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<p>1 transfer didn't get completed until three years later. 2 So all the while, that meant that they still had 3 fiduciary obligations.</p> <p>4 But when you're implementing a decision, 5 you -- you just don't divorce yourself from the -- the 6 obligation to continue to do what's in the best interest 7 of the retirees.</p> <p>8 There's no doubt that Idearc, from the 9 beginning of this -- planning stages all the way to the 10 end, did not want the retirees. And for good reason. 11 And it - it went all the way up to the top of the chain 12 of command. The CEO of Idearc, Kathy Harless, went to 13 the CEO of Verizon, Ivan Seidenberg, and said: This 14 isn't a really good idea; we don't want the retirees.</p> <p>15 And what was the outcome? It was almost 16 male chauvinistic. The CEO of Verizon tells her to stay 17 out of the way; from now on he'll deal with the guys; 18 he'll deal with Andy and Mueller.</p> <p>19 And that's what happened. So there was no 20 voice speaking up for the retirees during the 21 implementation of the decision.</p> <p>22 And as it turned out, as we point out, 23 there are four groups of retirees that would have been 24 involved in this spin-off. The Court is aware that 25 there's management retirees that were former managers.</p>	<p>1 ignored the plain language and basically rewrote the 2 statute, as we have pointed out.</p> <p>3 It's just about six weeks ago that 4 Judge Elrod of this Court entered a decision in Tolbert 5 versus RBC, on July 14. And you read that brief at 6 Pages 7 and 8, and it looks like, almost verbatim, what 7 we say: When Congress says something, it means what it 8 says, and it says what it means.</p> <p>9 And every word has to be applied. You 10 cannot ignore the fact that fiduciaries are prohibited 11 from acting in an individual or in any other capacity in 12 a transaction that is adverse to the interests of the 13 plan participants.</p> <p>14 JUDGE KING: You have to -- in order to do 15 that, you have to buy into the notion that this was not 16 a settlor decision as opposed to a fiduciary decision.</p> <p>17 MR. KENNEDY: But the decision, Your 18 Honor, was made when they decided to do the spin-off. 19 What they did subsequently is decide: Well, who's going 20 to be involved in this spin-off? And -- and, you know, 21 it was an evolving situation, and so it's not -- they 22 didn't insulate themselves by saying: Well, we're 23 acting now as in a seller capacity.</p> <p>24 The whole point of 406(b)(2) is that these 25 people, the senior officers who are designated the</p>
<p>Page 6</p> <p>1 There's non-management retirees that are, you know, 2 former collective bargaining employees. And those -- 3 there's two groups. There's -- in each group there's a 4 group that's under pay status, immediately getting a 5 check, and then there's a group of people who earned a 6 pension in the future, the deferred vested pensions.</p> <p>7 Well, at the last bit of the transaction 8 here, the management deferred pensioners were protected. 9 They were held back by Verizon. So they - they didn't 10 even treat everybody the same in that regard. They 11 didn't look out for the best interest when they -- when 12 they implemented the decision.</p> <p>13 The fact of 406(b)(2) is that you just 14 don't put yourself in a position where you can't serve 15 always, foremost, the best interest of the plan 16 participants.</p> <p>17 And I know the Courts have kind of got 18 lost in the language of 406(b)(2), and sometimes they 19 just don't read the plain language. But the fact is, 20 the Supreme Court has already made a comment about 21 406(b)(2) long ago, and that was in 1981, the NRLB case 22 versus Amax Coal Company.</p> <p>23 But somehow in the years since, people -- 24 courts have made a mistake, and everybody keeps making 25 the same mistake. And the district court below just</p>	<p>Page 8</p> <p>1 fiduciaries of the plan, they shouldn't even be involved 2 in advocating for the settlor.</p> <p>3 And why was all this done? What - the 4 reason they stayed true to the settlor is simply for a 5 short-term gain, to enhance shareholder value. And 6 that's undisputed, that this -- this wasn't an 7 arm's-length transaction; it was completely a cram-down.</p> <p>8 And we tried to find out all this 9 information before we got into litigation, and that's 10 one of our claims, is that, you know, one shouldn't have 11 to go through this expensive protracted effort to find 12 out what's happened to your pension plan and who's -- 13 who's handling it, what's going on with the funding, 14 especially when a company is going through bankruptcy.