

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

SUPERMEDIA INC., SUPERMEDIA §
LLC, SUPERMEDIA SERVICES INC., §
SUPERMEDIA SALES INC., §
SUPERMEDIA EMPLOYEE BENEFITS §
COMMITTEE, and §
IDEARC INCEPTOR LTD, §

Plaintiffs, §

v. §

CIVIL ACTION NO.
3:12-CV-2034-G

LINTON BELL, DALE BURKS, §
PAMELA BENNETT, MARTHA §
BOBO, DENNIS CASSIDY, CAROL §
FOY, JOSEPH GALLAGHER §
BEVERLY GEMMELL, EDWIN §
HANSON, CHRISTINE HARVEY, §
MARGARET KETZER, JOANIE KRAFT, §
THERESA LANE, SHARON LEYNES, §
PATRICIA LINDOP, ROBERT §
MENTZER, SANDRA NOE, CARL §
OHNSTAD, CLAIRE PALMER, §
STANLEY RUSSO, HOWARD SHAPSES, §
JOHN SULLIVAN, BERNARD ZENUS, §
COMMUNICATION WORKERS OF §
AMERICA, AFL-CIO, LOCAL 1301, §
COMMUNICATION WORKERS OF §
AMERICA, AFL-CIO, LOCAL 1302, §
and INTERNATIONAL §
BROTHERHOOD OF ELECTRICAL §
WORKERS, AFL-CIO, LOCAL 2213, §

Defendants. §

**PLAINTIFFS' RESPONSE TO DEFENDANTS PALMER, NOE, FOY, AND RUSSO'S
EMERGENCY MOTION TO STAY OR SUSPEND CASE AND BRIEF IN SUPPORT**

Plaintiffs SuperMedia Inc., SuperMedia LLC, SuperMedia Services Inc., SuperMedia Sales Inc., SuperMedia Employee Benefits Committee, and Idearc Inceptor LTD (collectively, “SuperMedia” or “Plaintiffs”) hereby file this RESPONSE TO DEFENDANTS PALMER, NOE, FOY, AND RUSSO’S EMERGENCY MOTION TO STAY OR SUSPEND CASE AND BRIEF IN SUPPORT (“Response”) and would show the Court as follows:

I.
INTRODUCTION

1. Faced with mounting financial pressures and the spiraling costs of healthcare coverage, SuperMedia made the difficult decision to amend its retiree health and welfare benefits plans to alter and terminate certain benefits previously provided to its retirees. Then, when certain affected retirees disputed SuperMedia’s legal right to make such amendments, SuperMedia filed the current suit (“SuperMedia Suit”), asking this Court to determine whether, among other issues, SuperMedia had the right to amend, modify, or terminate its retiree health and welfare benefits.

2. The sweeping accusations and inapplicable legal doctrines asserted in Claire Palmer, Sandra Noe, Carol Foy, and Stanley Russo’s (“Movants”) EMERGENCY MOTION TO STAY OR SUSPEND CASE (“Motion”) fail to justify a stay, which would ultimately impair SuperMedia’s genuine need for a resolution to the legal challenges raised against it—issues which will not be resolved by the pending motions for summary judgment in the Murphy Suit.¹ Because the Court is expected to render judgment in a timely fashion, minimizing or eliminating any burden to the plaintiffs in the Murphy Suit, and because the SuperMedia Suit involves distinct and critical issues that cannot be resolved by judgment in the Murphy Suit, Movants cannot establish the

¹ Civil Action No. 3:09-CV-2262-G

clear grounds to justify a stay in this case. Specifically, the Court should deny the Motion because: (1) the SuperMedia Suit affects distinct parties and issues that are not addressed by the Murphy Suit; (2) the Movants will not suffer any significant burden by proceeding in these early stages of SuperMedia's declaratory judgment action prior to the Court's order in the Murphy Suit; and (3) a delay in adjudication will harm both SuperMedia and the thousands of members of the SuperMedia Suit's defendant class of retirees ("Defendant Class") because the continued dispute impairs critical financial, business, and healthcare planning. As a result, SuperMedia respectfully requests that this Court deny the Motion and allow the SuperMedia Suit to proceed in a timely fashion.

