

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’ UNOPPOSED MOTION TO SUBMIT SUPPLEMENTAL AUTHORITY

Plaintiffs PHILIP A. MURPHY, JR., SANDRA R. NOE and CLAIRE M. PALMER, by and through their counsel, pursuant to Local Rule 56.7, move to submit supplemental authority in support of their Motion for Partial Summary Judgment (Docket 81), and in support of their oppositions to Defendants’ respective summary judgment motions (Dockets 86 and 88), and as grounds, state:

1. On pages 12-16 of Plaintiffs’ opening brief (Docket 83), supporting their motion for partial summary judgment, Plaintiffs make the argument that Verizon’s pension plans allowed only for a transfer of “assets” or “liabilities,” and they contend retirees are neither.

Plaintiffs cite various legal authority, including a Department of Labor Advisory Opinion.

Plaintiffs make the same argument in their memorandum brief opposing the Verizon Defendants' motion for summary judgment (Docket 87) at pages 8-12.

2. On March 27, 2012, the Third Circuit issued an appellate ruling in an ERISA case that dealt with the issue of what constitutes “plan assets”, and the appellate court relied essentially on the same authority Plaintiffs cite in their memorandum briefs. The Third Circuit said:

As the Tenth Circuit Court of Appeals has persuasively explained, in the absence of specific statutory or regulatory guidance, the term “plan assets” should be given its ordinary meaning, and therefore should be construed to refer to property owned by an ERISA plan. See *In re Luna*, 406 F.3d at 1199 (considering dictionary definition of “asset” and noting that “[c]entral to the definition of ‘asset,’ then, is that the person or entity holding the asset has an ownership interest in a given thing, whether tangible or intangible”). This approach is also consistent with guidance provided by the Secretary on the meaning of “plan assets,” which states that “the assets of a plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law. In general, the assets of a welfare plan would include any property, tangible or intangible, in which the plan has a beneficial ownership interest.” Department of Labor, Advisory Op. No. 93–14A, 1993 WL 188473 *4 (May 5, 1993); see also *Kalda v. Sioux Valley Physician Partners, Inc.*, 481 F.3d 639, 647 (8th Cir.2007) (finding “the Secretary's reasoning in its rulings regarding ‘plan assets’ thorough, valid, and particularly consistent” and adopting the Secretary's definition).

Secretary of Labor v. Doyle, --- F.3d ----, 2012 WL 1003547 at *7 (3rd Cir. March 27, 2012).

In a footnote, the appellate court stated, “The Supreme Court has also strongly suggested that this is the proper approach to defining “plan assets.” See *Jackson v. United States*, 555 U.S.

1163, 129 S.Ct. 1307, 173 L.Ed.2d 575 (2009) (vacating Fourth Circuit's holding that unpaid employer contributions were plan assets and remanding for further consideration “in light of the position asserted by the Solicitor General in his brief for the United States”); Brief for United States at 11–12, 2009 WL 133443, at * 11–* 12, in *Jackson v. United States* (explaining that “in

situations not covered by the plan asset regulations, ‘the assets of a plan generally are to be identified on the basis of ordinary notions of property rights under non-ERISA law’ ”).” *Id.*, 2012 WL 1003547 at *13, FN24.

3. Plaintiffs believe the Court will be assisted and persuaded by this recent Third Circuit appellate decision in making a determination that pension plan assets and liabilities cannot be construed to include retirees.

4. Because all of the briefing on the summary judgment motions was complete before the *Doyle* decision was issued and no party could cite the decision, Plaintiffs request leave to supplement their authority with the *Doyle* appellate opinion.

Certificate of Conference

5. On April, 3, 2012, Plaintiffs’ counsel sent to all defense counsel a draft of this motion, together with a request, that Defendants not oppose this motion. On April 6, 2012, counsel for the Verizon Defendants responded by stating, “While the Verizon defendants consent to plaintiffs’ submission of the *Doyle* case to the Court, they disagree that the case has any bearing on the resolution of the parties’ cross-motions for summary judgment, for substantially the reasons set forth in their reply brief. See Dkt. 99, at 6-7 & n.3.”¹ Counsel for Defendant SuperMedia EBC stated that Verizon’s position is “fine for us.” Therefore, this motion is unopposed.

WHEREFORE, Plaintiffs respectfully request leave to submit the *Doyle* decision as supplemental authority in support of Plaintiffs’ Motion for Partial Summary Judgment (Docket

¹ Verizon Defendants have argued, *inter alia*, that “to the extent plaintiffs meant to draw a distinction between the transfer of assets and liabilities and the transfer of “retirees,” any such distinction is meaningless.” (Docket 99, p. 7).

81), and in support of Plaintiffs' oppositions to the defendants' respective summary judgment motions (Dockets 86 and 88).

DATED this 6TH day of April, 2012. Respectfully submitted,

s/ Curtis L. Kennedy

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CERTIFICATE OF SERVICE

I hereby certify that on the 6TH day of April, 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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