</p> <p>15 And so we tried to find out all this 16 information, and we didn't get it. We were stonewalled. 17 We found out what we needed to know through the 18 litigation process.</p> <p>19 But Ehlmann says, you know, we reserve -- 20 this Court had reserved for a day to decide under what 21 circumstances, when a special request is made, should 22 you comply with that. Well, this is a case where the 23 Court can take Ehlmann and go -- go forward and say: 24 The company should have provided all this information. 25 So from -- from the beginning to all the</p>

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<p>1 way through, the Court has seen evidence that the 2 fiduciaries weren't looking out for the plan 3 participants. And there was no forewarning. There was 4 nothing said in the SPD.</p> <p>5 JUDGE GRAVES: You're not arguing that 6 there was a fiduciary duty in connection with the 7 decision to spin-off, are you?</p> <p>8 MR. KENNEDY: The basic decision to do a 9 spin-off was a settlor function. And it's just like in 10 Boussien, we decide we're going to purchase an insurance 11 annuity, that's a decision, but how you implement that 12 decision and how you go about choosing the right people 13 and -- and whether you use an independent fiduciary, 14 those are all fiduciary functions.</p> <p>15 And I want to point out, Judge Graves, 16 your decision in Kohler [ph], which is applicable in 17 this case. The reason one of these retirees was so 18 blind-sided is that it wasn't a circumstance that was 19 revealed in the SPD and the regulation and the statute. 20 And -- and in Kohler you said that the regulation 21 requires much greater clar- -- clarity. And -- and that 22 didn't happen in this instance.</p> <p>23 We asked for the investment guidelines, 24 which were to enable the retirees to know exactly how 25 the money's being managed, make sure it's not being put</p>	<p>1 investment policy and so on, doesn't that moot that?</p> <p>2 MR. KENNEDY: No, it doesn't moot that 3 because that's going to be a continuing issue. But I -- 4 I'm hoping the Court will -- will see and go back and 5 revisit the Boussien decision and see that this -- it's 6 just wrong to affirm the -- the court below.</p> <p>7 But there's going to be continuing 8 conflicts with plan participants when they ask for those 9 kind of guidelines and --</p> <p>10 JUDGE KING: Oh, but you can raise that 11 question then. I mean, you -- obviously you're looking 12 for something different before this, you know, deal 13 gelled than you were at -- at this point. I mean, 14 you're -- at some future point. You want it for a 15 different reason.</p> <p>16 MR. KENNEDY: What -- what we wanted to do 17 is find out: How did this happen, who was representing 18 us, and why didn't we know about it, and why weren't we 19 informed --</p> <p>20 JUDGE KING: Now, the plans -- the plans 21 here provide that this can -- they provide for this 22 possibility --</p> <p>23 MR. KENNEDY: The plan --</p> <p>24 JUDGE KING: -- implicitly.</p> <p>25 MR. KENNEDY: Judge King, it applies for</p>
<p>Page 10</p> <p>1 into a Madoff fund, and that was denied to us.</p> <p>2 Well, the other Circuits that have looked 3 at that have said: Those are instruments under which 4 the plan is operated and maintained. We didn't use the 5 magic word "governed." We did say that there are 6 instruments under which the plan is operated and 7 maintained.</p> <p>8 And -- and I think the Court, in three or 9 four instances, has pulled a rabbit out of the hat 10 and -- and used contentions that weren't even raised by 11 any of my friends in this action.</p> <p>12 And we're asking that the Court reverse 13 the judgment for the five central -- central reasons 14 we've argued and remand with instructions.</p> <p>15 They're trying to jump the gun and say: 16 Well, we want you to finish up the unfinished business. 17 They -- they come up with several arguments that weren't 18 even addressed by the trial court below. So they know 19 implicitly that this case wasn't completely resolved by 20 the trial court below.