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

WILLIAM LEE, *et al.*,	
Plaintiffs,	**CIVIL ACTION NO. 3:12-cv-04834-D**
v.	
VERIZON COMMUNICATIONS INC., *et al.*,	
Defendants.	

VERIZON DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER ERISA

Defendants Verizon Communications Inc., Verizon Corporate Services Group Inc., Verizon Employee Benefits Committee, Verizon Investment Management Corp., and Verizon Management Pension Plan (collectively, the "Verizon Defendants") hereby move to dismiss Plaintiffs' Amended Complaint For Declaratory And Injunctive Relief Under ERISA for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6) and/or for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). The grounds for the motion are set forth in the Verizon Defendants' Memorandum of Law and the declaration of James Kelly Hartnett, which accompany this motion.

Respectfully submitted,

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Dated: February 25, 2013

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2013, I caused a true and correct copy of the foregoing to be served on all counsel who have appeared in this action to date via the Court's electronic filing system pursuant to Local Rule 5.1(d). Those counsel are:

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VERIZON DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT

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Defendants Verizon Communications Inc. ("Verizon"), Verizon Investment Management Corp. ("VIMCO"), Verizon Corporate Services Group Inc., Verizon Employee Benefits Committee (the "VEBC"), and the Verizon Management Pension Plan (the "Plan" and, collectively, the "Verizon Defendants") submit this memorandum in support of their motion to dismiss.

INTRODUCTION

On December 10, 2012, the Plan purchased a group annuity contract from Prudential Insurance Company of America ("Prudential"). As part of the transaction, the Plan transferred assets worth more than $8 billion to Prudential, which irrevocably assumed the obligation to pay annuity benefits to approximately 41,000 Verizon management retirees who were participants in the Plan (the "Prudential annuity transaction"). Under the terms of the annuity contract and an October 17, 2012, Plan amendment, the amount of each affected retiree's annuity benefit is the same as the amount of the retiree's pension benefit before the transaction.

Plaintiffs Lee and McPartlin filed their original complaint on November 27, 2012, alleging that the Prudential annuity transaction violated various provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1002, *et seq*. The next day, they applied for a temporary restraining order, seeking to prevent the closing of the Prudential annuity transaction and the transfer of their benefit obligations to Prudential. At their request, the application was later converted into a motion for preliminary injunction. On December 7, 2012, this Court denied the motion, explaining that Plaintiffs Lee and McPartlin had "failed to carry their burden of showing a substantial likelihood of success on the merits." Dec. 7 Order (Dkt. 44), at 14. They did not appeal that order, and the Prudential annuity transaction closed on December 10, 2012.

After the Verizon Defendants moved to dismiss the complaint for failure to state a claim, Plaintiffs filed an amended complaint. With respect to the class of former Plan participants whose benefit obligations were transferred to Prudential, the amended complaint does not differ materially from the original complaint. For substantially the same reasons that the Court denied their request for a preliminary injunction, Plaintiffs Lee and McPartlin fail to state a claim for which relief may be granted.

In the amended complaint, Plaintiff Pundt purports to represent a second class, consisting of all remaining (*i.e.*, non-transferred) Plan participants. Plaintiff Pundt alleges that the Verizon Defendants breached fiduciary duties to the remaining Plan participants because (i) the Plan was not sufficiently funded to purchase the annuity contract under applicable regulations, and (ii) Plan assets were used to pay expenses associated with the annuity transaction, purportedly in violation of ERISA's "exclusive benefit" obligation. For the reasons explained in Part IV below, Plaintiff Pundt lacks standing to assert these claims, which in any event fail as a matter of law.

BACKGROUND

Last October, Prudential and two of the Verizon Defendants entered into a Definitive Purchase Agreement (the "DPA") committing the Plan to purchase a single premium group annuity contract (the "Annuity Contract") from Prudential to settle approximately $7.5 billion of pension liabilities of the Plan. *See* Am. Compl. ¶ 1 & Pls. Appx. 212.[1] Upon the closing of the Prudential annuity transaction and the issuance of the Annuity Contract, Prudential irrevocably assumed the obligation to make future annuity payments to approximately 41,000 Verizon management retirees who began receiving pension payments from the Plan prior to January 1,

[1] Pages 1 through 281 of Plaintiffs' "Appendix to Verified Complaint" (hereinafter "Pls. Appx.") were attached to and incorporated by reference into Plaintiffs' Complaint.

2010. *See id.* The annuity contract provides "the same rights to future payments, such as survivor benefits, as each retiree" had prior to the transfer, and Plaintiffs do not contend otherwise. Dec. 7 Order (Dkt. 44), at 3 & n.5.

Under the terms of the Annuity Contract, the assets transferred to Prudential were placed in a "dedicated, non-comingled separate account" used to pay the annuities due under the Annuity Contract. Pls. Appx. 80, 92. This "separate account" structure specially negotiated with Prudential provides substantial, additional protections for transferee's benefits, over and above the protections generally provided under state insurance law and by state guaranty associations. The separate account (i) may hold only assets supporting the payment of Prudential's obligations under the Annuity Contract, and (ii) must be invested primarily in investment grade fixed-income securities. Pls. Appx. 141, 145. "[N]one of the assets allocated to the" separate account "will be chargeable with liabilities arising out of any other business of Prudential." Pls. Appx. 145. In other words, the assets in the separate account may not be used to satisfy any other obligations of Prudential, even in the event of Prudential's bankruptcy or dissolution. Moreover, in the unlikely event that the assets in the separate account prove to be insufficient, Prudential is required to satisfy its payment obligations under the Annuity Contract out of its general account. Pls. Appx. 144.

On October 17, 2012, acting solely in its capacity as plan sponsor and settlor, Verizon's board of directors acted to amend the terms of the Plan to provide for the annuity transaction. *See* Pls. Appx. 54-59. The amendment, which became effective on December 7, 2012, directed the Plan to "purchase one or more annuity contracts" subject to terms and conditions specified in the amendment. *See* Pls. Appx. 60-62. Shortly after the DPA was executed, Verizon sent

Plaintiffs and other transferees a notice informing them of the annuity transaction. *See, e.g.*, Pls. Appx. 251-59 (copy of the notice as received by Plaintiff McPartlin).

STANDARD OF REVIEW

In deciding a Rule 12(b)(6) motion, the court must "evaluate[] the sufficiency of plaintiffs' [] complaint by 'accept[ing] all well-pleaded facts as true.'" *Paragon Office Servs., LLC v. UnitedHealthcare Ins. Co., Inc.*, No. 3:11–CV–2205–D, 2012 WL 5868249, at *1 (N.D. Tex. Nov. 20, 2012) (Fitzwater, C.J.) (citations omitted) (third alteration in original). The court, however, need not accept as true "conclusory" allegations or a "formulaic recitation of the elements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations and quotation marks omitted).

To survive a motion to dismiss, "plaintiffs must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Paragon Office Servs., LLC*, 2012 WL 5868249, at *1 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 556).

"When challenging subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1), a party can make either a facial or a factual challenge. A party makes a factual challenge to subject matter jurisdiction by submitting evidence, such as affidavits or testimony. When a movant provides evidence factually attacking subject matter jurisdiction, the party attempting to invoke jurisdiction must submit evidence and prove by a preponderance of the evidence that the court

has jurisdiction." *Crowell v. Looper Law Enforcement, LLC*, No. 3:10–CV–2506–D, 2011 WL 1515030, at *2 (N.D. Tex. 2011) (Fitzwater, J.) (citations omitted).

ARGUMENT

I. The Transferee Class Fails To State A Breach Of Fiduciary Duty Claim.

Count II alleges that the Verizon Defendants breached ERISA fiduciary duties owed to the transferee class. This claim fails as a matter of law. *See* Dec. 7 Order (Dkt. 44), at 7-11.

