IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN 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.	§	

JOINT STATUS REPORT

The parties, by and through their counsel, pursuant to Docket 35, the Court's Order of November 3, 2010, respectfully file the following joint status report.

1. A brief statement of the nature of the case, including the contentions of the parties.

On November 25, 2009, Philip A. Murphy, Jr., Sandra R. Noe and Claire M. Palmer (collectively, "Plaintiffs"), filed this case against the Verizon Defendants and the Idearc/SuperMedia Defendants on behalf of themselves and others similarly situated, alleging that their suit should be certified as a class action. On January 6, 2010, Plaintiffs filed their

"Amended Complaint for Proposed Class Action Relief Under ERISA." (Docket No. 6). All of the asserted claims are governed by a single federal law, the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461.

A. Plaintiffs' Statement Of The Case And Contentions

Plaintiffs' claims arise out of Verizon Defendants' actions taken during November-December 2006 when Plaintiffs and the proposed class of several thousand retirees were involuntarily transferred out of Verizon's long established pension plans into pension plans of a newly formed, highly leveraged spin-off company, Idearc, Inc., now known as SuperMedia Inc.[1] Plaintiffs contend that the involuntary transfer of Plaintiffs and putative class members proved to be an economic detriment to the retirees and their beneficiaries, and that the transferred retirees suffered significant loss of retiree benefits not suffered by tens of thousands of retirees who remained enrolled in Verizon's sponsored pension and employee benefit plans. (Docket No. 6, Amended Complaint at ¶¶ 49, 66, 150). Plaintiffs asserted six claim for relief.

By Order dated October 18, 2010, this Court effectively dismissed, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, part of Count 1 and all of Count 2 of the Amended Complaint. The Court dismissed that part of Count 1's ERISA Section 404(a)(1) claim of breach of fiduciary duty to the extent the claim was based upon Plaintiffs' contention that Defendant SuperMedia EBC failed to produce certain requested documents. The Court left in the case that part of Count 1 which is based upon an ERISA Section 404(a)(1) claim of failure

[1] On March 31, 2009, Idearc, Inc. and its domestic subsidiaries filed within the Dallas Division of this District voluntary petitions for reorganization under Chapter 11 of the U.S. Bankruptcy Code. As of January 4, 2010, Idearc emerged from Chapter 11 bankruptcy proceedings and changed its name to SuperMedia, Inc. (Docket No. 6, Amended Complaint at ¶¶ 19, 62)

to provide Plaintiffs a full and fair review of their administrative claim. Plaintiffs do not seek class certification of this claim.

The Court dismissed Count 2 which asserts a claim against both Defendants Verizon EBC and SuperMedia EBC for penalties for failure to give Plaintiffs documents they contend should have been produced to them in accordance with ERISA Section 104(b)(4). The Court ruled that the requested documents were not specifically required by the statute to be produced. While the Order granted Defendant SuperMedia's motion to dismiss, the Court's ruling would seem to apply to Defendant Verizon EBC as well.

There are three other claims remaining within the Amended Complaint and each count is briefly summarized in the following paragraphs.

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. (*Id*. 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 sponsored pension plans as of November 17, 2006 was action taken in violation of the retirees' contractual rights under the Verizon pension plans and action taken in violation of controlling pension plan terms and rules. (*Id*. at ¶ 134).

While Plaintiffs acknowledge that Verizon made a "business decision" to create Idearc Inc in a Spin-off, Plaintiffs contend that it was a violation of existing pension plan terms to involuntarily remove Plaintiffs and the putative class of retirees from Verizon's sponsored pension plans and transfer them to Idearc's sponsored pension plans. Plaintiffs concede that as of November 16, 2006, when the Spin-off was completed, the terms of the pension plans allowed Verizon to transfer either "assets" or "liabilities" But, retirees are persons with only one classification – plan "participants." The retirees are neither monetary assets nor liabilities. When the Spin-off occurred, there were no plan terms that gave Verizon defendants any license to involuntarily remove from the pension plans any of the retirees with vested rights to benefits. 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).