</p> <p>21 I'd like to reserve my rest --</p> <p>22 JUDGE KING: Let me ask you a question: 23 If -- if this Court were to affirm on the major issues 24 here and not --- and then get to the question about 25 the -- what they --- whether you should have had the</p>	<p>Page 12</p> <p>1 mergers and acquisitions, and that's what the retirees 2 were accustomed to. They were -- they were -- they were 3 accustomed to the companies getting bigger and better, 4 and all the while it was an improvement.</p> <p>5 JUDGE KING: They permit the transfer of 6 plan assets and liabilities.</p> <p>7 MR. KENNEDY: You know, in my 32 years of 8 doing ERISA, I've seen a lot of plans that specifically 9 say: You can transfer assets, liabilities, and 10 participants. And this is one of the few where it 11 didn't actually say it.</p> <p>12 So the Court has said: Implicitly that 13 was allowed. Well, even the Court's decision in that 14 regard, which wasn't even raised by my friends, is not 15 supported by any case law, and it undermines the whole 16 point of ERISA so that the summary plan description 17 inform people about what your rights are, what will 18 happen in the future, and what are circumstances that 19 can come about so that you can plan ahead, and maybe you 20 can even bring about changes, which I've done with other 21 organizations. We didn't get that chance here, Your 22 Honor.</p> <p>23 Thank you.</p> <p>24 JUDGE KING: Thank you.</p> <p>25 MR. HUVELLE: May it please the Court. I</p>

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<p>1 am Jeffrey Huvelle for the Verizon Appellees. 2 Mr. Brister will speak on behalf of SuperMedia. 3 We -- my task here is made easier by the 4 very careful and thoughtful opinion of Judge Fish below. 5 I'd like to make three points about how ERISA bears on 6 transactions of this nature. 7 First of all, ERISA protects plan 8 participants in this kind of transaction in two 9 important respects. ERISA Section 204(g) prohibits any 10 amendment to the plan that decreases the benefit of a 11 participant. And as a practical matter, what that means 12 is that there can be no amendment that changes the 13 formula that restates the obligation to the employee in 14 terms of what he is entitled in benefits. 15 Secondly, Section 208 requires that the 16 employee -- that the participant be entitled to the same 17 benefit on a plan termination basis after the transfer 18 of assets and liabilities as before. And that provision 19 is actually much more complicated than it seems on the 20 surface because it implicates ERISA's rules as the plan 21 terminations, which are -- what you are entitled to upon 22 a plan termination depends on how many assets are 23 available. And there are very extensive rules in 24 Section 414 about how you calculate and determine those 25 entitlements.</p>	<p>1 to transfer these assets, who would be the participants 2 in the new plan. So that who was transferred is very 3 much part of the design decision; it's not a fiduciary 4 decision. 5 Counsel mentioned the Boussien case where, 6 in terms of administering the assets of a plan, I 7 think -- I think the facts were that the -- the plan had 8 a choice of four insurance companies to invest some of 9 the money. And of course there was a fiduciary 10 responsibility to be careful in reviewing the four 11 possible insurance companies and pick one in a careful 12 manner. 13 But fiduciary duties are functional in 14 nature, and a person is a fiduciary only when they're 15 acting with discretionary authority over the 16 administration and assets of the plan. So that -- the 17 decision here is plainly not -- doesn't implicate 18 Section 404. 19 JUDGE GRAVES: Does the reservation of 20 rights provision allow an employer to make any amendment 21 to a plan at any time with regard to employee pensions 22 without violating the notice provisions under 102(b)? 23 MR. HUVELLE: Well, the -- it does allow 24 amendments to the -- yeah, it allows amendments to the 25 plan, and it gives employees notice of those amendments.</p>