Plaintiffs Lee and McPartlin acknowledge that both ERISA and the Plan permit Verizon to terminate its obligation to pay the pension benefits of transferee class members and to transfer those obligations to an insurance company. *E.g.*, Am. Compl. ¶¶ 36 n.5, 69. Having recognized that Verizon had the right to transfer retirees' benefits to an insurance company, they are left to complain about the *manner* in which it did so. Whether the transfer to an insurance company occurs by plan termination or (as here) by an annuity transaction, the result for retirees is the same. In both cases, the benefits and the post-transfer procedural protections available to them are identical. Because the Verizon Defendants undisputedly could have transferred the obligation to pay benefits to Prudential as part of a termination, there is no merit to the argument that Verizon breached its fiduciary duties by instead doing so through an annuity purchase.

A. The Prudential Annuity Transaction Fully Complied With ERISA And All Applicable Regulations.

In enacting ERISA, Congress was careful not to "mandate what kind of benefits employers must provide if they choose to have" a retirement plan. *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). Congress recognized that providing employers with the freedom to design their own pension plans was "vital" to the willingness of employers to provide such plans, and therefore sought to preserve "flexibility in the design and operation of . . . pension programs." H.R. Rep. No. 93-533 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4647.

A key feature of ERISA's voluntary retirement system is the employer's ability to leave it. ERISA sets forth several means by which an employer may choose to remove liabilities from a pension plan and specifies protections for participants in each instance. For example, an employer may terminate a pension plan entirely. 29 U.S.C. § 1341. Or an employer may merge a plan with another plan or spin off a portion of a plan into a separate plan. 29 U.S.C. § 1058; *see* 26 C.F.R. § 1.414(*l*)-1. Finally, and most relevant here, Department of Labor regulations specifically authorize the transfer of pension benefit obligations to an insurance company as part of an annuity transaction. *See* 29 C.F.R. § 2510.3-3(d)(2)(ii) ("Annuitization Regulation").

Under the Annuitization Regulation, an individual's benefit ceases to be covered by an ERISA-governed plan if:

> (1) the entire pension benefit is "fully guaranteed by an insurance company, insurance service or insurance organization licensed to do business in a State";
>
> (2) the individual's rights to the benefit "are legally enforceable by the sole choice of the individual against the insurance company, insurance service or insurance organization"; and
>
> (3) a "contract, policy or certificate describing the benefits to which the individual is entitled under the plan has been issued to the individual."

29 C.F.R. § 2510.3-3(d)(2)(ii). The Department of Labor has observed that this regulation "explicitly recognize[s] a transfer of liability from the plan when such an annuity is purchased from an insurance company licensed to do business in a State." 60 Fed. Reg. 12328, 12328 (Mar. 6, 1995). Furthermore, the transfer of liabilities may occur either upon termination or when the annuity contract is purchased by "an ongoing plan." *Id.* And, contrary to Plaintiffs' suggestion, nothing in the regulation limits such transfers to the context of a plan termination or the moment in time when an employee separates from service and commences receiving a benefit. *See* 29 C.F.R. § 2510.3-3(d)(2)(ii).

Verizon complied with the three-step procedure set out in the Annuitization Regulation, and the amended complaint does not allege otherwise. The October 17 Plan amendment authorizing the transaction required (i) the Plan to purchase an annuity contract from an insurance company under which the insurance company would "fully guaranty" the payment of the pension benefits of designated participants, (ii) the contract to specify that "the benefits are legally enforceable by the sole choice of the individual against the insurance company issuing the contract," and (iii) the insurance company to issue annuity certificates describing participants' rights. Pls. Appx. 61-62. The Annuity Contract issued by Prudential follows these requirements, *id.* at 143, 147, 155-56, and the transfer of pension liabilities to Prudential thus fully complied with governing regulations pertaining to the annuitization of pension obligations.

Verizon's undisputed compliance with the specific requirements governing the annuitization of benefit obligations precludes the claim that the decision to transfer benefits to an insurance company violated ERISA's fiduciary standards. This conclusion is consistent with the decisions of courts that have considered the similar question of whether pension benefits can be transferred from one plan to another. ERISA permits a pension plan to transfer or "spin off" some of its benefit obligations to another plan (including a plan with a different sponsor), and regulations specify the requirements for doing so. 29 U.S.C. § 1058; *see* 26 C.F.R. § 1.414(*l*)-1; *see also Koch Indus., Inc. v. Sun Co.*, 918 F.2d 1203, 1206-07 (5th Cir. 1990). When those rules are followed, courts have consistently rejected claims that the transfer of benefit obligations violates other ERISA duties. *See Blaw Knox Ret. Income Plan v. White Consol. Indus., Inc.*, 998 F.2d 1185, 1190 (3d Cir. 1993) ("compliance with ERISA's provisions for the funding of merged, transferred or acquired pension plans as set forth in 29 U.S.C. § 1058 precludes a finding that a fiduciary breach had occurred"); *see also Bigger v. Am. Commercial Lines*, 862

F.2d 1341, 1344 (8th Cir. 1988) ("general standard of fiduciary duty [does not] supersede[] and impose[] a higher standard than" ERISA's specific requirements for a plan merger or spin-off). For the same reason, the amended complaint's fiduciary breach claims here are without merit: the Verizon Defendants complied with the Department of Labor regulations governing annuity transactions, and ERISA requires nothing more.

B. Verizon's Decision To Enter Into The Annuity Transaction Was Not Made In A Fiduciary Capacity.

Plaintiffs Lee and McPartlin assert that their inclusion "in the Verizon/Prudential annuity transaction is not a Plan design function" but a "fiduciary function." Am. Compl. ¶ 101. This is incorrect. As this Court has recognized, "the decision to amend a plan to purchase an annuity does not implicate a plan fiduciary's duties." Dec. 17 Order (Dkt. 44), at 10. Accordingly, the amended complaint's fiduciary breach claims fail as a matter of law.

Under ERISA's "two-hats" doctrine, a person or entity may at times wear a fiduciary hat and at other times wear an employer or "settlor" hat with respect to an ERISA-governed plan. *See Pegram v. Herdrich*, 530 U.S. 211, 225 (2000). Thus, the "threshold question" in an action charging breach of fiduciary duty under ERISA is "not whether the actions of some person . . . adversely affected a plan beneficiary's interest, but whether that person was acting as a fiduciary (that is, was performing a fiduciary function) when taking the action subject to complaint." *Id.* at 226. The Supreme Court, moreover, has made clear that the "*decision to amend a pension plan* concerns the composition or design of the plan itself and *does not implicate the employer's fiduciary duties*." *Hughes Aircraft v. Jacobson*, 525 U.S. 432, 444 (1999) (emphasis added); *see also Lockheed*, 517 U.S. at 890 ("Plan sponsors who alter the terms of a plan do not fall into the category of fiduciaries.").

The Supreme Court's decision in *Beck v. PACE International Union*, 551 U.S. 96 (2007), is especially instructive. *Beck* involved an employer's decision to end its defined benefit pension plans by undertaking a "standard termination," and to reject a proposal instead to transfer the pension assets and liabilities associated with the employer's union employees to a union-sponsored pension plan through a plan merger. *See id.* at 99-100. Participants in the terminated plan argued that the employer's choice between a standard termination and a merger implicated ERISA's fiduciary duties. *See id.* at 101. The Supreme Court unanimously rejected this argument, observing that, unlike a pension plan merger, "terminating a plan through purchase of annuities . . . formally severs the applicability of ERISA to plan assets and employer obligations." *Id.* at 106. *Beck* thus makes clear that the decision whether to maintain pension liabilities in an ERISA-covered pension plan or, instead, to remove pension liabilities from ERISA coverage is a fundamental design decision that belongs to the employer as settlor, *not* as a fiduciary under ERISA. *See id*. at 101 ("an employer's decision *whether* to terminate an ERISA plan is a settlor function immune from ERISA's fiduciary obligations").

