

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHER DISTRICT OF TEXAS  
DALLAS DIVISION

PHILIP A. MURPHY, JR. §  
SANDRA R. NOE, and §  
CLAIRE M. PALMER, §  
Individually, and as Representatives of plan §  
participants and plan beneficiaries of §  
VERIZON’s PENSION PLANS §  
involuntarily re-classified and treated as §  
transferred into IDEARC’s PENSION PLANS, §

Plaintiffs, §

vs. §

CIVIL ACTION NO. **3:09-cv-2262-G**

VERIZON COMMUNICATIONS, INC., §  
VERIZON EMPLOYEE BENEFITS COMMITTEE, §  
VERIZON PENSION PLAN FOR NEW YORK §  
AND NEW ENGLAND ASSOCIATES, §  
VERIZON MANAGEMENT PENSION PLAN, §  
IDEARC EMPLOYEE BENEFITS COMMITTEE, §

Defendants. §

**PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION**

1. In accordance with the Court’s schedule set forth in the Order dated May 24, 2010 (Docket 32), Plaintiffs’ hereby move for class certification of the Third, Fourth and Sixth Counts set forth in the Amended Complaint (Docket 6). A memorandum brief in support of this motion is filed contemporaneously herewith and incorporated by reference as if fully set forth herein.

2. Certificate of Compliance with Local Rule 7.1(a). There has been compliance with Local Rule 7.1(a). On November 25, 2010, the latest draft of Plaintiffs’ memorandum brief in support of their motion for class certification was shared with all of Defendants’ counsel in an attempt to confer and reach agreement about the motion. On November 30, 2010, Plaintiffs’ counsel Curtis L. Kennedy met personally with Verizon Defendants’ counsel Jeffrey G. Huvelle

and Christian J. Pistilli in Washington, DC and they had an extensive discussion about this case and conferred about this motion for class certification. As a result, to date, it does not appear there is any disagreement that the case meets all the requirements of Rule 23(a) and Rule 23(b)(2). Presently, the parties are contemplating and discussing the details for a proposed order concerning class certification, but no final agreement has been reached on a proposed order.

3. By Order dated October 18, 2010 (Docket 33), the Court dismissed several of Plaintiffs' individually asserted claims in the Amended Complaint which claims were directed at SuperMedia Defendants. As reported in a Status Report filed on November 24, 2010, the parties are very close to reaching a stipulation regarding any remaining claims pending against SuperMedia EBC, and it is anticipated that stipulation will soon be filed with the Court.

4. By the same order dated October 18, 2010 (Docket 33), the Court dismissed Count 5, an ERISA Section 510 claim directed at Verizon Defendants, on the grounds that claim was time barred by the applicable Texas statute of limitations.

5. Counts Three, Four and Six remaining in the Amended Complaint all pertain to the same challenged course of conduct, the inclusion of retirees in the November 17, 2006 Spin-off of Idearc and their involuntary transfer out of Verizon's sponsored pension plans into Idearc/SuperMedia's sponsored pension plans. All of Plaintiffs' claims are pursued under the same federal law, the Employee Retirement Income Security Act of 1974 (ERISA). All claims will be tried to the Court. This case easily satisfies all four prerequisites of Fed.R.Civ.P. 23(a) and can be certified under three of Rule 23(b)'s prongs (or any combination thereof).

6. In Count Three, Plaintiffs contend Defendant Verizon EBC violated ERISA

Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), the duty to comply with pension plan document rules. (Docket 6 at ¶ 136). Plaintiffs contend that all actions taken with respect to pension assets and retired plan participants had to be in exact accordance with then existing governing plan terms and rules, but that said defendant acted contrary to the controlling terms and rules. (*Id.* at ¶ 128). Plaintiffs invoke *Kennedy v. Plan Administrator for DuPont Savings and Investment*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 865 (2009), wherein the Supreme Court confirmed that ERISA provides no exception to the plan administrator's duty to act in accordance with existing plan documents and stated rules. (*Id.* at ¶ 129). Plaintiffs contend that Verizon EBC's involuntary reclassification and removal of Plaintiffs and the putative class of retirees from Verizon's sponsored pension plans as of November 17, 2006 was action taken in violation of the retirees' contractual rights under the Verizon pension plans and in violation of controlling pension plan terms and rules. (*Id.* at ¶ 134). Plaintiffs seek a declaration from this Court that Defendant Verizon EBC failed to act in compliance with Verizon's pension plan documents rules and violated ERISA Section 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). (*Id.* Prayer at ¶ G.2).

7. In Count Four, Plaintiffs have asserted a novel claim seeking appropriate equitable relief against Verizon, in its capacity as the pension plans sponsor, and against Verizon EBC, in its capacity as plan administrators.<sup>1</sup> Plaintiffs contend that the pension assets Verizon transferred to Idearc/SuperMedia were excess or surplus pension assets not earmarked or tied to any identifiable retirees. (Docket 6 at ¶ 138). Pursuant to ERISA Sections 502(a)(2) and (a)(3),

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<sup>1</sup> The Court approved the parties' stipulated agreement that SuperMedia Inc. be dismissed from this litigation and SuperMedia has agreed to be bound by any equitable relief ordered by the Court. (Docket Nos. 17 and 15).