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<p>1 But the net effect of it is that where the 2 plan is adequately funded to give everyone a benefit on 3 a plan termination basis before the transfer, they're 4 entitled to it after, which means a certain amount of 5 assets need to be transferred to satisfy that. 6 And that was done here. There is no 7 dispute that both of these important protections, in 8 terms of what the employee's entitled to and what assets 9 are available in the new plan, were satisfied. In fact, 10 the assets transferred to the new plan amounted to 11 something like 760 million. But on an accounting basis, 12 the plan only needed to be funded up to the level of 13 600 million. 14 But they're different -- different sets of 15 rules and, in effect, they were satisfied, but the plan 16 was adequately funded as required by ERISA. And there's 17 no dispute here that there's been compliance here with 18 both 204(g) and 204(a). 19 The second point about ERISA is the point 20 that has been discussed already, the distinction between 21 settlor functions regarding -- to the design of a plan 22 and fiduciary functions. 23 And to respond to the -- the comments by 24 counsel, the record, at 1593, is the plan amendment, 25 which clearly identifies, as part of the design decision</p>	<p>1 And as I said, 204(g) ensures that the benefit is not 2 decreased. 3 We would maintain that Section 10- -- that 4 the notice provision, or SPD, it only applies in terms 5 of giving people notice of a potential loss or denial of 6 benefits. And the three plaintiffs have admitted in 7 response to RFAs that they continued to receive the same 8 benefit after the transfer as before. And the law 9 requires that that be done. 10 So in terms of the notice requirements, 11 it -- they're simply not implicated in our view. Judge 12 Fish found that they were implicated, but they were 13 satisfied by that reservation of -- of rights provision. 14 In terms of the prohibited transaction 15 rule, the -- if you look at the statute, every section, 16 (a)(1), (a)(2), and (b)(1), each one starts: A 17 fiduciary shall not; no fiduciary shall; a fiduciary, 18 with respect to a plan, shall not -- 19 So quite clearly, if you just read the 20 statute, it only applies to fiduciary decisions, doesn't 21 apply to plan design decisions such as what was at issue 22 here. 23 And the cases are consistent with that. 24 The Lockheed case, Supreme Court case, says that. And 25 then there are cases from the Third, Sixth, Seventh, and</p>

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<p style="text-align: right;">Page 17</p> <p>1 Second Circuits, all of which deal with the argument of 2 prohibitive transactions and -- and concluding that that 3 only restricts fiduciary actions, and therefore, has no 4 role to play in this kind of transaction because the 5 decision to do a spin-off simply is not a fiduciary act. 6 JUDGE KING: I have the impression -- and 7 I haven't looked it up -- that there are now regulations 8 dealing with spin-offs; is that right? I mean -- 9 MR. HUVELLE: There are -- there are very 10 detailed regulations relating to the funding in 11 connection with a spin-off. 12 JUDGE KING: Yeah. 13 MR. HUVELLE: And that is -- and that goes 14 from 208 and the issue of funding it on a planned 15 termination basis. And we reviewed that in some detail 16 in our summary judgment papers. Judge Fish apparently 17 reviewed that entire sequence and the complexity of 18 those regulations and said in his opinion that it was -- 19 in terms of repeating those requirements, it was simply 20 too tedious to go into. 21 JUDGE KING: Yeah, I had that impression, 22 but I -- the reason I asked that is that I can remember 23 from many years ago that this kind of thing would come 24 up, and they -- those regulations didn't exist. They do 25 now. I mean, how --</p>	<p style="text-align: right;">Page 19</p> <p>1 elements is you must allege harm. 2 The Fifth Circuit law is very clear that 3 where you're alleging harm, speculation's not 4 sufficient. And here we would contend there's simply no 5 meaningful allegation that any of the plaintiffs were 6 harmed by any lack of disclosure in the SPD. 7 Thank you. 8 MR. BRISTER: May it please the Court. 9 Scott Brister and David Whittlesey with Andrews Kurth 10 for SuperMedia Employee Benefits Committee. We're the 11 managers of the plan into which these folks were 12 transferred from Verizon. 13 And the novel claim against my client is 14 whether ERISA gives members a right to demand documents 15 from a plan when they have no claim for -- against us 16 for benefits, the documents they want won't help them 17 make a claim for benefits, and the documents, in fact, 18 give them no rights of any kind. 19 There is no claim for benefits against us. 20 The past benefits have all been paid. The plans are 21 adequately funded for the future. The investment 22 guidelines they want don't give them any rights because 23 we don't let the plan members say: Well, I -- I don't 24 want to invest in tobacco stocks, or: I don't want you 25 to invest in hedge funds.</p>
