

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

.....)
PHILIP A. MURPHY, JR., et al.,)

Plaintiffs,)

CIVIL ACTION NO. 3:09-CV-2262-G

v.)

VERIZON COMMUNICATIONS INC., et al.,)

Defendants.)
.....)

RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

The Verizon Defendants submit this response to the motion for class certification and supporting memorandum filed by Plaintiffs on December 2, 2010. While the Verizon Defendants strongly disagree with a number of statements made in Plaintiffs' memorandum and deny that Plaintiffs' claims have any merit, the Verizon Defendants do not oppose Plaintiffs' request for class certification on the terms set forth herein.

As the Verizon Defendants informed counsel for Plaintiffs well in advance of the class certification deadline, the Verizon Defendants do not oppose class certification of this matter. To date, however, neither counsel for Plaintiffs has responded to the Verizon Defendants' efforts to prepare an agreed class certification order. Accordingly, the Verizon Defendants hereby submit a proposed class certification order for consideration by the Court. Although that order defines the class and the class claims somewhat differently from Plaintiffs, there does not appear to be any meaningful disagreement regarding the appropriateness of a non-opt out class, the composition of the class, or the nature of the class claims.

The Verizon Defendants strongly dispute many of the factual and legal assertions contained in Plaintiffs' request for class certification. However, the Verizon Defendants agree that a class in this case would satisfy Rule 23(a)'s requirements of numerosity, commonality, and typicality and adequacy of plaintiffs. Moreover, the Verizon Defendants do not contest Plaintiffs' assertion that their counsel are sufficiently qualified and experienced or that they should be appointed as class counsel pursuant to Rule 23(g). Finally, the Verizon Defendants agree with Plaintiffs that class certification is appropriate under Rule 23(b)(2) because the Verizon Defendants have allegedly acted or refused to act on grounds generally applicable to the Class. For example, the question whether the November 2006 spin-off was proper under governing law and the applicable Verizon pension plans applies equally to all class members.¹

The parties also appear to agree regarding the composition of the proposed class. The Verizon Defendants, however, do not believe that the class definition proposed by Plaintiffs' counsel is appropriate for two reasons. *First*, Plaintiffs' proposed class definition by its terms would include active Verizon employees who were transferred to Idearc's pension plans and subsequently retired. Plaintiffs themselves have made clear that this is not their intention. *See* Dkt. 43, at 4-5 ("The Class does not include persons who were active Verizon employees, not retired, when the spin-off occurred."). Accordingly, the Verizon Defendants believe that the class definition should be changed to make this clear.

Second, Plaintiffs' proposed class definition is inaccurate and unnecessarily argumentative. For instance, there can be no doubt that members of the class were transferred from Verizon pension plans into Idearc pension plans in connection with the spin-off transaction.

¹ The Verizon Defendants also believe that a class would be appropriate under Rule 23(1)(A) because inconsistent or varying adjudications with respect to individual class members would establish incompatible standards of conduct for the Verizon Defendants.

The question in this lawsuit is whether that transfer was proper (and it was). Thus, Plaintiffs' use of the phrase "treated as transferred" is unnecessarily argumentative and wholly unnecessary. Similarly, it is neither accurate nor necessary to say that the class members were transferred "pursuant to" the November 2006 spin-off; the parties agree, however, that the transfer occurred "in connection with" the spin-off. Accordingly, the Verizon Defendants request that the Court instead certify the following non-opt out class:

All former participants in Verizon's pension plans who were transferred into Idearc's pension plans in connection with a spin-off occurring in November 2006 and who were retired or terminated from Verizon at the time of the spin-off, as well as any beneficiaries of such participants.

The Verizon Defendants believe that this class would have precisely the same composition as the class that Plaintiffs attempted to define in their motion for class certification.

Under Rule 23(c)(1)(B), this Court is required to issue a class certification order that, among other things, "define[s] . . . the class claims." The Verizon Defendants, however, are unable to discern from Plaintiffs' submission any proposed definition of the class claims that the Court might appropriately adopt in its class certification order. By contrast, the attached proposed order seeks succinctly to define the claims asserted by Plaintiffs in Counts III, IV and VI in a fair and neutral fashion, as follows:

- a) Whether Defendant Verizon EBC breached its fiduciary duties under ERISA § 404(a)(1) by transferring Plaintiffs and Class members to Idearc pension plans.
- b) Whether Plaintiffs and the Class are entitled to "other appropriate equitable relief" under ERISA § 502(a)(3) as a result of the transfer of Plaintiffs and Class members to Idearc pension plans.
- c) Whether, pursuant to ERISA § 502(a)(1)(B), Plaintiffs and the Class are entitled to any pension benefits under the terms of any Verizon pension plan that they did not receive as a result of the November 2006 spin-off.

Accordingly, the Verizon Defendants respectfully submits the attached proposed order for the Court's consideration and approval.