The holding in *Beck* is dispositive here. As in *Beck*, Plaintiffs Lee and McPartlin seek to challenge as a breach of fiduciary duty Verizon's decision to "sever[] the applicability of ERISA to plan assets and employer obligations." *Id.* Because *Beck* makes clear that Verizon's decision to undertake the annuity transfer was a settlor decision and not a fiduciary decision, the breach of fiduciary duty claim brought on behalf of the transferee class fails as a matter of law.

C. The Annuity Transaction Was Authorized By Plan Terms.

Plaintiffs Lee and McPartlin also assert that the Verizon Defendants breached fiduciary duties because the Prudential annuity transaction "violates the controlling terms of documents establishing and governing the [Plan]." Am. Compl. ¶ 5. The Plan documents attached to and relied on in their complaints, however, unambiguously disprove this assertion. *See, e.g.*, *Willard*

v. Humana Health Plan of Tex. Inc., 336 F.3d 375, 379 (5th Cir. 2003) ("In deciding a motion to dismiss the court may consider documents attached to or incorporated in the complaint. . . .").

As this Court has recognized, Section 8.3 of the Plan was amended on October 17, 2012, to "expressly authorize[]" the "purchase of the annuity contract." *E.g.*, Dec. 7 Order (Dkt. 44), at 7. Indeed, the October 17 Plan amendment states that the Plan "*shall purchase* one or more annuity contracts" for designated participants. Pls. Appx. 61 (emphasis added). Thus, the Plan terms not only authorized the Prudential annuity transaction, they unambiguously *required* the Plan to enter into an annuity transaction.

Plaintiffs allege that, before October 17, 2012, no Plan terms expressly authorized the Prudential transaction. *E.g.*, Am. Compl. ¶ 34. But nothing here turns on the pre-October 17 terms of the Plan. Verizon had the right to "modify or amend the Plan . . . at any time," Pls. Appx. 29, and the Plan was amended, effective December 7, 2012, to authorize and require the annuity transaction, *see* Pls. Appx. 60-62. Thus, the Plan terms in effect when the transaction closed on December 10, 2012, unambiguously authorized the Prudential annuity transaction.

To the extent Plaintiffs mean to suggest that pre-October 17, 2012 Plan terms somehow *precluded* Verizon from adopting the October 17 Plan amendment, they are again mistaken:

First, Plaintiffs point to Section 11.2 of the Plan, which states that no plan "amendment shall [] reduce . . . any benefit[] that is accrued." Pls. Appx. 29; *see* Am. Compl. ¶ 97. This provision represents the Plan's codification of ERISA's anti-cutback rule, which states that the "accrued benefit of a participant under a plan may not be decreased by an amendment of the plan." 29 U.S.C. § 1054(g). Because the Annuity Contract guarantees Plaintiffs "the same amount of benefits and the same rights to future benefits" after the annuity transaction as before,

see Dec. 7 Order (Dkt. 44), at 9, the October 17 Plan amendment did not reduce any accrued benefits in violation of Section 11.2 or the anti-cutback rule.

ERISA provides no support for the assertion that the "accrued benefit" of members of the transferee class includes a right to receive "benefits *paid directly from the Plan*." Am. Compl. ¶ 98 (emphasis added). This is because ERISA protects the form and amount of benefits paid to participants; it does not guarantee that benefits will be paid by any specific entity or source. As Plaintiffs concede, *see id.* at ¶¶ 36, 69, 86, Verizon had the right under both ERISA and the Plan (i) to terminate the plan, resulting in the transfer of benefit obligations to an insurance company, (ii) to "transfer[] to another plan" the "assets or liabilities" of the Plan, or (iii) to merge the Plan into another plan. Pls. Appx. 29-30; s*ee* 29 U.S.C. § 1058 (providing that a pension plan may "merge or consolidate with, or transfer its assets or liabilities to" another plan); 29 U.S.C. § 1341 (authorizing the termination of a pension plan and the transfer of plan liabilities to an insurer). If Plaintiffs' "accrued benefit from the Plan" theory were correct, *all* pension plan spinoffs and terminations would necessarily violate ERISA's anti-cutback rule, which is not a sensible reading of ERISA and is belied by the line of cases finding that such transactions are permissible under ERISA.[2]

Second, Plaintiffs point to Section 8.5 of the Plan, which requires that Plan assets be used for the "exclusive benefit" of participants, to "provide benefits under the terms of the Plan" and pay "reasonable expenses." Am. Compl. ¶¶ 35, 55; Pls. Appx. 25. This Plan provision, again, simply incorporates an ERISA provision – in this case, the exclusive benefit rule of Section 404(a). *See* 29 U.S.C. § 1104(a)(1)(A)(i). The annuity purchase here does not violate this rule

[2] *See, e.g.*, *Beck*, 551 U.S. 101 (plan terminations); *Systems Council EM-3 v. AT&T Corp.*, 159 F.3d 1376, 1382 (D.C. Cir. 1998) (plan spinoffs).

because Plan assets were used in connection with the Prudential annuity transaction solely to fund annuity benefits for transferred participants and to pay associated expenses. Interpreting ERISA's exclusive benefit rule (and thus Plan Section 8.5) to prohibit using plan assets for this purpose cannot be reconciled with ERISA provisions expressly authorizing analogous asset transfers in the context of plan mergers, spin-offs and terminations. Indeed, "if Section 8.5 were interpreted as Plaintiffs posit, Verizon would effectively be precluded from exercising its right to amend the Plan, a result that the Plan's text does not support." Dec. 7 Order (Dkt. 44), at 8. Thus, as this Court has held, Plaintiffs "have not shown that any part of the . . . [Prudential annuity] transaction violates the requirements of Section 8.5." *Id.*; *see also infra* Part IV.C.

Third, Plaintiffs reference Sections 12.3 and 12.7 of the Plan. Am. Compl. ¶¶ 36 n.5, 55. These provisions, however, merely set forth certain requirements in the event of a plan termination. Pls. Appx. 33. As this Court has recognized, they "have no bearing on whether Verizon can amend the Plan to authorize an annuities purchase." Dec. 7 Order (Dkt. 44), at 9.

Fourth, Plaintiffs point to Section 11.3 of the Plan. Am. Compl. ¶¶ 36, 55; *see* Pls. Appx. 30. As this Court has determined, "Section 11.3 only addresses mergers and transfers to another plan; it does not implicate any other types of plan transactions like the annuity transaction here." Dec. 7 Order (Dkt. 44), at 8-9.

In sum, no Plan provision precluded Verizon from adopting the October 17, 2012, Plan amendment or entering into the Prudential annuity transaction, and Section 8.3(b) of the Plan (as amended effective December 7, 2012) expressly required the Plan to purchase an annuity. Plaintiffs' claim that the Verizon Defendants breached their fiduciary duty to follow Plan terms by entering into the Prudential annuity transaction thus fails as a matter of law.

D. Nothing In ERISA Or The Plan Required Participant Consent For The Prudential Annuity Transaction.

Plaintiffs complain that the transfer of the obligation to pay their benefits to Prudential was done without their consent. *E.g.*, Am. Compl. ¶ 33. The amended complaint, however, does not (and could not) identify any Plan provision purportedly requiring participant consent for a transfer, and nothing in ERISA requires it. Accordingly, this claim fails as a matter of law.