<p style="text-align: right;">Page 18</p> <p>1 MR. HUVELLE: Well, 26 CFR 1.414(l) is a 2 very extensive set of regulations that deal with the 3 funding and, again, you know, reflect that both 4 Congress, in Section 208, and the regulatory authorities 5 have given very careful attention to these kinds of 6 transactions, which have to occur as companies such as 7 those in the telecom industry either acquire new 8 companies, spin-off entities. As their businesses 9 evolve, so too must their pension plans. 10 And basically the -- both the -- Congress 11 and the regulators have given considerable thought to 12 how to protect employees in connection with those 13 transactions. And here there's no dispute that there's 14 been compliance with both Section 208 and 15 Section 204(g). 16 In terms of the SPD issue, as I said, 17 Judge Fish found in -- that there had been no violation 18 because there was adequate disclosure in the reservation 19 of rights. We would argue that, in addition, that 20 obligation is not even triggered because there was no 21 harm, no loss -- no loss or denial of benefits. 22 There's one additional argument that 23 Judge Fish did not reach, which is the recent Supreme 24 Court case -- or not so recent -- in Amara versus Cigna. 25 It says that to have a disclosure claim, one of the</p>	<p style="text-align: right;">Page 20</p> <p>1 We don't -- members don't get to pick 2 that. And so what the -- if the invest- -- if they 3 don't like our investment guidelines, they don't get to 4 sue us and make us change them. That's what we have 5 investment managers to do. 6 I'll spend just a second on why investment 7 guidelines is the only thing that they pleaded and 8 preserved. 9 It's not enough to plead: We asked for 10 plan-related documents, because we can't tell if that's 11 plausible or not. You're entitled to some plan-related 12 documents and not others. And just saying: I didn't 13 get some plan-related documents, doesn't tell us -- 14 Judge Briars phrase recently in Fifth Third: It doesn't 15 separate the plausible sheep from the meritless goats. 16 We just -- you've got to be more specific 17 than that. And the only thing that is both pleaded in 18 the complaint and still preserved in their appellate 19 briefs is investment guidelines. 20 Now, the deal on investment guidelines is 21 this: There's a difference between Section 104 and 22 Section 404 of ERISA; 104 is papers you have to give to 23 members, 404 is performance we expect from managers. 24 Those are two different things. 401 is: You've got to 25 give them copies of this stuff. 404 is: The managers</p>

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<p>1 have to comply with these things. 2 And they've mixed those two up in the 3 brief against us, because it is true there's a 4 Department of Labor bulletin, and there's some cases 5 that say you have to give investment guidelines, and 6 they're all in cases where somebody's plan lost a bunch 7 of money on a bad investment. 8 And yes, if you sue -- if Dean Witter 9 loses the plan's money and you want to sue Dean Witter 10 and said: You weren't prudently investing, you may be 11 able to get the investment guidelines to see if Dean 12 Witter was following on them. 13 But they don't have a claim like that 14 against us. They -- we haven't lost money on 15 investments. We haven't -- this -- this is -- they 16 don't have a claim that: Because of that, we need to 17 see whether you followed the investment plans. We 18 haven't had any bad investment plans. 19 They -- they've got to go under 104, and 20 104 does say there's certain documents you have to give 21 people if they request. But it can't be what they say, 22 which is just: Well, if it's any document under which 23 the plan is governed -- 24 Think for a minute. I assume most plans 25 probably have a sexual-harassment policy and a</p>	<p>1 MR. BRISTER: Right. And that's -- the 2 Kajanik is they wouldn't tell me how to get a rollover. 3 They wouldn't tell me how to get my benefits. And I 4 think they have to do that. I think if it's -- I -- I 5 think that's under -- you could put that under either 6 404 or 104, because it has to do -- but this is not -- 7 this is not something they have a right to change. 8 JUDGE GRAVES: We put it under 404 in that 9 case, I think. 10 MR. BRISTER: Yes. Right. And I -- and I 11 think that's -- I think that's -- if you say: This is 12 hurting my benefits -- you know, 404 says you've got to 13 do -- you've got to: Discharge your duties solely for 14 the members' benefits as a prudent investor with 15 diversification in accordance with the instruments of 16 the governing plan. 17 So you're saying: I want to make a claim 18 for my benefits, and you won't give me the papers to do 19 that, or: I want to make a claim that you're not being 20 a prudent investor, and you want give me the documents 21 to prove that claim. 22 I think, under those circumstances, you 23 might be able to get some of these documents. But 24 that's different from 104, because they're not making 25 any of those claims. We haven't breached -- they don't</p>
