



various legal authority, including a Department of Labor Advisory Opinion. Plaintiffs make the same argument in their memorandum brief opposing the Verizon Defendants' motion for summary judgment (Docket 87) at pages 8-12.

2. In *Secretary of Labor v. Doyle*, --- F.3d ----, 2012 WL 1003547 (3<sup>rd</sup> Cir. March 27, 2012). On March 27, 2012, the Third Circuit dealt with the issue of what constitutes pension “plan assets”, and the appellate court relied essentially on the same authority Plaintiffs cite in their memorandum briefs. The Third Circuit said:

As the Tenth Circuit Court of Appeals has persuasively explained, in the absence of specific statutory or regulatory guidance, the term “plan assets” should be given its ordinary meaning, and therefore should be construed to refer to property owned by an ERISA plan. See *In re Luna*, 406 F.3d at 1199 (considering dictionary definition of “asset” and noting that “[c]entral to the definition of ‘asset,’ then, is that the person or entity holding the asset has an ownership interest in a given thing, whether tangible or intangible”). This approach is also consistent with guidance provided by the Secretary on the meaning of “plan assets,” which states that “the assets of a plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law. In general, the assets of a welfare plan would include any property, tangible or intangible, in which the plan has a beneficial ownership interest.” Department of Labor, Advisory Op. No. 93-14A, 1993 WL 188473 \*4 (May 5, 1993); see also *Kalda v. Sioux Valley Physician Partners, Inc.*, 481 F.3d 639, 647 (8th Cir.2007) (finding “the Secretary's reasoning in its rulings regarding ‘plan assets’ thorough, valid, and particularly consistent” and adopting the Secretary's definition).

*Id.*, 2012 WL 1003547 at \*7. In a footnote, the appellate court stated:

“The Supreme Court has also strongly suggested that this is the proper approach to defining “plan assets.” See *Jackson v. United States*, 555 U.S. 1163, 129 S.Ct. 1307, 173 L.Ed.2d 575 (2009) (vacating Fourth Circuit's holding that unpaid employer contributions were plan assets and remanding for further consideration “in light of the position asserted by the Solicitor General in his brief for the United States”); Brief for United States at 11-12, 2009 WL 133443, at \* 11-\* 12, in *Jackson v. United States* (explaining that “in situations not covered by the plan asset regulations, ‘the assets of a plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law’ ”).”

*Id.*, 2012 WL 1003547 at \*13, FN24.

WHEREFORE, Plaintiffs respectfully request submit the *Doyle* decision as supplemental

authority in support of Plaintiffs' Motion for Partial Summary Judgment (Docket 81), and in support of Plaintiffs' oppositions to the defendants' respective summary judgment motions (Dockets 86 and 88).

DATED this 9<sup>th</sup> day of April, 2012.

Respectfully submitted,

*s/ Curtis L. Kennedy*

Texas State Bar No. 11284320  
Colorado State Bar No. 12351  
Curtis L. Kennedy, Esq.  
8405 E. Princeton Avenue  
Denver, Colorado 80237-1741  
Tele: 303-770-0440  
CurtisLKennedy@aol.com  
*CLASS COUNSEL*

*s/ Robert E. Goodman, Jr.*

Texas State Bar No. 08158100  
Robert E. Goodman, Jr., Esq.  
KILGORE & KILGORE LAWYERS  
3109 Carlisle Street  
Dallas, Texas 75204  
Tele: 214-969-9099  
Fax: 214-953-0133  
reg@kilgorelaw.com  
*CLASS COUNSEL*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of April, 2012, 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 as follows:

<p>Jeffrey G. Huvelle, Esq. Christian J. Pistilli, Esq. COVINGTON &amp; BURLING LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004-2401 Tele: 202-662-5526 Fax: 202-778-5526 jhuvelle@cov.com cpistilli@cov.com <i>Counsel for Verizon Defendants</i></p> <p>Christopher L. Kurzner, Esq. Texas Bar No. 11769100 KURZNER PC 1700 Pacific Avenue, Suite 3800 Dallas, Texas 75201 Tele: 214-442-0801 Fax: 214-442-0851 CKurzner@kurzner.com <i>Counsel for Verizon Defendants</i></p>	<p>David P. Whittlesey, Esq. Texas State Bar No. 00791920 Casey Low, Esq. Texas State Bar No. 24041363 ANDREWS KURTH LLP 111 Congress Avenue, Suite 1700 Austin, Texas 78701 Tele: 512-320-9330 Fax: 512-320-4930 davidwhittlesey@andrewskurth.com <i>Counsel for Idearc/SuperMedia Defendants</i></p> <p>Marc D. Katz, Esq. ANDREWS KURTH LLP Texas State Bar No. 00791002 1717 Main Street, Suite 3700 Dallas, Texas 75201 Tele: 214-659-4400 Fax: 214-659-4401 marckatz@andrewskurth.com <i>Counsel for Idearc/SuperMedia Defendants</i></p>
--	---

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

Philip A. Murphy, Jr.  
25 Bogastow Circle  
Mills, MA 02054-1039  
phil.murphy@polimortgage.com (Philip A. Murphy, Jr.)

Sandra R. Noe  
72 Mile Lane  
Ipswich, MA 01938-1153  
capsan@comcast.net (Sandra R. Noe)

Claire M. Palmer  
26 Crescent Street  
West Newton, MA 02465-2008  
priesing@aol.com (Claire M. Palmer)

s/ Curtis L. Kennedy  
Curtis L. Kennedy