Plaintiffs have argued that undertaking the Prudential annuity transaction without their consent would violate fiduciary duties under ERISA. Their sole support for this argument is *Howe v. Varity Corp.*, 36 F.3d 746, 749, 756 (8th Cir. 1994), *aff'd on other grounds*, 516 U.S. 489 (1996). Although *Howe* held that it was a breach of fiduciary duty under ERISA to transfer the welfare benefit obligations for retired employees to a new employer without their consent, that holding was effectively overruled by the subsequent succession of Supreme Court cases holding that employers "are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans." *E.g.*, *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995); *see* Part I.B, *supra*. As the Sixth Circuit has noted, "[t]o the extent that the Eighth Circuit's holding [in *Howe*] is grounded in the retirees' lack of consent," the holding is "an anomaly within the case law governing the scope of employer action subject to ERISA's fiduciary standards." *Sengpiel v. B.F. Goodrich Co.*, 156 F.3d 660, 668 n.8 (6th Cir. 1998).

II. The Transferee Class's Disclosure Claim Fails As A Matter Of Law.

Count I alleges that the VEBC breached fiduciary duties by impermissibly failing to disclose in a summary plan description ("SPD") that participants "could be involuntarily removed from enrollment in the Plan and transferred to either Prudential or any other insurance company." Am. Compl. ¶ 79. According to Plaintiffs Lee and McPartlin, this "non-disclosure" runs afoul of Section 102(b) of ERISA and applicable regulations requiring SPDs to describe the

"circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery" of benefits, 29 C.F.R. § 2520.102-3(*l*). *See* Am. Compl. ¶ 75. This claim fails as a matter of law.

First, Plaintiffs Lee and McPartlin are wrong that the transfer of their benefit obligations to Prudential constitutes a circumstance that resulted in the denial or loss of benefits. Under the terms of the October 17 Plan amendment and the Annuity Contract, Prudential is required to pay Plaintiffs benefits in precisely the same form and amount that they would otherwise have received from the Plan. *See* Dec. 7 Order (Dkt. 44), at 5. Because Plaintiffs Lee and McPartlin "have failed to show that the . . . annuity transaction" might "result in 'loss of benefits,'" their SPD disclosure argument fails as a matter of law. *Id.*

Second, as this Court has held, Section "102(b) requires a description of a plan's current terms, not a disclosure of changes that may occur." Dec. 7 Order (Dkt. 44), at 5; *see Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 935 (5th Cir. 1993) ("Section 102[](b) relates to an individual employee's eligibility under then existing, current terms of the Plan and not to the possibility that those terms might later be changed, as ERISA undeniably permits."); *see also* 29 C.F.R. § 2520.102-3 ("The summary plan description must accurately reflect the contents of the plans as of the date not earlier than 120 days prior to the date such summary plan description is disclosed."). Plan administrators do not have a "duty of clairvoyance," and ERISA does not require them to anticipate and disclose in an SPD every plan amendment that the plan's sponsor might conceivably make to the plan in the future. *See Fischer v. Philadelphia Elec. Co.*, 994 F.2d 130, 135 (3d Cir. 1993). While SPDs generally must disclose existing plan provisions under which benefits may be offset – for example, provisions stating that pension benefits will be offset by Social Security payments – they need not disclose possible future plan terms unless and

until they are adopted. *See, e.g.*, *Martinez v. Schlumberger, Ltd.*, 338 F.3d 407, 428 (5th Cir. 2003) (holding that there is no affirmative duty under ERISA to disclose contemplated plan amendments to participants).

Here, shortly after the Plan amendment relating to the annuity transaction was adopted, members of the transferee class were sent a notice explaining the amendment and its impact on them. *See, e.g.*, Pls. Appx. 251-59. This notice fully satisfied any disclosure obligations that the Verizon Defendants had under ERISA relating to the Prudential annuity transaction. *See generally* 29 C.F.R. § 2520.104b-3 (plan amendments must be disclosed no later than 210 days after the close of the plan year in which the modification or change was adopted).

Third, even if participants needed to be informed before October 2012 that a plan amendment affecting their benefits could be adopted, the SPD did so. The SPD made clear that Verizon reserved the "unlimited right to amend, modify, suspend, terminate or partially terminate the plan at any time, at their discretion, with or without any advance notice to participants," Pls. Appx. 17, thus fully disclosing the "circumstance" – *i.e.*, a plan amendment – that resulted in the purported loss or denial of benefits at issue here.

Fourth, Plaintiffs Lee and McPartlin are wrong that the SPD failed to inform them that the obligation to pay their benefits could be transferred to an insurance company. The SPD clearly stated that participants might "receive benefits . . . *in the form of an annuity contract issued by an insurance company*." Pls. Appx. 18 (emphasis added). While this provision relates specifically to the payment of benefits in the event of a plan termination, it plainly put participants on notice that the obligation to pay their benefits might be transferred to an insurance company. From the standpoint of participants, there is no material difference between a termination and the Prudential annuity transaction: in either case, the obligation to pay their

benefits transfers from an ERISA-covered pension plan to an insurance company. The SPD thus provided adequate notice to the transferee class that the obligation to pay their benefits might be transferred outside ERISA's regulatory regime.

III. The Transferee Class's "Discrimination" Allegations Should Be Dismissed.

The transferee class alleges that Verizon's decision to enter into the Prudential annuity transaction violated Section 510 of ERISA, which makes it "unlawful for any person to . . . expel . . . or discriminate against a participant . . . for the purposes of interfering with the attainment of any rights to which such participant may become entitled under the plan." 29 U.S.C. § 1140. The amended complaint alleges that Verizon discriminated against the transferred retirees because the obligation to pay *other* Plan participants' benefits was *not* transferred to Prudential. *See* Am. Compl. ¶¶ 99, 103. This argument fails to state a claim for four separate reasons.

First, pursuant to the October 17 Plan amendment, members of the transferee class did not have any "right" to continued participation in the Plan. Absent such a right, the interference claim fails as a matter of law. *See generally* Dec. 7 Order (Dkt. 44), at 14 n.13.

Second, the Prudential transaction did not interfere with the attainment of any right to benefits. Rather, as this Court has recognized, the Annuity Contract "provide[s] the same rights to future payments . . . as each retiree" had under the Plan prior to the transfer. *Id.* at 1-2.

Third, as this Court has recognized, Section 510 does not broadly prohibit "any change to a plan that [allegedly] disadvantages an identifiable group of plan beneficiaries." Dec. 7 Order (Dkt. 44), at 13 (citing *McGann v. H & H Music Co.*, 946 F.2d 401, 408 (5th Cir. 1991)). Thus, a claim under Section 510 must allege "more than that a plan amendment resulted in an identifiable group's being treated differently from another." *See id.* at 12 (citing *McGann*, 946 F.2d at 406-07). Here, however, Plaintiffs Lee and McPartlin allege only that they were treated differently from the Plan participants whose benefit obligations were not transferred to

Prudential. Because they have failed to allege facts that – if true – would state a plausible claim of unlawful discrimination or interference under Section 510, Count III should be dismissed. *See generally Twombly*, 550 U.S. at 555-56.

Fourth, several circuit courts have held that the decision to adopt a plan "amendment is not actionable under section 510." *Haberern v. Kaupp Vascular Surgeons Ltd. Defined Benefit Pension Plan*, 24 F.3d 1491, 1504 (3d Cir. 1994); *accord Mattei v. Mattei*, 126 F.3d 794, 800 (6th Cir. 1997) ("[Section] 510 offers no protection against an employer's actions affecting the status or scope of an ERISA plan itself."); *Deeming v. Am. Standard, Inc.*, 905 F.2d 1124, 1127 (7th Cir. 1990) (similar). As the Fifth Circuit has explained, permitting an ERISA discrimination claim based upon the adoption of a plan amendment "would clearly conflict with Congress's intent that employers remain free to create, modify and terminate the terms and conditions of employee benefits plans without governmental interference." *McGann*, 946 F.2d at 407.[3] Because the amended complaint's Section 510 claims ultimately turns on the permissibility of the October 17 Plan amendment adopted by Verizon as Plan settlor, it fails to state a claim.

