response to Plaintiffs' Second Amended Complaint is currently due December 1, 2005. Qwest seeks a 21 day extension of time, or up to and including Thursday, December 22, 2005, within which to respond to the Second Amended Complaint. Defendants believe that good cause for said extension is set forth below.

2. Plaintiffs filed an original Amended Complaint in this case and Qwest moved to dismiss that Complaint on the grounds of ripeness and standing. That Motion to Dismiss is fully briefed.

3. After the Motion To Dismiss was fully briefed, Plaintiffs filed a fifty-one (51) page Second Amended Complaint containing three new plaintiffs and two new claims. The Second Amended Complaint includes two hundred and fourteen (214) allegations.

4. One of the new claims references a number of transactions dating back to 1998 and each new claim, accompanied by an array of additional factual allegations, raise new issues of fact and law (for example, what effect the “Section 420 transfers” had on the death benefit at issue). These issues are being examined with diligence.

5. In addition, the Second Amended Complaint names three new class representatives and contains allegations expanding the size of the alleged class. The newly named class representatives allegedly have a different status than the previously named class representatives with regard to retirement date and/or receipt of the death benefit at issue.

6. As a result of the newly named class representatives and alleged expansion of the class scope, Qwest is faced with new potential defenses and/or other defenses have come to the forefront (such as administrative exhaustion, statute of limitations and failure to state a claim), different from those presented in the original Motion to Dismiss. These issues are also being examined with diligence.

7. In addition to all of the new factual allegations, legal issues and defenses that Qwest must consider and address, Qwest must also reexamine its previously filed Motion to Dismiss to make sure it may still be asserted with regard to the entirety of the Second Amended Complaint.

8. Finally, Plaintiffs have at the same time served an extensive set of discovery requests upon the Defendants that, without exaggeration, include document requests dating back to 1927 and seeking communications with all company retirees over a twenty (20) year period. Preparing responses and objections to this unduly burdensome discovery must now occur at the same time Qwest is analyzing a number of legal issues and preparing to file a Motion To Dismiss or Motion for Summary Judgment relating to the Second Amended Complaint.

9. Despite a diligent effort on the part of Qwest and its counsel, the breadth of allegations and legal issues raised by Plaintiffs' Second Amended Complaint necessitates this request for additional time to thoroughly respond to the numerous allegations that have been raised against it and to analyze and present its defenses.

10. For the reasons stated herein, specifically the extensive legal issues raised by the lengthy Complaint, two new claims and three newly named class representatives, Qwest believes there is good cause for the requested extension as required by MSK Civ. Practice Standard II.G. Qwest has not previously requested any such extension of this deadline and believes no party will be prejudiced by such extension at this early stage of the litigation.

11. In addition, because the Second Amended Complaint raises legal issues that Qwest believes are appropriately resolved upon a Motion to Dismiss/Motion for Summary Judgment, Qwest believes providing this extension and allowing the early presentation of the

legal issues in a thorough and informed manner will conserve both the resources of the Court and the parties.

12. Also due to the number of legal issues presented by this case, and the fact Defendants already have one Motion to Dismiss on file, Defendants seek an extension of the page limitations set pursuant to MSK Civ. Practice Standard V.A and V.H.3.a. Specifically, Defendants seek to be allowed to maintain their currently filed Motion to Dismiss and to file a second Motion to Dismiss and/or Motion for Summary Judgment that has an accompanying opening brief not to exceed 30 pages.

13. Pursuant to D.C.COLO.LCivR 7.1(A), counsel for Defendants contacted Plaintiffs' attorney to confer regarding the requested extension of time and page limitation increase. Counsel for Plaintiffs does not object to these requests. He did ask that Defendants agree that it would be reasonable to allow Plaintiff a similar extension of time to respond to any Motion to Dismiss or Motion for Summary Judgment since such a filing would occur immediately before the Christmas holiday. Defendants agree and would have no objection to a similar extension for Plaintiffs.

WHEREFORE, Qwest respectfully requests an extension of time up to and including December 22, 2005, in which to file an Answer or otherwise respond to Plaintiffs' Second Amended Complaint for Proposed Class Action Relief Under ERISA [Docket No. 29] and to allow Qwest to file a second Motion To Dismiss and/or Motion for Summary Judgment with an accompanying opening brief not to exceed 30 pages.

Respectfully submitted this 28th day of November, 2005.

s/ Elizabeth I. Kiovsky
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Qwest Employees Benefits
Committee,
Qwest Pension Plan Design
Committee,
Qwest Communications
International, Inc.

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on November 28, 2005, I electronically filed the foregoing **UNOPPOSED MOTION FOR EXTENSION OF TIME IN WHICH TO FILE AN ANSWER OR OTHERWISE RESPOND TO PLAINTIFFS' SECOND AMENDED COMPLAINT FOR PROPOSED CLASS ACTION RELIEF and MOTION SEEKING TO EXTEND PAGE LIMITATIONS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail address:

Curtis L. Kennedy, Esq. at CurtisLKennedy@aol.com

and, I also certify that I have mailed or served the document via U.S. Mail, postage prepaid, to the following non-CM/ECF participants:

Cynthia Delaney
Qwest Communications Corp.
1801 California Street, Suite 900
Denver, CO 80202

s/ Carla A. Chiles
Carla A. Chiles, Paralegal
Baird & Kiovsky, LLC