29 U.S.C. §§ 1132(a)(2) and (a)(3), Plaintiffs request this Court grant them appropriate equitable relief, including a declaration that the transfer of surplus assets, whenever it did occur, did not serve to change the retirees' status and did not extinguish any plaintiff's or putative class member's rights to receive payment of benefits from Verizon's sponsored pension plans. (*Id.* at ¶ 138, Prayer at ¶ G.3). Plaintiffs contend the December 22, 2006 pension plan amendments were illegally applied retroactively, and Plaintiffs request a declaration that the December 22, 2006 plan amendments are null and void. (*Id.* at ¶ 139, Prayer at G.3). Plaintiffs ask this Court to grant all retirees appropriate equitable relief which would include injunctive relief rescinding Verizon's reclassification of Plaintiffs and the putative class and an order requiring all retirees be restored to their former status as participants and beneficiaries enrolled in Verizon's pension and welfare plans and that they be made whole. (*Id.* at ¶140, Prayer at ¶ G.4). Plaintiffs request an order requiring Idearc/SuperMedia Defendants to transfer Plaintiffs and all putative class members back into Verizon's sponsored pension and welfare benefit plans (*Id.*, Prayer at ¶ G.5).

8. In Count Six, Plaintiffs seek payment of benefits from Verizon's sponsored pension plans. Plaintiffs assert their ERISA Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), claim as an alternative claim to their ERISA Sections 502(a)(2) and (a)(3) based claims, should the Court not be able to grant full relief under those claims. (Docket 6 at ¶ 152). Plaintiffs contend that Verizon vested pension plan benefits due and payable under the terms in existence before December 22, 2006 were not actually provided to Plaintiffs and putative class members. (*Id.* at ¶ 157). Plaintiffs seek for themselves and the putative class members benefits payable under the unaltered terms and plan language in existence before December 22, 2006. (*Id.* at ¶

158, Prayer at ¶ H).

9. Plaintiffs seek certification of a plaintiff class (hereinafter the “Class”), defined as follows:

All retirees and their beneficiaries formerly enrolled in Verizon’s pension plans who were reclassified by Verizon and treated as transferred into Idearc’s pension plans pursuant to the spin-off occurring in November 2006.

(Docket 6 at ¶ 171).

10. Again, there appears to be no disagreement that Class certification is entirely appropriate here. The proposed class, consisting of over 2,000 retirees, is easily and objectively determinable from Defendants’ business records, including a data base containing each Class member’s full name and address.

11. There are no individualized issues of proof on any elements of Plaintiffs’ ERISA based claims. There are several documents that purport to affect all Class members. On the last day of the Spin-off, Verizon and Idearc executed an Employee Matters Agreement (“EMA”) which called for Plaintiffs and all Class members to be included in the Spin-off and transferred into Idearc’s retiree rolls. In addition, Defendants will contend that all Class members’ rights to Verizon’s sponsored pension benefits were extinguished by the terms of *post hoc* pension plan amendments executed on December 22, 2006. Defendants attempted to make the pension plan amendments retroactive to November 17, 2006, the final date of the Spin-off. Defendants did not tell the retirees what had happened to them until several months after the fact. The claims in this case only concern Defendants’ conduct, not the conduct of any Plaintiff or Class member.

12. This case raises uniform, classwide legal and factual questions whether Verizon Defendants violated ERISA and whether the Court should grant the Class appropriate equitable

relief, namely restoration into Verizon's sponsored employee benefit plans. For the reasons set forth in the memorandum brief filed herewith, the Court should grant class certification.

13. Plaintiffs move the Court to certify the Class under Rule 23(b)(1)(B) and/or Rule 23(b)(2). Alternatively, if the Court does not deem a class appropriate under those provisions, Plaintiffs move the Court to certify a Class under Rule 23(b)(3) or a combination of Rule 23(b)(2) and (b)(3).

14. 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)(B) (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)(B) and/or (b)(2) class actions are preferred over (b)(3) class actions since they have superior *res judicata* effects because they generally do not permit opt-outs.

15. Plaintiffs' counsel Curtis L. Kennedy and Robert E. Goodman, Jr., satisfy the requirements of Rule 23(g) for all of the reasons set forth in the declarations accompanying the memorandum brief filed in support of this motion.

16. In support of this motion, Named Plaintiffs adopt and incorporate herein Docket 6, the Amended Complaint filed with the Court on January 6, 2010. Also, Plaintiffs incorporate herein their memorandum of authorities and arguments, together with Exhibits, also filed on this date.

WHEREFORE, Plaintiffs request an order certifying Counts 3, 4 and 6 of the Amended Complaint as Class claims, that the Class be defined as set forth hereinabove and Plaintiffs' counsel be designated counsel for the Class.

DATED this 2<sup>nd</sup> day of December, 2010.

Respectfully submitted,

s/ Curtis L. Kennedy

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of December, 2010, 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:

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

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