

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 SuperMedia’s PENSION PLANS,

Plaintiffs,

vs.

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

VERIZON COMMUNICATIONS INC.,
VERIZON CORPORATE SERVICES GROUP INC.,
VERIZON EMPLOYEE BENEFITS COMMITTEE,
VERIZON PENSION PLAN FOR NEW YORK
AND NEW ENGLAND ASSOCIATES,
VERIZON MANAGEMENT PENSION PLAN,
VERIZON ENTERPRISES MANAGEMENT
PENSION PLAN,
VERIZON PENSION PLAN FOR MID-ATLANTIC
ASSOCIATES,
SUPERMEDIA EMPLOYEE BENEFITS COMMITTEE,

Defendants.

**PLAINTIFFS’ REPLY TO Docket 119, SUPERMEDIA EBC’S OPPOSITION TO
Docket 117, PLAINTIFFS’ AMENDED MOTION FOR LEAVE TO SUBMIT
SUPPLEMENTAL STATEMENT OF ADMISSIONS MADE BY SUPERMEDIA EBC**

Plaintiffs PHILIP A. MURPHY, JR., SANDRA R. NOE and CLAIRE M. PALMER, by
and through their counsel, file this reply to Defendant SuperMedia EBC’s opposition to Docket
117, Plaintiffs’ Amended Motion for Leave to Submit Supplemental Statement of Admissions
Made by SuperMedia EBC.

1. On April 24, 2012, months after the parties’ filed their motions for summary
judgment, Defendant SuperMedia EBC filed its Answer to the Second Amended Complaint (See
Docket 115). In the Answer, said defendant finally admitted to several material factual matters

which the Court should take into consideration when making rulings on the parties' pending motions for summary judgment.

2. In their amended motion filed as Docket 117, Plaintiffs have requested the Court to take into consideration SuperMedia EBC's admissions to the factual allegations in paragraphs 58, 61, 109 and 227 of Plaintiffs' Amended Complaint.

3. After reviewing the draft of Plaintiffs' proposed motion, SuperMedia EBC scrambled to take cover and reverse course, particularly with respect to its admission of the allegations in paragraph 58 of Plaintiffs' Second Amended Complaint. SuperMedia EBC filed a superceding Amended Answer to Plaintiffs' Second Amended Complaint no longer admitting the salient allegations of paragraph 58 of the Second Amended Complaint.

4. Admissions made in superseded pleadings are as a general rule considered to lose their binding force as judicial admissions, but they continue to have value as evidentiary admissions. 3 Moore's Federal Practice & Procedure ¶ 15.08[7] at 15-128 (1982); *White v. ARCO/Polymers, Inc.*, 720 F.2d 1391, 1396, FN5 (5th Cir.1983), citing *Borel v. United States Casualty Co.*, 233 F.2d 385 (5th Cir.1956). In *Borel*, there had been an admission made in an answer which was subsequently withdrawn. The appellate court held that "[a] superseded pleading is of course not a conclusive admission of the statements made therein, and is not properly considered by a fact-finder unless introduced in evidence." *Id.*, 233 F.2d at 387. The *Borel* court explained that the plaintiff in that case had offered into evidence the answer making the admission, and held that the statement could have been considered by the trier of fact in reaching a verdict, along with all the other evidence in the case. *Id.*

5. Although SuperMedia EBC's admission about surplus pension assets has been superceded by its subsequent Amended answer made on May 23, 2012, Plaintiffs, accordingly,

continue to request that such defendant's April 24, 2012 Answer with the admissions be allowed as part of Plaintiffs' supportive summary judgment evidence. The April 24 "Answer" was signed by several defense counsel, necessarily after they had sufficiently informed themselves of the facts, and the admission was withdrawn only after they reacted in panic to Plaintiffs' revelation that Plaintiffs would inform the Court of very important admissions.

6. SuperMedia EBC has not withdrawn its admissions to the allegations set forth in paragraphs 61, 109 and 227 of Plaintiffs' Second Amended Complaint, and those admissions should be considered by the Court without qualification, as judicial admissions, for the reasons argued in Plaintiffs' amended motion filed as Docket 117.

WHEREFORE, for the reasons argued in Docket 117 and herein, Plaintiffs respectfully request leave to submit the aforesaid admissions made by Defendant SuperMedia EBC as supplemental fact matters in support of Plaintiffs' Motion for Partial Summary Judgment (Docket 81) and in support of Plaintiffs' oppositions to all Defendants' respective summary judgment motions (Dockets 86 and 88).

DATED this 4th day of June, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 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:

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