In Count Four, Plaintiffs seek appropriate equitable relief against the pension plan sponsors and plan administrators. Plaintiffs contend that the pension assets, if any, that Verizon may have transferred to Idearc/SuperMedia were excess or surplus pension assets not earmarked or tied to any liabilities. (*Id*. at ¶ 138). Pursuant to ERISA Sections 502(a)(2) and (a)(3), 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 payment of benefits from Verizon's pension plans. (*Id*. at ¶ 138, Prayer at ¶ G.3). Plaintiffs concede that as of November 16, 2006, when the Spin-off was completed, the terms of the pension plans allowed Verizon to transfer either "assets" or "liabilities" But, retirees are persons with only one classification – plan "participants." The retirees are neither

monetary assets nor liabilities. When the Spin-off occurred, there were no plan terms that gave Verizon defendants any license to involuntarily remove from the pension plans any of the retirees with vested rights to benefits.

Plaintiffs contend the December 22, 2006 pension plan amendments were illegally applied retroactively and they request a declaration that the December 22, 2006 plan amendments are null and void. (*Id*. at ¶ 139, Prayer at ¶ G.3). Plaintiffs seek 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).[2] Plaintiffs request an order requiring Idearc/SuperMedia Defendants transfer back to Verizon pension and welfare plans Plaintiffs and all putative class members. (*Id*., Prayer at ¶ G.5).

In Count Six, Plaintiffs seek payment of benefits from Verizon's 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 grant full relief under those claims. (*Id*. 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).

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[2] Plaintiffs are not seeking "monetary damages." However, appropriate equitable relief in the nature of reinstatement into Verizon's sponsored pension plan may include retroactive benefits.

The Court has jurisdiction of each claim for relief based upon the civil enforcement provisions of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1132(a)(1), 1132(a)(2), 1132(a)(3), 1132(e)(1) and 1132(f), and upon 28 U.S.C. § 1331.

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 ¶ 171). Class certification is entirely appropriate here. 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 were affected by pension plan amendments executed after the Spin-off on December 22, 2006. Defendants attempted to make those plan amendments retroactive to November 17, 2006, the final date of the Spin-off.

Plaintiffs contend that this case raises uniform, classwide legal and factual questions whether Verizon Defendants had the right to transfer persons, as opposed to "assets" and "liabilities" when the retirees were involuntarily transferred. Also, the case raises uniform classwide legal and factual questions whether Verizon Defendants violated ERISA when retroactively applying pension plan amendments so as to affect the rights of retirees. Finally, the cases raises uniform, classwide legal and factual questions whether the Court should grant Plaintiffs and putative class members appropriate equitable relief, namely restoration into Verizon's sponsored pension plans.

B. The Verizon Defendants' Statement Of The Case And Contentions

The Verizon Defendants deny each and every allegation of wrongdoing set forth in the Complaint, contend that all of Plaintiffs' claims are entirely without merit, and maintain that Plaintiffs are not entitled to any of the injunctive, monetary or other relief requested in their complaint.

Plaintiffs' allegation in Count III that Defendant Verizon EBC violated ERISA's fiduciary duty requirements is meritless. The decision to spin off to Idearc certain pension assets and liabilities, including the assets and liabilities associated with the pension benefits of the proposed class of retirees, was made by Verizon Communications Inc., in its settlor capacity as a business matter, not by the Verizon EBC or any other entity acting in its capacity as a fiduciary of any Verizon pension plan. At the time of the spin-off, moreover, the relevant Verizon pension plans expressly authorized the "transfer of assets and liabilities into another plan" (Compl. ¶ 43), and governing law and regulations make clear that this includes spin-off transactions like that at issue here. Alternatively, it is well-established under ERISA that retroactive plan amendments, in the circumstances presented here, are entirely permissible. Finally, the Verizon Defendants contend that Plaintiffs are not entitled to any money damages on their fiduciary breach claim because any such claim would require them to prove that the alleged breach caused a loss to a Verizon pension plan, *see* ERISA § 409(a), which undisputedly did not occur here.