IV. **The Non-Transferee Class's Fiduciary Duty Claim Fails As A Matter Of Law.**

Count IV, which is brought by Plaintiff Pundt on behalf of a class of *non*-transferred Plan participants, asserts that the Verizon Defendants breached fiduciary duties owed to the remaining participants in the Plan by entering into the Prudential annuity transaction. Am. Compl. ¶ 120. Specifically, the non-transferee class appears to allege that (i) the Plan violated a requirement of

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[3] While the Fifth Circuit has rejected the proposition that the reach of Section 510 is limited to decisions that affect the "employment relationship," it has never held that Section 510 may be used to challenge a plan amendment. *See Heimann v. Nat'l Elevator Indus. Pension Fund*, 187 F.3d 493, 507 (5th Cir. 1999), *overruled on other grounds*, *Arana v. Ochsner Health Plan*, 338 F.3d 433 (5th Cir. 2003). Notably, *Heimann* relies heavily on the Sixth Circuit's *Mattei* decision, which makes clear that Section 510 "offers no protection against an employer's actions affecting the status or scope of an ERISA plan itself." 126 F.3d at 800.

the Pension Protection Act of 2006 ("PPA"), *see* 29 U.S.C. § 1056(g), by entering into the Prudential annuity transaction at a time when it was less than 80 percent funded, and (ii) the Plan violated ERISA's "exclusive benefit" rule by paying transaction costs associated with the Prudential annuity transaction out of Plan assets. *See, e.g.*, Am. Compl. ¶¶ 39-52, 108. Plaintiff Pundt fails to allege a sufficiently concrete and imminent harm to establish constitutional standing for these claims. Even if he established standing, he fails to state a valid claim.

A. **Plaintiff Pundt Lacks Article III Standing.**

Because Plaintiff Pundt fails adequately to plead that he has suffered or is in imminent danger of suffering a concrete injury resulting from the breaches of fiduciary duty alleged in Count IV, he lacks standing to bring his claims.

The "irreducible constitutional minimum" of Article III standing consists of (i) an injury-in-fact, (ii) a causal connection between the injury and the conduct complained of, and (iii) the likelihood, as opposed to the mere speculation, that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). While Congress can identify those persons whom it intends to protect by a statute, "the requirement of injury in fact is a hard floor of Article III jurisdiction that cannot be removed by statute." *Summers v. Earth Island Inst*., 555 U.S. 488, 496 (2009). The "injury-in-fact" component requires a plaintiff to allege (and ultimately prove) "a harm suffered by the plaintiff that is 'concrete' and 'actual or imminent, not conjectural or hypothetical.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998).

A participant in a defined benefit pension plan has an interest only in his fixed future benefit payments, *not* the assets of the pension fund. *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439-40 (1999). Accordingly, the Supreme Court has noted that "[m]isconduct by the administrators of a defined benefit plan will not affect an individual's entitlement to a defined

benefit unless it creates or enhances a risk of default by the entire plan." *LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 255 (2008).

In light of these principles, a number of circuit courts have held that participants in defined benefit plans do not have standing to bring a claim based upon alleged misconduct resulting in a reduction of plan assets where the pension plan continues to have substantial assets or the plan sponsor is financially capable of making up any shortfall in the plan. *Harley v. Minnesota Mining & Mfg. Co.*, 284 F.3d 901, 906 (8th Cir. 2002) (holding that "the limits on judicial power imposed by Article III counsel against permitting participants or beneficiaries who have suffered no injury in fact from suing to enforce ERISA fiduciary duties on behalf of the Plan"); *see also Kendall v. Emps. Ret. Plan of Avon Prods.*, 561 F.3d 112, 121 (2d Cir. 2009) (plan participant cannot claim that "an alleged breach of fiduciary duty to comply with ERISA . . . in and of [itself] constitutes an injury-in-fact sufficient for constitutional standing"). As the Fourth Circuit recently explained,

> If the Plan becomes underfunded, the [employer] will be required to make additional contributions. If the [employer] is unable to do so because of insolvency, participants' vested benefits are guaranteed by the PBGC up to a statutory minimum. *Thus, the risk that [participants'] pension benefits will at some point in the future be adversely affected as a result of the present alleged ERISA violations is too speculative to give rise to Article III standing.*

David v. Alphin, No. 11-2181, 2013 WL 142072, at *9 (4th Cir. Jan. 14, 2013) (emphasis added).

Here, the amended complaint wholly fails to allege that the purported misuse of Plan assets in connection with the Prudential annuity transaction has in any way jeopardized the Plan's ability to meet its remaining future benefit payment obligations to the remaining Plan participants. To the contrary, the amended complaint avers that the Plan's sponsor, Verizon, is a "very wealthy, solid Fortune 5 U.S. corporation." Am. Compl. ¶ 69. In light of Verizon's undisputed financial strength and its on-going obligation to fund the Plan in accordance with

ERISA's minimum funding requirements, the amended complaint itself establishes a lack of a concrete, imminent injury to Plan participants arising out of the Prudential annuity transaction. Because the amended complaint on its face demonstrates that Plaintiff Pundt lacks standing, his claim should be dismissed. *See Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981) (discussing "facial attack[s]" to subject matter jurisdiction).

To the extent the Court deems it relevant, moreover, the Plan was fully funded during the 2012 plan year. "[U]nder the requirements established by Congress in the [PPA], a plan is only considered to be 'in at-risk status for a plan year if' the statutory funding ratio is 'less than 80 percent.'" *Perelman v. Perelman*, No. 10–5622, 2013 WL 271817, at *5 (E.D. Pa. Jan. 24, 2013) (citing 29 U.S.C. § 1083(i)(4)(A)). Thus, at a minimum, a plan participant does not have standing to bring a claim where the plan's funding ratio exceeds 80 percent at the time of the challenged action. *See id.* Here, the Plan's actuary certified that the Plan's funding ratio for the 2012 Plan year was in excess of 100 percent. *See* Declaration of James Kelly Hartnett ("Hartnett Decl."), ¶ 4 & Ex. B. Plaintiff Pundt's claims therefore should be dismissed for lack of standing.

B. Plaintiff Pundt's Minimum Funding Argument Fails To State A Claim.

Plaintiff Pundt alleges that the use of Plan assets to purchase the Annuity Contract violated rules limiting or prohibiting benefit distributions in circumstances where a plan's funding ratio is below 80 percent. *E.g.*, Am. Compl. ¶¶ 41, 50 (citing 26 U.S.C. § 436(d)). This claim fails as a matter of law. As explained below, while the Plan's funding ratio for 2012 must be calculated as of a January 1, 2012, valuation date, applicable regulations permit the Plan to take into account contributions made to the Plan on or before September 15, 2012, in calculating its 2012 funding ratio, and Plaintiff does not (and could not) allege that the Plan's 2012 funding ratio was below 80 percent after taking into account all contributions made to the Plan on or before September 15, 2012.

A plan's funding ratio – *i.e.*, its "adjusted funding target attainment percentage" or "AFTAP" – is the plan's "funding target attainment percentage" as determined under Section 430 of the Internal Revenue Code, subject to certain adjustments not relevant here. *See* 26 U.S.C. § 436(j). "The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage)" of (A) "the value of plan assets for the plan year" (adjusted for the prefunding balance and the funding standard carryover balance) to (B) "the funding target of the plan for the plan year" (adjusted if the plan is classified as at-risk). *Id.* § 430(d)(2). Of alleged relevance here, where a plan's funding ratio is less than 80 percent, the plan's ability to make lump sum distribution and annuity purchases is limited. *See id*. §§ 436(d)(3), (5).