II. **ARGUMENT AND AUTHORITIES**

A. LEGAL STANDARD FOR A STAY OF PROCEEDINGS

3. The decision to stay a proceeding is within the sound discretion of the Court. *Landis v. N. Am. Corp.*, 299 U.S. 248, 254 (1936) ("The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"); *Dominguez v. Hartford Fin. Servs. Group, Inc.*, 530 F. Supp. 2d 902, 905 (S.D. Tex. 2008). "Although a district court has wide discretion to stay proceedings, its power is not unbounded." *Dominguez*, 530 F. Supp. 2d at 905 (citing *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983)). In deciding whether to grant a requested stay, a court must "weigh the competing interests" of the parties. *Dominguez*, 530 F. Supp. 2d at 905.

4. Further, a movant seeking a discretionary stay of a proceeding carries the burden of showing that the competing interests **clearly** justify the delay. *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983) ("The party seeking a stay bears the burden of

justifying a delay tagged to another legal proceeding: The suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else.”). Where the movant clearly shows that another legal proceeding and the balance of the interests of the parties create a “special circumstance” warranting a delay, a court may stay the proceeding. *SEC v. Mutuals.com., Inc.*, 2004 U.S. Dist. LEXIS 13718, at *7-8 (N.D. Tex. July 20, 2004). For example, district courts in the Fifth Circuit have stayed civil actions pending completion of patent reexaminations and criminal proceedings. *Id.*, at *8 (“[A] district court may stay a civil proceeding during the pendency of a parallel criminal proceeding. Such a stay contemplates ‘special circumstances’ and the need to avoid ‘substantial and irreparable prejudice.’”); *BarTex Research v. FedEx Corp.*, 611 F. Supp. 2d 647, 649-650 (E.D. Tex. 2009); *Dominguez*, 530 F. Supp. 2d at 905. In deciding whether special circumstances justify the stay of a proceeding, the Northern District of Texas has looked to the following factors: (1) the extent to which the issues in the other case overlap with those presented in the current case; (2) the status of the other case; (3) the private interests of the plaintiffs in proceeding expeditiously, weighed against the prejudice to plaintiffs caused by the delay; (4) the private interests of and burden on the defendants; (5) the interests of the courts; and (6) the public interest. *Mutuals.com, Inc.*, 2004 U.S. Dist. LEXIS 13718, at *7-8.

Because these factors weigh in favor of SuperMedia and against special circumstances that would clearly justify a stay of the proceeding, this Court should allow the SuperMedia Suit to proceed towards an expeditious declaration of the parties’ rights and obligations regarding health and welfare benefits. Specifically, as discussed below, since very little overlap exists between the issues and parties in the Murphy and SuperMedia Suits (factor 1), Movants will

suffer very little private burden in defending the SuperMedia Suit before the Court rules on the pending summary judgment motions in the Murphy Suit due to the status of the Murphy case (factors 2, 4, 5), and SuperMedia, the affected retirees, the named unions, and members of the public such as current SuperMedia employees, share a great need for certainty in their financial obligations related to health and welfare benefits in a timely manner, the competing interests of all parties weigh in favor of an expeditious declaration of the parties' rights and obligations by way of the SuperMedia Suit (factors 3, 6). *See Mutuals.com, Inc.*, 2004 U.S. Dist. LEXIS 13718, at *7-8.

B. THE ISSUES AND PARTIES IN THE SUPERMEDIA SUIT ARE DISTINCT FROM THOSE IN THE MURPHY SUIT

5. First, the SuperMedia and Murphy Suits lack a true overlap of parties and issues, and resolution of the Murphy Suit will not dispose of the key issues in the SuperMedia Suit nor apply to the much broader group of SuperMedia defendants. In the present action, SuperMedia seeks a declaration of its right to amend *health and welfare* benefits that it provides for current and future retirees—a declaration that does not depend on a resolution of the issues in the Murphy Suit (which address not only a different type of benefits, *pension* benefits, but also who should provide coverage for those benefits). SECOND AMENDED COMPLAINT FOR PROPOSED CLASS ACTION RELIEF UNDER ERISA, Civil Action No. 3:09-cv-2262-G, Dkt. No. 64 (“Murphy Complaint”) at pp. 28-57; ¶ 247 (“This suit poses questions of law and fact . . . [including] whether Plaintiffs and class members are entitled to payment of Verizon pension plan benefits.”). Notably, the Murphy Complaint never even references SuperMedia health and welfare benefits much less asks this Court to make a determination about them. *See* Murphy Complaint, generally. When the Court rules on the issues related to the provision pension benefits in the