Plaintiffs' request in Count IV for "appropriate equitable relief" under ERISA § 502(a)(3) fails for substantially the same reasons that their breach of fiduciary duty claim fails (*i.e.*, that the spin-off was done in accordance with the terms of the plan and governing law). Plaintiffs are also not entitled to any money damages arising out of their § 502(a)(3) claim because the payment of money is not "equitable" relief under governing law.

Plaintiffs' "alternative" claim for benefits in Count VI is also meritless. The Plan Administrator of the Verizon pension plans is entitled to deference in interpreting those plans. Here, the Plan Administrator interpreted those plans to permit the spin-off at issue in this litigation. Because that interpretation is reasonable and is entitled to deference, Plaintiffs' claim for benefits under the Verizon plans should be denied. Moreover, Plaintiffs' claims for pension benefits from Verizon also fails because Plaintiffs' benefits have been paid in full by Verizon and Idearc/Supermedia plans at all times since the spin-off occurred. Finally, to the extent Plaintiffs assert that the Verizon plans should have paid Plaintiffs' pension benefits in November and December of 2006, Plaintiffs' claims fail for the additional reason that the Verizon pension plans did so.

Because Counts III, IV and VI are the only remaining claims that Plaintiffs are pursuing against the Verizon Defendants, the Verizon Defendants have limited their response to Plaintiffs' allegations in those three claims.

C. **SuperMedia EBC's Statement Of The Case And Contentions**

SuperMedia EBC (the only remaining SuperMedia defendant) similarly denies each and every allegation of wrongdoing set forth in the Amended Complaint, contends that all of Plaintiffs' claims are entirely without merit, and maintains that Plaintiffs are not entitled to any of the injunctive, monetary or other relief requested in their complaint. SuperMedia EBC further contends that the remaining claims against it should be dismissed because there is no underlying claim for benefits that was ever denied in the first place (*See* Dkt. # 36, SuperMedia EBC's Motion for Judgment on the Pleadings). As a result, SuperMedia EBC should not be in the case. Plaintiffs have indicated that they see no need to keep SuperMedia EBC in the case because Plaintiffs have no claim against SuperMedia EBC for monetary damages of any kind. However, Plaintiffs have indicated that they do want SuperMedia EBC to be bound by any

injunction that is issued concerning return of retirees to Verizon pension plans. As a result, Plaintiffs have offered the concept of a stipulation that would allow SuperMedia EBC to be dismissed from the case entirely so long as (1) SuperMedia EBC will agree to be bound by any injunctive relief that may be ordered in connection with return of retirees to Verizon's pension plan, and (2) that no party will argue that SuperMedia EBC is a necessary party in the case if SuperMedia EBC is dismissed. This concept was first raised by Plaintiffs' counsel on November 16, 2010 in a conference call among all counsel to discuss the preparation of this filing. Because the parties have just begun discussing the content of such a stipulation, it is unclear whether an agreement will be reached on this point. In addition, SuperMedia EBC has asserted a number of other defenses in its Answer to Plaintiffs' Amended Complaint, all of which are incorporated here by reference.

2. Any challenge to jurisdiction or venue.

There are no challenges to the Court's subject matter jurisdiction or venue.

3. Any pending motions.

On November 4, 2010, SuperMedia EBC filed Docket 36, a Rule 12(c) motion for judgment on the pleadings.

On or before December 2, 2010, pursuant to Docket 32, the Court's order for filing, Plaintiffs' will file their motion for class certification.

4. Any matters which require a conference with the court.

Presently, the parties do not believe there are any pending matters which require a conference with the Court.