In calculating a plan's funding ratio, the "value of [plan] assets" may include "contribution[s] to the plan after the valuation date for the plan year in which the contribution is made." *Id.* § 430(g)(4). Under Department of Treasury regulations, the contribution must actually be made within 8-1/2 months after the end of the plan year for which the contribution is made.[4] Thus, where a plan has a January 1 valuation date, a later contribution may be included in determining the plan's AFTAP so long as the contribution is "actually made" on or before September 15 of that calendar year.[5]

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4 *See* 26 U.S.C. § 430(j)(1) ("[T]he due date for any payment of any minimum required contribution for any plan year shall be 8-1/2 months after the close of the plan year"); 26 C.F.R. § 1.430(g)-1(d)(1)(i) ("[I]f an employer makes a contribution to the plan after the valuation date for the current plan year and the contribution is for an earlier plan year, then the present value of the contribution determined as of that valuation date is taken into account as an asset of the plan as of the valuation date, but only if the contribution is made before the deadline for contributions as described in [26 U.S.C.] section 430(j)(1) for the plan year immediately preceding the current plan year"); *see also* Am. Compl. ¶ 47 (acknowledging that employers may "ma[k]e contributions to the Plan to be credited as prior year contributions").

5 As the amended complaint correctly recognizes, "January 1 of each calendar year is the 'valuation date' for the Plan," and thus January 1, 2012 is the "valuation date" relevant here. *See* Am. Compl. ¶ 40.

The amended complaint alleges that (i) based on data reflecting the "fair market value of the Plan's assets" as of December 31, 2011, the Plan's 2012 AFTAP was "approximately 76%," and (ii) any contributions made by Verizon to the Plan "after January 1, 2012 and before *August* 15, 2012 . . . were not sufficient to increase the AFTAP above the 80% threshold." *See id.* ¶¶ 45, 47.[6] Even taking these (erroneous) allegations as true, Plaintiff Pundt fails to state a claim. For a plan year beginning on January 1, 2012, a plan may take into account contributions received on or before *September* 15, 2012, for purposes of calculating its funding ratio. While the amended complaint conclusorily (and incorrectly) alleges that the Plan's AFTAP was below 80% based on December 31, 2011, data, it does not (and could not) allege that the Plan's January 1, 2012, AFTAP was below 80 percent after taking into account contributions to the Plan made between January 1, 2012, and September 15, 2012, as the applicable regulations expressly allow.

Moreover, the court should dismiss this claim *with prejudice* because any attempt by Plaintiff Pundt to cure the defect in his complaint would be futile. As public filings attached to

[6] The only concrete asset and liability figures referenced in the amended complaint for the 2012 Plan year were 2011 year-end figures provided to Plan participants in an April 2012 annual funding notice. *See* Am. Compl. ¶ 45; Hartnett Decl., Ex. A. However, different rules govern (i) the calculation of assets and liabilities at year-end as reported in an annual funding notice, and (ii) the funding ratio calculation. *See, e.g.,* Dept. of Labor Field Assistance Bulletin 2009-01, Q&A-7, 2009 WL 501046, at *4 (the calculation of year-end liabilities reported in an annual funding notice uses a different interest rate than the AFTAP calculation). Moreover, in July 2012 a statute changing the interest rate assumptions that a plan may use in calculating its 2012 AFTAP was signed into law, further undermining the validity of Plaintiff Pundt's reliance on December 31, 2011, figures. *See* Moving Ahead for Progress in the 21st Centruy Act ("MAP-21"), Pub. L. No. 112-141 (codified at 29 U.S.C. § 1083(h)(2)(C)(iv)); *see also* IRS Notice 2012-61, 2012-42 IRB 479, Q&A G-2, 2012 WL 3958061 ("The MAP-21 segment rates apply for purposes of applying the benefit restrictions under [26 U.S.C.] § 436, including the calculation of the . . . AFTAP."). Thus, the Court should not credit the amended complaint's (in-any-event irrelevant) allegation that the Plan's funding ratio (based on plan assets as of December 31, 2011) was below 80 percent, since the figures underlying the allegation were avowedly pulled from an inapposite annual funding notice and do not reflect more recent law regarding permissible interest rate assumptions.

the complaint make clear, Verizon made a substantial contribution to the Plan in September 2012. *See* Pls. Appx. 212 (October 2012 SEC disclosure referencing Verizon's "contribution made in September 2012"). Taking into account all Plan assets – including the $930 million contribution that Verizon made to the Plan on September 14, 2012 – the Plan's enrolled actuary certified on September 28, 2012, that the Plan's January 1, 2012, AFTAP was 100.33%. Hartnett Decl. ¶ 2(e) & Ex. B.[7] Accordingly, the Plan was free from any restriction under the PPA on making annuity purchases at the time of the December 2012 closing.

C. <u>Plaintiff Pundt's Exclusive Benefit Argument Fails To State A Claim.</u>

Plaintiff Pundt appears to argue that Verizon, rather than the Plan, should have paid approximately $1 billion in alleged transaction costs – including "legal fees" and "commissions" – associated with the Prudential annuity transaction. *See* Am. Compl. ¶ 108 (complaining that "almost $1 billion more than necessary to cover the transferred liabilities was paid to Prudential by the Plan"). This argument fails for at least two reasons.

First, Verizon made voluntary contributions of approximately $2.6 billion to the Plan in connection with the Prudential annuity transaction. *See* Pls. Appx. 212 (October 2012 SEC filing noting that Verizon intended "to contribute an aggregate of approximately $2.5 billion to the Plan in connection with the transaction, inclusive of a contribution made in September 2012" so that the "funding percentage does not decrease as a result of this transaction"); Hartnett Decl. ¶ 2(e)-(j) (indicating that Verizon made approximately $2.6 billion in contributions to the Plan between September 14 and December 11, 2012). Thus, even assuming *arguendo* that the

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[7] The Court may consider the September 28, 2012, AFTAP certification on a motion to dismiss because it is incorporated by reference in the amended complaint. *See Willard*, 336 F.3d at 379. Alternatively, the Court may convert the instant motion to one for summary judgment and, relying on the Plan's AFTAP certification, enter judgment in favor of the Verizon Defendants. *See* Fed. R. Civ. P. 12(d).

approximately $1 billion in fees and costs should have been paid by Verizon instead of the Plan, Verizon has already made the Plan whole for those payments. Because Verizon's voluntary payments more-than offset the approximately $1 billion alleged "injury" to the Plan, it is especially clear that Plaintiff Pundt does not have standing to bring this claim. *See* Part IV.A, *supra*.