Murphy Suit, it will only determine whether certain members of the SuperMedia Suit's Defendant Class should receive pension benefits from Verizon. However, the Court will not resolve the challenges to SuperMedia's health and welfare benefits Amendments. Regardless of the Court's ruling in the Murphy Suit, the Court must still rule with respect to SuperMedia's right to enact the Amendments. Because the Court will not resolve all issues for all parties to the SuperMedia Suit with a ruling in the Murphy Suit, the Court should refuse to stay, and unnecessarily delay, these proceedings in the interim.²

6. Further, the SuperMedia Suit includes approximately 3,685 retirees in its Defendant Class, including more than approximately **900 retirees** who are not part of the plaintiff class in the Murphy Suit. SUPERMEDIA'S FIRST AMENDED CLASS ACTION COMPLAINT FOR DECLARATORY JUDGMENT ("SuperMedia Complaint")³ at pp. 8, 19-26. Additionally, SuperMedia has named local chapters of the Communication Workers of America, AFL-CIO and the International Brotherhood of Electrical Workers, AFL-CIO, who are or will be represented by counsel. In contrast, the class from the Murphy Suit strictly involves retirees of Verizon, SuperMedia's pre-spin parent company, who retired from Verizon prior to the 2007 spin transaction. Murphy Complaint at ¶ 246 ("The size of the [Murphy] class is well over a thousand and closer to two thousand."); Motion at p. 2 ("2750 retirees in the *Murphy* action"). If

² As recognized by the Supreme Court and Congress, health and welfare benefits are treated entirely different from pension benefits. *See e.g. Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) ("Nor does ERISA establish any minimum participation, vesting, or funding requirements for welfare plans as it does for pension plans."); *see Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 935 (5th Cir. 1993) ("Congress has conspicuously chosen to exempt welfare benefit plans from the full breadth of ERISA's extensive requirements . . . The disparate treatment accorded welfare plans is not accidental. . ."); *see Moore v. Metro. Life Ins. Co.*, 856 F.2d 488, 492 (2d Cir. 1988) ("With regard to an employer's right to change medical plans, Congress evidenced its recognition of the need for flexibility in rejecting the automatic vesting of welfare plans. Automatic vesting was rejected because the costs of such plans are subject to fluctuating and unpredictable variables.").

³ The SuperMedia Complaint is on file with this Court at Dkt. No. 23 and incorporated herein by reference.

the Court were to stay the SuperMedia Suit for the pendency of the adjudication of the Murphy Suit, SuperMedia, as well as at least several hundred retirees and many more current employees, would remain in financial limbo, forced to make critical decisions about not just retirement healthcare, but retirement itself, without certainty on the validity of SuperMedia's Amendments. Ultimately, a judgment in the Murphy Suit would not resolve the issues presented in the SuperMedia Suit nor would it apply to SuperMedia's entire, much broader Defendant Class or the named unions, and a stay in the SuperMedia Suit would deprive SuperMedia, thousands of retirees, and the named unions of necessary and timely relief.⁴

C. BECAUSE THE SUPERMEDIA CASE IS ONLY IN ITS PRELIMINARY STAGES, THE PRIVATE INTERESTS OF AND BURDEN ON MOVANTS AND THE COURT IN PROCEEDING IS MINIMAL

7. Next, as this Court noted in its August 3, 2012 Order vacating its previous consolidation of the Murphy and SuperMedia Suits, these cases “are at very different procedural stages,” and Movants will suffer little, if any, prejudice in defending the SuperMedia Suit prior to obtaining rulings in the Murphy Matter. Order, Dkt. No. 11, entered August 3, 2012 (“August 3 Order”). Currently, SuperMedia is merely serving the numerous defendants named in the SuperMedia Suit, and the parties will not even reach the initial response phase for weeks. *See id.* (“[T]he parties are still in the earliest stages of pleading.”). In the Murphy Suit, the