<p>Page 22</p> <p>1 discrimination policy and a 2 being-courteous-to-people-on-the-phone policy. Well, 3 now, are those other instruments under which the plan is 4 operating? Well, broadly construed, yes. But these 5 things are things not only do you have to give a member 6 on written request, but you have to set up a document 7 repository. Under 404(b)(2) the same things have to be 8 put in a box -- document repository so they're available 9 for examination by any plan participant. 10 Well, I mean, if it's just that under -- 11 if it's everything about operations, then you just -- 12 your whole office is the document repository. 13 I think they're misinterpreting that 14 because it's under (b) -- 404(b) starts with this -- 15 both the title and the first line says: Publication of 16 the summary plan descriptions and annual reports shall 17 be made to participants and beneficiaries as follows -- 18 1, 2, 3, 4 -- upon written request. 19 It's describing when you send them summary 20 plan descriptions and annual reports, which of course, 21 are mandated because they're supposed to give people 22 everything they need to know to --- to pursue a claim. 23 JUDGE HIGGINSON: Can you -- you just have 24 a few minutes. Can you discuss the Kajanik decision a 25 little bit?</p>	<p>Page 24</p> <p>1 allege we breached any fiduciary duties of any kind. 2 They just say this is something you have to give 3 everybody. That's a 104 claim, and that ought to be 4 reserved for the statutorily required kind of plans. 5 So in conclusion -- of course, the main 6 purpose -- all I'm saying is: The main purpose of ERISA 7 is not producing paper; it's protecting pensions. And 8 they're not saying: We need this to protect our 9 pensions. All they say is: We need this so we can use 10 it against Verizon. 11 So I agree with you, Your Honor. If 12 there's no claim against Verizon, then the claim against 13 us is moot -- excuse me -- because that's what they 14 wanted the papers for. 15 JUDGE GRAVES: Thank you. 16 MR. BRISTER: Thank you. 17 JUDGE GRAVES: Rebuttal? 18 MR. KENNEDY: Your Honor, what's been lost 19 in all the discussion is if there's a judicial admission 20 that this whole transaction was imposed upon Idearc, and 21 we point that out in our appellate briefs. 22 And the centerpiece of how it was imposed 23 is in the record at Page 2559; that's the CEO-to-CEO 24 discussion. 25 And I want to point out that Section 208</p>

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<p style="text-align: right;">Page 25</p> <p>1 is not the floor, it does not bless the transaction, and 2 there are no cases that say that 208 excuses everybody 3 else from complying with the other provisions of the 4 statute, the 406(b)(2), don't get into a conflict of 5 interest, and the 404 issues.</p> <p>6 The plan amendment that they want to -- 7 this Court to address on the retroactive basis wasn't 8 even retroactive all the way. They couldn't shoot 9 straight, because they started transferring assets and 10 people on November 1. The plan amendment done on 11 December 22 was made retroactive to Dec- -- to 12 November 17. So it didn't even cover when they first 13 acted to -- to transfer assets.</p> <p>14 And what the courts have said 15 consistently, when -- you always act as a fiduciary 16 every time you transfer assets, regardless of what 17 you're doing with the assets. That's a fiduciary 18 function.</p> <p>19 And in regard to the notice, they want to 20 point out that the notice is only required when there 21 might be a loss or denial of benefits. That's not true. 22 The regulation says that you have to provide notice of 23 the circumstances that may result in loss, denial, 24 ineligibility, and offset. That means you get the same 25 benefits, but maybe they're going to be offset because</p>	<p style="text-align: right;">Page 27</p> <p>1 pick and choose who goes with it. And if you're doing 2 that, you're managing the assets, and you're -- and 3 you're doing a fiduciary role. You're playing God. 4 You're deciding which of the retirees are going to be 5 linked to the very surplus monies that you're giving 6 away to Idearc. And that's what happened here and 7 that's why we keep saying over and over: It was a 8 fiduciary function.