5. Likelihood that other parties will be joined.

On or before December 2, 2010, pursuant to Docket 32, the Court's order for filing, Plaintiffs' will file their motion for class certification.

The parties do not expect any other parties to be joined to this civil action.

6. (a) An estimate of the time needed for discovery, with reasons, and (b) a specification of the discovery contemplated.

Rule 26(a)(1) disclosures are due to be made on or before Friday, December 3, 2010.

A. Plaintiffs' Contentions

Plaintiffs anticipate that formal discovery can be completed within six months. Plaintiffs' discovery will consists primarily of document requests, the usual number of interrogatories and one or two Rule 30(b)(6) depositions.

Because none of the ERISA based claims in this civil action involve either the conduct of the Plaintiffs' or the conduct of any putative class member, Plaintiffs do not believe Defendants will be justified in seeking any formal discovery from either Plaintiffs or putative class members.

Plaintiffs have advised SuperMedia EBC that Plaintiffs do not believe any formal discovery is necessary from SuperMedia EBC. But Plaintiffs have indicated that they may, in the future, need to obtain Form 5500's and possibly other plan documents from SuperMedia EBC, and will attempt to work out an agreeable stipulation with SuperMedia EBC in that regard.

B. **The Verizon Defendants' Contentions**

The Verizon Defendants anticipate taking discovery, *inter alia*, of the named Plaintiffs, including deposition discovery. The Verizon Defendants agree that discovery should take not more than six months.

7. Requested trial date, estimated length of trial, and whether a jury has been demanded.

All the asserted ERISA based claims in this civil action will be tried to the Court. There is no jury demand.

Plaintiffs estimate this matter can be tried within nine months of this Joint Status Report and that trial to the Court will take three days or less.

The Verizon Defendants do not believe that it would be appropriate to set a trial schedule at this time. Rather, the Verizon Defendants propose that the Court set the following schedule for summary judgment briefing:

Filing	**Deadline**
Motions for summary judgment	No later than 45 days after the close of discovery.
Oppositions to motions for summary judgment	No later than 30 days after the filing of the motion being opposed.
Replies in support of motions for summary judgment	No later than 30 days after the filing of the opposition brief.

Should the case not be fully resolved on summary judgment, the Verizon Defendants respectfully suggests that the parties and the Court address the setting of a trial schedule at that time.

8. Whether the parties will consent to trial (jury or non-jury) before a United States Magistrate Judge per 28 U.S.C.A. § 636(c).

The parties do not consent to referral of this matter to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

9. Prospect for settlement, and status of any settlement negotiations.

A. Plaintiffs' Statement

By letter dated November 8, 2010, Plaintiffs made a settlement proposal. All Defendants have declined the settlement offer. The parties will continue to discuss settlement as the litigation progresses.

B. Defendants' Statement

On November 8, 2010, Defendants received a "demand for a global settlement" from Plaintiffs' counsel. In light of the facts that Plaintiffs' claims are entirely meritless and that

Plaintiffs' settlement 'demand" exceeds even what the class might recover if it were to prevail in this litigation, the Verizon Defendants promptly informed Plaintiffs that they were unwilling to settle on the terms proposed by Plaintiffs or any similar terms.

10. <u>What form of alternative dispute resolution (e.g., mediation, arbitration, summary judgment trial) would be most appropriate for resolving this case and when it would be most effective (e.g., before discovery, after limited discovery, at the close of discovery). Including the Contentions of the Parties</u>.

A. Plaintiffs' Statement

Plaintiffs believe this case is especially one suitable for a mediation that can be accomplished after adequate disclosures and, if not, after limited written discovery. In that regard, by letter dated November 8, 2010, Plaintiffs made a proposal for there to be a prompt mediation using Hesha Abrams as a mediator based on her complex litigation experience. Defendants' counsel responded by advising that they will consider mediation, but not immediately. The Verizon Defendants also stated that if the parties at some point decided that mediation would be appropriate, they would want to consider a number of possible mediators.

