

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

WILLIAM LEE, JOANNE McPARTLIN, §
and EDWARD PUNDT, Individually, §
and as Representatives of plan participants §
and plan beneficiaries of the §
VERIZON MANAGEMENT PENSION PLAN, §
§
Plaintiffs, §

vs. §

CIVIL ACTION NO. **3:12-cv-04834-D**

VERIZON COMMUNICATIONS INC., §
VERIZON CORPORATE SERVICES GROUP §
INC., VERIZON EMPLOYEE BENEFITS §
COMMITTEE, VERIZON INVESTMENT §
MANAGEMENT CORP., and VERIZON §
MANAGEMENT PENSION PLAN, §
§
Defendants. §

MOTION FOR LEAVE TO FILE SURREPLY BRIEF

Plaintiffs WILLIAM LEE, JOANNE McPARTLIN, and EDWARD PUNDT, by and through their counsel, seek permission to file a short reply brief to address a single issue with respect to Defendants’ pending motion to dismiss, and state:

1. This is a class action exclusively seeking relief under the Employee Retirement Income Security Act (“ERISA”). 29 U.S.C. § 10001, *et seq.* (Docket 68, Order granting class certification).

2. In their Amended Complaint, Plaintiffs assert four counts. (Docket 59). The Verizon Defendants filed a motion for an order of dismissal of the Amended Complaint in its entirety. (Docket 64). Plaintiffs filed an opposition brief. (Docket 65). The Verizon Defendants filed a reply brief. (Docket 69).

3. Plaintiffs seek leave to file a short surreply brief so as to submit a counterpoint to a point asserted within the Verizon Defendants' reply brief pertaining to the following allegation set forth in Count Four of the Amended Complaint, to-wit:

The Verizon Defendants have depleted the [Verizon Management Pension] Plan and Master Trust of necessary funding, undermined and scaled back the Plan's and Master Trust's ability to generate much larger investment returns and, thereby, jeopardized the financial security of Plaintiff Pundt's and the remaining Plan participants' benefits. After the Verizon/Prudential annuity transaction was consummated, the Plan was left underfunded on an actuarial basis, insufficient to fully support all of the expected payments to Plaintiff Pundt and remaining Plan participants.

(Docket 59, Amended Complaint, Count Four, paragraph 123 at page 39).

4. In their attack against Count Four, the Verizon Defendants have argued that "the Verizon Defendants came forward with evidence establishing that the Plan was overfunded at the time of the Prudential annuity transaction." (emphasis added) (Motion to Dismiss Reply Brief, Docket 69, page 8). The Verizon Defendants argued that, "To the extent the Court deems it relevant, moreover, the Plan was fully funded during the 2012 plan year." (Motion to Dismiss Brief, Docket 64-1, page 20). The Verizon Defendants' argument implies the Plan was fully funded all during year 2012.

5. Soon after filing their reply brief for dismissal of Count Four, the Verizon Defendants mailed to Plaintiffs and Class members an "Annual Funding Notice" for the Plan which official notice reveals that

As of December 31, 2012, the fair market value of the Plan's assets was \$3,770,557,274. On this same date, the Plan's liabilities were \$5,696,752,538. The numbers in this paragraph reflect the reduction in the assets and liabilities transferred to Prudential in December 2012.

6. Thus, in the immediate aftermath of the annuity transaction, the Plan was not fully funded, but left in a far less stable financial condition, underfunded by almost \$2 billion or about 66% actuarially funded. This information was not previously disclosed before the Verizon Defendants filed their motion to dismiss.¹

7. The Court's local rules do not allow surreplies as a matter of course. *Underwood v. East Texas State Univ.*, 1998 WL 223695, *1 (N.D. Tex. April 28, 1998). Plaintiffs contend the newly revealed undisputed information ought to be considered by the Court, especially since the Verizon Defendants contend that the Plan was fully funded during year 2012 and that the Plaintiffs have no evidence of any harm to the Plan.

WHEREFORE, pursuant to local rule 7.1(h), Plaintiffs request the Court grant them leave to file a short surreply brief to the pending motion to dismiss.

DATED this 17th day of May, 2013.

Respectfully submitted,

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¹ The newly made disclosure about the Plan's financial condition in the immediate aftermath of the annuity transaction is in stark contrast to arguments made by The Prudential Insurance Company of America when that defendant party was persuading the Court to deny Plaintiffs' request for preliminary injunctive relief. On December 5, 2012, Prudential argued, "The Annuity Transaction also will not have an adverse impact on the remaining participants in the Verizon Plan, as Verizon expects to contribute an additional \$2.5 billion to the Plan so that the Plan's funding percentage does not decrease as a result of the annuity transaction." (Docket 28, at p. 9, n.4). Prudential further argued that "Participants who remain in the Plan will not be adversely affected in the least; Verizon is planning "to make additional contributions to the Plan prior to the date of the closing of the transaction . . . of approximately \$2.5 billion" to ensure the Verizon Plan's funding percentage does not decrease after the Annuity Transaction." (Docket 28, at p. 23).

CERTIFICATE OF CONFERENCE

On May 10, 2013, Plaintiffs' counsel advised defense counsel of the reason Plaintiffs request leave to file a surreply brief. On May 15, 2013 defense counsel Chris Pistilli confirmed in an email message to Plaintiffs' counsel that "the Verizon Defendants do not consent to plaintiffs' proposed motion for leave to file a surreply." Therefore, this motion is opposed.

DATED this 17th day of May, 2013.

Respectfully submitted,

s/ Curtis L. Kennedy

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May, 2013, 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 causing a copy to be emailed to Defendants' counsel as follows:

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