Second, both Section 8.5 of the Plan and Section 404(a)(1)(A) of ERISA expressly permit Plan assets to be used to defray "reasonable expenses of administering the [P]lan." 29 U.S.C. § 1104(a)(1)(A); Pls. Appx. 25. It is well recognized that the payment of legal fees incurred in connection with plan administration is a permissible plan expense. *See, e.g.*, 29 C.F.R. § 2550.404a-5(h)(5)(ii)(C) (including legal expenses in list of types of plan expenses that must be disclosed to participants in a 401(k) plan); DOL Request for Information, 72 Fed. Reg. 20457, 20459, 20460 (Apr. 25, 2007) (recognizing that plan administrative expenses may include legal fees); Instructions for IRS Form 5500, *available at* http://www.dol.gov/ebsa/pdf/2012-5500inst.pdf ("Amounts charged against the fund for other ordinary operating expenses, such as attorneys' fees . . . are not reportable indirect compensation for Schedule C purposes."). Commissions associated with the purchase of an annuity contract are also permissible expenses of an ERISA-covered plan. *See, e.g.*, 49 Fed. Reg. 13208 (Apr. 3, 1984), as amended by 71 Fed. Reg. 5887 (Feb. 3, 2006) (Department of Labor permitting "[t]he receipt, directly or indirectly, by an insurance agent or broker or a pension consultant of a sales commission from an insurance company in connection with the purchase, with plan assets, of an insurance or annuity contract"); *see also* Rev. Rul. 86-142, 1986 WL 327267; 29 C.F.R. § 2550.408b-2(c)(1)(iv)(E)(1) (recognizing that a commission may be charged directly against a plan investment). Thus, Section 8.5 of the Plan and ERISA's exclusive benefit rule plainly authorize the use of Plan

assets to pay the administrative expenses, including legal fees and commissions, associated with annuity purchase transactions.[8]

Plaintiff's argument also makes no sense as a practical matter. As this Court has recognized, pension plans may use plan assets in order to purchase annuities. Plainly, any annuity purchase transaction will involve some administrative costs. Moreover, no insurance company would ever agree to sell an annuity contract if it were required to charge only the actuarial present value of the transferred liabilities as reported on the employer's books: an insurance company's pricing must take into account costs of pension administration, profit, and reserve requirements imposed on insurance companies by state law. Thus, the "reasonable expenses" associated with an annuity purchase transaction include not only the amount necessary to cover the transferred liabilities, but also the transaction fees and costs necessary to effectuate the transfer of liabilities.

CONCLUSION

For the foregoing reasons, the Court should dismiss each of Plaintiffs' claims with prejudice for failure to state a claim upon which relief can be granted.

[8] To the extent that Plaintiff Pundt alleges that legal fees and commissions may not be paid when a plan discharges its liabilities rather than as part of administering an "on-going plan" (Am. Compl. ¶ 108), he is mistaken. Purchasing an annuity contract is an act of plan administration, even when the purchase discharges the plan's obligations to the participants. *See* DOL Interpretive Bulletin 95-1, 29 C.F.R. § 2509.95-1(c). The Labor Department has similarly stated in other contexts that plan assets may be used in connection with a plan termination. *See, e.g.*, DOL Op. Letter 97-03A, 1997 WL 28100, at *3 (Jan. 23, 1997) ("[R]easonable expenses incurred in implementing a plan termination would generally be payable by the plan."). Thus, the purchase of an annuity contract – and the attendant costs of the purchase – are a necessary part of implementing the settlor decision to terminate or settle plan liabilities, and as such may be paid out of plan assets as an administrative cost of the plan.

Respectfully submitted,

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Dated: February 25, 2013

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2013, I caused a true and correct copy of the foregoing to be served on all counsel who have appeared in this action to date via the Court's electronic filing system pursuant to Local Rule 5.1(d). Those counsel are:

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

WILLIAM LEE, *et al.*, **Plaintiffs,** **v.** **VERIZON COMMUNICATIONS INC., *et al.*,** **Defendants.**	**CIVIL ACTION NO. 3:12-cv-04834-D**

DECLARATION OF JAMES KELLY HARTNETT

I, James Kelly Hartnett, declare as follows:

1. I am a Vice President for Pension and Benefits at Verizon Communications Inc. ("Verizon"). I have held this position at Verizon since July 2000. I have personal knowledge, based in part upon my review of business records maintained by Verizon in the ordinary course of business, of the facts set forth in this declaration.

2. During the calendar year 2012, Verizon made the following contributions to the Verizon Management Pension Plan ("Plan"):

a. $27,795,521 (on January 13, 2012)

b. $286,887,943 (on March 31, 2012)

c. $101,905,479 (on April 13, 2012)

d. $101,905,479 (on July 13, 2012)

e. $930,000,000 (on September 14, 2012)

f. $400,000,000 (on November 26, 2012)

g. $400,000,000 (on November 27, 2012)

h. $400,000,000 (on November 28, 2012)

i. $400,000,000 (on December 3, 2012)

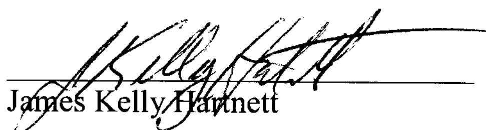
j. $100,000,000 (on December 11, 2012)

3. Attached hereto as Exhibit A is a true and correct copy of the Annual Funding Notice For Verizon Management Pension Plan, which was distributed to Plan participants in April 2012.

4. Attached hereto as Exhibit B is a true and correct copy of a September 28, 2012 letter that I received from the Plan's enrolled actuary, Daniel F. McFall of AonHewitt, enclosing the Certification of the Adjusted Funding Target Attainment Percentage for the Plan (as well as other Verizon-sponsored pension plans) for the 2012 Plan Year. As reflected on page 4 of the Certification, the Plan's "2012 AFTAP" was 100.33%.

Pursuant to 17 U.S.C. Section 1746, I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on February 22, 2013, in Basking Ridge, New Jersey



James Kelly Hartnett

Exhibit A

Annual Funding Notice For Verizon Management Pension Plan

Introduction

This notice includes important information about the funding status of your pension plan ("the Plan") and general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), a federal insurance agency. All traditional pension plans (called "defined benefit pension plans") must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is for the plan year beginning January 1, 2011 and ending December 31, 2011 ("Plan Year"). Additional participants were added to this Plan in 2011 when the Pension Plan for Employees of MCI Communications Corporation and Subsidiaries merged with the Plan. See the section below entitled Events Having a Material Effect on Assets and Liabilities for further details.

How Well Funded Is Your Plan

Under federal law, the plan must report how well it is funded by using a measure called the "funding target attainment percentage." This percentage is obtained by dividing the Plan's Net Plan Assets by Plan Liabilities on the Valuation Date for the plan year. In general, the higher the percentage, the better funded the plan. Your Plan's funding target attainment percentage for the Plan Year and each of the two preceding plan years is shown in the chart below, along with a statement of the value of the Plan's assets and liabilities for the same period.

Funding Target Attainment Percentage			
	2011	2010	2009
1. Valuation Date	January 1, 2011	January 1, 2010	January 1, 2009
2. Plan Assets			
a. Total Plan Assets	$9,646,519,582	$10,773,509,883	$10,880,843,508
b. Funding Standard Carryover Balance	$106,511,607	$113,330,903	$132,238,724
c. Prefunding Balance	$0	$0	$0
d. Net Plan Assets (a) - (b) - (c) = (d)	$9,540,007,975	$10,660,178,980	$10,748,604,784
3. Plan Liabilities	$11,704,823,071	$11,720,767,828	$10,893,506,850
4. Funding Target Attainment Percentage (2d)/(3)	82%	91%	99%

The Hourly Employees Retirement System of GTE Hawaiian Telephone Co. Inc. was merged into this plan on 12/31/2009. The 2009 values only include assets and liabilities for the Verizon Management Pension Plan. The Illinois, Kentucky, Michigan, Northwest, Ohio, and Wisconsin Hourly plans merged in to this plan during 2010. The 2010 and 2009 values only include assets and liabilities for the Verizon Management Pension Plan.

Plan Assets and Credit Balances

Total Plan Assets is the value of the Plan's assets on the Valuation Date (see line 2 in the chart above). Credit balances were subtracted from Total Plan Assets to determine Net Plan Assets (line 2 d) used in the calculation of the funding target attainment percentage shown in the chart above. While pension plans are permitted to maintain credit balances (also called "funding standard carryover balances" or "prefunding balances" see 2 b & c in the chart above) for funding purposes, they may not be taken into account when calculating a plan's funding target attainment percentage. A plan might have a credit balance, for example, if in a prior year an employer made contributions to the plan above the minimum level required by law. Generally, the excess contributions are counted as "credits" and may be applied in future years toward the minimum level of contributions a plan sponsor is required to make by law.