B. Defendants' Statements

Especially in light of Plaintiffs' unrealistic settlement demand and the infirmities in their claims, the Verizon Defendants do not believe that mediation would be productive at this time, but will continue to consider the possibility of mediation as the litigation progresses. If and when a mediation becomes advisable, the Verizon Defendants believe that the parties should at that time consider a number of possible mediators, including Ken Rubenstein of Burdin Mediations, 4514 Cole Ave. Ste. 1450, Dallas, TX 75205, based on his complex litigation experience.

SuperMedia EBC believes that mediation is premature given (a) its pending motion for judgment on the pleadings (Dkt. #36), (b) discussions concerning a stipulation to

remove SuperMedia EBC from the case, and (c) the fact that no class certification motion has been filed or decided.

11. Any other matters relevant to the status and disposition of this case.

On October 18, 2010, the Court entered an order of dismissal of Plaintiffs' Count 5 of the Amended Complaint on the grounds that the ERISA Section 510 claim was time barred by the applicable Texas two year statute of limitations (Docket 35).

On November 12, 2010, several putative class member timely commenced a civil action styled as *Jacobsen, et al, v. Verizon, et al*, Case No. 8:10-cv-2536-T-26TBM, in the Tampa Division of the Middle District of Florida. The case contains a single claim, substantially the same ERISA Section 510 claim, attempted by the Plaintiffs in this action. Plaintiffs allege that the *Jacobsen* case will be subject to Florida's 4 year statute of limitations as established by case law in *Byrd v. MacPapers, Inc.*, 961 F.2d 157, 159-60 (11th Cir.1992) (applying Florida 4 year statute of limitations for any ERISA Section 510 claim).

The *Jacobsen* plaintiffs filed their ERISA Section 510 claim as a putative class claim. Plaintiffs' counsel will be filing a motion, pursuant to 28 U.S.C. § 1407, before the Judicial Panel on Multidistrict Litigation, seeking to have the *Jacobsen* case transferred to the Court for consolidated pretrial proceedings with this *Murphy* case.

DATED this 24th day of November, 2010.

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
Counsel for Plaintiffs

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
Counsel for Plaintiffs

s/ Jeffrey G. Huvelle
Jeffrey G. Huvelle, Esq.
Christian J. Pistilli, Esq.
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
Tele: 202-662-5526
Fax: 202-778-5526
jhuvelle@cov.com
cpistilli@cov.com
Counsel for Verizon Defendants

s/ Christopher L. Kurzner
Christopher L. Kurzner, Esq.
KURZNER PC
1700 Pacific Avenue, Suite 3800
Dallas, Texas 75201
Tele: 214-442-0801
Fax: 214-442-0851
CKurzner@kurzner.com
Counsel for Verizon Defendants

s/ David P. Whittlesey
David P. Whittlesey, Esq.
Casey Low, Esq.
ANDREWS KURTH LLP
111 Congress Avenue, Suite 1700
Austin, TX 78701
Tele: 512-320-9330
Fax: 512-320-4930
davidwhittlesey@andrewskurth.com
caseylow@andrewskurth.com
Counsel for Idearc/SuperMedia Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of November, 2010, a true and correct copy of the above and foregoing document, as electronically filed with the Clerk of the Court using the CM/ECF system, caused the system to email a copy to Defendants' counsel, and a courtesy copy was emailed to Defendants' counsel as follows:

Jeffrey G. Huvelle, Esq.
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
Tele: 202-662-5526
Fax: 202-778-5526
jhuvelle@cov.com
Counsel for Verizon Defendants

Christopher L. Kurzner
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
Counsel for Verizon Defendants

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, TX 78701
Tele: 512-320-9330
Fax: 512-320-4930
davidwhittlesey@andrewskurth.com
Counsel for Idearc/SuperMedia Defendants

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