</p> <p>9 And what's been lost in the statute that 10 was violated, the 406(b)(2) language, the plain words 11 say that: A fiduciary shall not in his individual or in 12 any other capacity -- any other capacity --</p> <p>13 That means as an officer, as a director, 14 as an agent, as a girlfriend, as anything of --- in a 15 transaction that's adverse to the interest of the 16 retirees. And we've shown that.</p> <p>17 This was --- there's -- there's harm all 18 over the field here, and they knew that. They knew that 19 it wasn't in their best interest from the --- from the 20 beginning. And that's because they barely gave enough 21 funding for what the retirees' needs were. They did not 22 give one dollar, one penny to deal with the package of 23 benefits that all these people earned by putting in all 24 their years of service.</p> <p>25 All these people at Verizon -- there's</p>
<p style="text-align: right;">Page 26</p> <p>1 you're going somewhere else, or maybe you're going into 2 an annuity or a different pension plan.</p> <p>3 But there wasn't any such disclosure. But 4 they made sure of that -- they made sure that they put 5 that in their SPDs a year -- within -- close to a year 6 after the retirees were transferred. So, you know, 7 that's an admission that they know it should have been 8 in the SPDs from the get-go.</p> <p>9 When dealing with the -- the settlor 10 function here, they cannot insulate their -- everything 11 that happens -- just because they say: Well, now we're 12 going to do a spin-off. What if it takes three years to 13 figure out what's the best thing to do for the people?</p> <p>14 When they were choosing to use these 15 assets for the spin-off, as part of the way to enhance 16 the shareholder value, they had to choose which people 17 would go with it. And I could never understand how you 18 can tie people to surplus assets.</p> <p>19 Because the Hughes Aircraft decision by 20 the Supreme Court says: If there's surplus assets, the 21 plan participants are -- aren't linked to it; they have 22 no right to complain about what's done with it; they 23 have no interest in it.</p> <p>24 Well, I think that goes both ways. If the 25 company wants to transfer surplus assets, it cannot just</p>	<p style="text-align: right;">Page 28</p> <p>1 100,000 of them -- they've all earned a package. And 2 everyone that's at Verizon still gets the whole package, 3 the life insurance, the welfare benefits, everything 4 that goes with being a --- a good long-term --</p> <p>5 JUDGE KING: That's the basic --</p> <p>6 MR. KENNEDY: -- service employee.</p> <p>7 JUDGE KING: That's the basic problem from 8 your standpoint, is that because you're not a part of 9 the Verizon plan anymore, you don't get the health 10 benefits and all the rest of it. It's really not about 11 this pension.</p> <p>12 MR. KENNEDY: That was part of the deal. 13 You know, it's one of the terms of the pension plan. 14 The pension plan says right in -- and that makes it 15 unique. The pension plan says: If you're eligible for 16 a service pension, you're eligible for --- you're going 17 to get all of these other things as well. And we point 18 out that language in our briefs.</p> <p>19 And that --- that's one of the unique 20 things about these Bell System pension plans, is that it 21 did provide right within the pension plan document that 22 you get your health care and welfare benefits.</p> <p>23 Verizon hasn't done anything negative to 24 them. And it's one of the richest companies in America, 25 so you've got to wonder why would they get rid of all</p>

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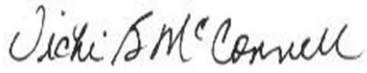
1 these unwanted retirees. It was simply to enhance
 2 shareholder value, and it was all wrong.
 3 We ask you to reverse and remand and ---
 4 and order the trial court, also, to give attorneys' fees
 5 and costs for our efforts.
 6 Thank you.
 7 JUDGE GRAVES: Thank you very much.
 8 The Court will take this matter under
 9 advisement, issue a ruling...
 10 (Recording concluded.)

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