Conclusion

For the foregoing reasons, the Court should issue the Order attached hereto.

Dated: December 8, 2010

Respectfully submitted,

/s/ Christopher L. Kurzner

Christopher L. Kurzner

Texas Bar No. 11769100

KURZNER PC

1700 Pacific Avenue, Suite 3800

Dallas, Texas 75201

Tel.: 214-442-0801

Fax: 214-442-0851

ckurzner@kurzner.com

Jeffrey G. Huvelle (admitted pro hac vice)

Christian J. Pistilli (admitted pro hac vice)

COVINGTON & BURLING LLP

1201 Pennsylvania Ave., N.W.

Washington, DC 20004

Tel.: (202) 662-6000

Fax: (202) 662-6291

Attorneys for the Verizon Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2010, I caused a true and correct copy of the foregoing instrument to be served on counsel for plaintiffs via the Court's electronic filing system as set forth in Miscellaneous Order 61 as follows:

Curtis L. Kennedy
8405 E. Princeton Avenue
Denver, CO 80237-1741
Fax: (303) 843-0360

Robert E. Goodman, Jr.
Francis Goodman PLLC
8750 N. Central Expressway – Ste. 1000
Dallas, TX 75231
Fax: (214) 368-3974

David Whittlesey
Andrews Kurth LLP
111 Congress Avenue
Suite 1700
Austin, TX 78701
Fax: (512) 320-9292

/s/ Christopher L. Kurzner
Christopher L. Kurzner

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

<p>PHILIP A. MURPHY, JR., <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>VERIZON COMMUNICATIONS INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL ACTION NO. 3:09-CV-2262-G</p>
--	--	---

[PROPOSED] ORDER FOR CLASS CERTIFICATION

This matter coming to be heard on the Plaintiffs’ Motion for Class Certification and Defendants’ Response thereto, and the Court being fully advised in the premises,

THE COURT HEREBY FINDS AND ORDERS THE FOLLOWING:

1. The Court finds that the Class proposed by the parties meets the requirements of Rule 23. Accordingly, the Court certifies a class pursuant to Rule 23(b)(2) in this action, defined as:

All former participants in Verizon’s pension plans who were transferred into Idearc’s pension plans in connection with a spin-off occurring in November 2006 and who were retired or terminated from Verizon at the time of the spin-off, as well as any beneficiaries of such participants.

2. The Court finds that the Class meets the requirements of Rule 23(a). The Class consists of more than 1000 people. The Class is therefore so numerous that joinder of all members is impracticable. There are common questions of law and fact regarding whether the

terms of the Verizon pension plans permitted the spin-off transaction. The claims of the Class Representatives are typical of the Class because they, like the other Class members, were transferred from Verizon pension plans to Idearc pension plans in connection with the spin-off transaction.. The Court finds that the Class Representatives will fairly and adequately protect the interests of the Class. They have no conflict of interest with the Class, and they have retained competent counsel to represent the Class.

3. The Court finds that this action may be maintained as a class action under Rule 23(b)(2) because the Defendants have allegedly acted or refused to act on grounds generally applicable to the Class, making final injunctive relief or corresponding declaratory relief with respect to the Class as a whole appropriate.

4. Pursuant to Rule 23(c)(1)(B), the class claims are defined as follows:

- a) Whether Defendant Verizon EBC breached its fiduciary duties under ERISA § 404(a)(1) by transferring Plaintiffs and Class members to Idearc pension plans.
- b) Whether Plaintiffs and the Class are entitled to “other appropriate equitable relief” under ERISA § 502(a)(3) as a result of the transfer of Plaintiffs and Class members to Idearc pension plans.
- c) Whether, pursuant to ERISA § 502(a)(1)(B), Plaintiffs and the Class are entitled to any pension benefits under the terms of any Verizon pension plan that they did not receive as a result of the November 2006 spin-off.

5. Based on the pleadings, motions, and other court filings in this case, including materials relating to proposed Class counsel, the Court has considered the following factors pursuant to Rule 23(g)(1): (1) the work Plaintiffs’ counsel have done in identifying and investigating potential class claims in this case, (2) their experience in handling class actions, other complex litigation, and claims of the type asserted in this action, (3) their knowledge of the applicable law, and (4) the resources counsel will commit to representing the Class. Based on

that review, the Court concludes that Plaintiffs' counsel will fairly and adequately represent the interests of the Class. The Court therefore appoints the following attorneys as Class Counsel pursuant to Rule 23(c)(1)(B) and Rule 23(g):

Curtis L. Kennedy
Law Office of Curtis L Kennedy
8405 E. Princeton Ave.
Denver, CO 80237-1741

Robert E Goodman, Jr.
Kilgore & Kilgore PLLC
3109 Carlisle Street
Dallas, TX 75204

Date: December __, 2010

Entered:

Judge Joe Fish