⁴ In support of their Motion, Movants urge this Court to stay or dismiss the SuperMedia Suit based on the “prior pending action doctrine.” Motion at p. 3. However, Movants fail to meet the threshold requirements of this doctrine, rendering it inapplicable in this case, because SuperMedia has not filed “a second complaint alleging the same cause of action as a prior, pending, related action” in avoidance of procedural obstacles. *Oliney v. Gardner*, 771 F.2d 856, 859 (5th Cir. 1985) (affirming dismissal where a plaintiff filed a second duplicative suit in the same court where the action it first filed was still pending, to circumvent procedural obstacles); *Friends of the Earth v. Crown Cent. Petroleum Corp.*, 95 F.3d 358, 362 (5th Cir. 1996) (“This rule finds particular application where, as here, the plaintiff files the second complaint to achieve procedural advantage by ‘circumventing the rules pertaining to the amendment of complaints.’”); *Provenza v. Stamps*, 2011 U.S. Dist. LEXIS 10694, 8 (S.D. Miss. Feb. 1, 2011) (refusing to dismiss a second action and finding, “This action does not involve the same case, filed twice, and pending simultaneously before the same court. The case is not an attempt to expand procedural rights or to avoid relation back of an amendment in the other lawsuit.”).

parties have completed discovery, briefed the issues for summary judgment, and the summary judgment motions are pending. *Id.* The SuperMedia Suit will not tie up Movants in litigation for years, or even numerous months, before the Court resolves the Murphy summary judgment motions, and based on this Court's imminent rulings, the Verizon retirees involved in the Murphy Suit will presumably know whether or not they will go forward in the SuperMedia Suit before this case requires the parties to incur significant expense in its prosecution or defense.⁵ Thus, Movants will not suffer any significant prejudice, hardship, or inequity by going forward with the "earliest stages" of the SuperMedia Suit prior to the time they receive rulings in the Murphy matter, and the factors regarding the status of the Murphy Suit and the private interests of and burden on Movants, as well as the Court, weigh in favor of rejecting a stay.⁶ August 3 Order; *see Wedgeworth*, 706 F.2d at 545.

8. Ironically, Movants suggest that appearing in the Northern District of Texas is somehow burdensome because they did not expect "to be hauled into the Dallas federal court."⁷ Motion at ¶ 9. However, Movants Noe and Palmer, as well as the Verizon Class from the Murphy Suit, electively sued SuperMedia first in this very District Court, and they have been litigating their issues here for approximately three years. Murphy Complaint at ¶ 5 ("Venue of

⁵ Additionally, the Court has an interest in allowing the early phases of the SuperMedia Suit to proceed so as to move its dockets along in a timely manner towards resolution and not suffer unnecessary delay or costs as a result of a stay.

⁶ Further, because the SuperMedia Suit involves interpretation of unambiguous Plan documents (which have already been filed with the SuperMedia Complaint) as a matter of law, SuperMedia anticipates very little discovery will occur before the Court can resolve these strictly legal issues. A quick adjudication of SuperMedia's declaratory judgment suit is both possible and likely. Therefore, Movants gain little by delaying the preliminary stages of the SuperMedia Suit, as their burden in defending the SuperMedia Suit while awaiting an order in the Murphy Suit is unlikely to be either long-term or excessive.

⁷ Of note, Movants also assert that a stay is appropriate because SuperMedia allegedly failed to comply with internal claims processes and because this suit "harass[es] unsuspecting retirees." Motion at ¶ 10. Such an allegation is both inaccurate and irrelevant to the Court's analysis of whether to grant a stay. Regardless, SuperMedia has complied with all terms of its Plans, and affected retirees have challenged SuperMedia's legal right to amend.

this action lies in the Northern District of Texas”). In the end, these veteran plaintiffs to the Northern District of Texas cannot establish a burden so great as to justify a stay of the current action before the very same Court they selected long ago.

D. SUPERMEDIA AND THE PUBLIC HAVE STRONG INTERESTS IN PROCEEDING EXPEDITIOUSLY WITH THE SUPERMEDIA SUIT

9. Finally, a stay in the current proceedings will cause unnecessary delay and prejudice to SuperMedia and all other parties, including the public, who seek clarity about the fast-approaching effectiveness of the Amendments that will financially impact all parties. Specifically, rulings in the Murphy Suit could occur after September 1, 2012 (the earliest effective date of key provisions of the Amendments) and during the time that SuperMedia and its retirees are planning for additional changes effective January 1, 2014. *See* SuperMedia Complaint at ¶ 55-57.⁸ The financial impact of the Amendments to all sides proves substantial. For SuperMedia, the Amendments significantly reduce an unfunded net liability of more than approximately \$315 million for retiree health and welfare benefits under the Plans. SuperMedia faced extreme liability risks due to sky-rocketing healthcare costs, which far exceed the rate of inflation. Retaining these unfunded benefits amidst escalating healthcare costs in a continued sluggish economy is not a viable option for SuperMedia, thus necessitating the Amendments. Delaying a declaration of SuperMedia’s rights will only add further uncertainty to the equation.

10. Likewise, SuperMedia’s retirees must adequately prepare for the modifications made under the Amendments, including increased responsibility for premium payments and the

⁸ The first critical provisions of SuperMedia’s Amendments become effective on September 1, 2012, including the reduction of SuperMedia’s contribution to retiree premium costs to 75 percent of prior contributions and the removal of Medicare-eligible retirees from access to coverage under SuperMedia Plans. *Id.* Thereafter, it will be important for SuperMedia, SuperMedia retirees, and future SuperMedia retirees to plan and prepare for further changes and reductions in premium contributions, which will become effective by January 1, 2014. *Id.*

elimination of Medicare Part B reimbursements. Further, current employees, who are members of the public, must undertake the same retirement planning and even make decisions on whether to retire. Because of the significant financial impact, and because the effective dates of these Amendments are only weeks and months away, delaying a decision on SuperMedia's rights to enact the Amendments could cause significant (and possibly irreparable) harm to all affected parties by way of financial uncertainty, misguided decision-making, and the risk of incurring increased expense. Thus, delaying resolution of the key issues in the SuperMedia Suit—whether SuperMedia may amend the retiree health and welfare benefits it provides—ultimately prejudices all parties, including any of the Murphy class members who remain participants in the SuperMedia Plans.

III. CONCLUSION

11. In closing, Movants cannot clearly establish special circumstances or that the weight of competing interests justifies a stay of the SuperMedia Suit. Because a stay will detrimentally impact the parties' ability to make critical financial, healthcare, and business decisions, and because a resolution of the Murphy Suit will not decide the same issues with respect to the same parties, the balance of factors does not clearly weigh in favor of the requested stay. Rather, a stay will only prevent timely adjudication of these important issues at a time when SuperMedia and the Defendant Class are in the process of enacting and responding to the Amendments, the validity of which the Defendant Class continues to dispute. In the end, Movants' minimal burden during the early stages of this proceeding fails to clearly outweigh the harm that SuperMedia and its retirees will suffer by the requested stay.

IV.
PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiffs request that the Court deny the Movants' EMERGENCY MOTION TO STAY OR SUSPEND CASE in its entirety. Further, Plaintiffs seek all other relief to which they may be justly entitled.

DATED: August 15, 2012

Respectfully submitted,

s/ Richard S. Krumholz

Richard S. Krumholz
Texas Bar No. 00784425
rkrumholz@fulbright.com
Scott P. Drake
Texas Bar No. 24026812
sdrake@fulbright.com
Abby N. Ruth
Texas Bar No. 24056247
aruth@fulbright.com
Rachel L. Williams
Texas Bar No. 24067175
rachelwilliams@fulbright.com

FULBRIGHT & JAWORSKI L.L.P.
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201
Telephone: (214) 855-8000
Facsimile: (214) 855-8200

and

Mark S. Miller (*admitted pro hac vice*)
Texas Bar No. 14099600
mmiller@fulbright.com
Justin Coddington
Texas Bar No. 24050434
jcoddington@fulbright.com

FULBRIGHT & JAWORSKI L.L.P.
Fulbright Tower
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: (713) 651-5151
Facsimile: (713) 651-5246

**COUNSEL FOR PLAINTIFFS
SUPERMEDIA INC., SUPERMEDIA LLC,
SUPERMEDIA SERVICES INC.,
SUPERMEDIA SALES INC.,
SUPERMEDIA EMPLOYEE BENEFITS
COMMITTEE, AND IDEARC INCEPTOR
LTD**

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2012, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

s/ Richard S. Krumholz