Plan Liabilities

Plan Liabilities shown in line 3 of the chart above are the liabilities used to determine the Plan's Funding Target Attainment Percentage. This figure is an estimate of the amount of assets the Plan needs on the Valuation Date to pay for benefits under the plan.

Year-End Assets and Liabilities

The asset values in the chart above are measured as of the first day of the Plan Year. The IRS permits either actuarial or market values for this purpose, and Verizon has elected to use an actuarial value of assets. Because market values can fluctuate daily based on factors in the marketplace, such as changes in the stock market, pension law allows plans to use actuarial values that are designed to smooth out those fluctuations for funding purposes. The asset values below are market values and are measured as of the last day of the plan year. Market values tend to show a clearer picture of a plan's funded status as of a given point in time. As of December 31, 2011, the fair market value of the Plan's assets was $9,702,077,829. On this same date, the Plan's liabilities were $12,787,094,200. The Company also made contributions of $27,795,521 on January 13, 2012 and $286,887,943 on March 26, 2012 for the 2011 plan year, and these amounts are not included in the year-end asset value. Additionally, the totals include the value of assets and liabilities transferred from the Pension Plan for Employees of MCI Communications Corporation and Subsidiaries that was merged into this Plan during 2011.

Participant Information

The total number of participants in the Plan as of the Plan's valuation date was 106,320. Of this number, 22,310 were active participants, 57,831 were retired or separated from service and receiving benefits, and 26,179 were retired or separated from service and entitled to future benefits.

Funding & Investment Policies

Every pension plan must have a procedure for establishing a funding policy to carry out plan objectives. A funding policy relates to the level of assets needed to pay for promised benefits. The funding policy of the plan is that Verizon intends to make contributions to the pension fund sufficient to comply with the minimum funding standards imposed by the Internal Revenue Code. Verizon's contributions shall be determined at least annually. Each contribution made to the Plan shall be made on the condition that it is currently deductible under section 404 of the Internal Revenue Code for the taxable year with respect to which the contribution is made and without regard to any subsequent amendment improving benefits under the Plan.

Once money is contributed to the Plan, the money is invested by plan officials called fiduciaries, who make specific investments in accordance with the Plan's investment policy. Generally speaking, an investment policy is a written statement that provides the fiduciaries who are responsible for plan investments with guidelines or general instructions concerning investment management decisions. The investment policy of the Plan is to prudently invest pension assets in order to meet benefit payments as required by Plan provisions. Asset classes (such as stocks, bonds and real estate) and benefit payment projections are studied to set the percentage of total assets to invest in each asset class (that is, the "policy asset mix"). Assets can be shifted away from the policy asset mix within defined limits to try to optimize the return on investment. Assets and benefit payments are reviewed regularly and the policy asset mix is adjusted as appropriate.

The Plan's assets are 100% invested collectively with certain other Verizon pension plans' assets in a master trust investment account. In accordance with the Plan's investment policy, the assets in the master trust investment account were allocated among the following categories of investments, as of the end of the Plan Year. These allocations are percentages of total assets:

Asset Allocations	Percentage
1. Cash (interest-bearing and non-interest bearing)	5%
2. U.S. Government securities	7%
3. Corporate debt instruments (other than employer securities):	
Preferred	4%
All other	6%
4. Corporate stocks (other than employer securities):	
Preferred	0%
All other	22%
5. Partnership/joint venture interests	34%
6. Real estate (other than employer real property)	4%
7. Loans (other than to participants)	0%
8. Participant loans	0%

Asset Allocations (cont.)	Percentage
9. Value of interest in common/collective trusts	6%
10. Value of interest in pooled separate accounts	0%
11. Value of interest in master trust investment accounts	0%
12. Value of interest in 103-12 investment entities	2%
13. Value of interest in registered investment companies (e.g., mutual funds)	1%
14. Value of funds held in insurance co. general account (unallocated contracts)	0%
15. Employer-related investments:	
Employer Securities	0%
Employer real property	0%
16. Buildings and other property used in plan operation	0%
17. Other	9%

For information about the Plan's investment in any of the following types of investments as described in the chart above - common/collective trusts, pooled separate accounts, master trust investment accounts, or 103-12 investment entities - contact the Employee Benefits Committee, c/o Verizon Benefits Center, P.O. Box 1457, 100 Half Day Road, Lincolnshire, Illinois 60069-1457.

Events Having a Material Effect on Assets or Liabilities

Federal law requires the plan administrator to provide in this notice a written explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. Material effect events are occurrences that tend to have a significant impact on a plan's funding condition. An event is material if it, for example, is expected to increase or decrease Total Plan Assets or Plan Liabilities by five percent or more. We are not aware of any events expected to have such an effect for the 2012 plan year.

Effective September 30, 2011, the Pension Plan for Employees of MCI Communications Corporation and Subsidiaries was merged into this Plan. The Pension Plan for Employees of MCI Communications Corporation and Subsidiaries is now a separate component of this Plan. The merger of plans was implemented in a manner that preserved the separate provisions of the merged plans for the separate participant groups.

Right to Request a Copy of the Annual Report

A pension plan is required to file with the US Department of Labor an annual report called the Form 5500 that contains financial and other information about the plan. Copies of the annual report are available from the US Department of Labor, Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202.693.8673. For 2009 and subsequent plan years, you may obtain an electronic copy of the plan's annual report by going to www.efast.dol.gov and using the Form 5500 search function. Or you may obtain a copy of the Plan's annual report by making a written request to the plan administrator at: Employee Benefits Committee, c/o Verizon Benefits Center, P.O. Box 1457, 100 Half Day Road, Lincolnshire, Illinois 60069-1457. The Plan's annual report is also available on the Verizon Communications Inc. web site at www.Verizon.com/Benefits. Select the Summary Plan Description & Plan Information link from the Pension drop down menu. Individual information, such as the amount of your accrued benefit under the plan, is not contained in the annual report. If you are seeking information regarding your benefits under the plan, contact the plan administrator identified below under "Where To Get More Information."

Summary of Rules Governing Termination of Single-Employer Plans

If a plan is terminated, there are specific termination rules that must be followed under federal law. A summary of these rules follows.

There are two ways an employer can terminate its pension plan. First, the employer can end the plan in a "standard termination" but only after showing the PBGC that the plan has enough money to pay all benefits owed to participants. Under a standard termination, the plan must either purchase an annuity from an insurance company (which will provide you with periodic retirement benefits, such as monthly, for life or for a set period of time when you retire) or, if your plan allows, issue one lump-sum payment that covers your entire benefit. Your plan administrator must give you advance notice that identifies the insurance company (or companies) that your employer may select to provide the annuity. The PBGC's guarantee ends when your employer purchases your annuity or gives you the lump-sum payment.

Second, if the plan is not fully-funded, the employer may apply for a distress termination. To do so, however, the employer must be in financial distress and prove to a bankruptcy court or to the PBGC that the employer cannot remain in business unless the plan is terminated. If the application is granted, the PBGC will take over the plan as trustee and pay plan benefits, up to the legal limits, using plan assets and PBGC guarantee funds.

Under certain circumstances, the PBGC may take action on its own to end a pension plan. Most terminations initiated by the PBGC occur when the PBGC determines that plan termination is needed to protect the interests of plan participants or of the PBGC insurance program. The PBGC can do so if, for example, a plan does not have enough money to pay benefits currently due.

Based on the most recent information available from the PBGC, there were 3,297 single employer defined benefit pension plans with more than 1,000 participants as of September 30, 2010. Of these 3,297 plans, 23 (less than 1%) were taken over the by the PBGC during the 2010 fiscal year ending September 30, 2010. (*Sources: PBGC 2010 Pension Insurance Data Book and Single Employer Plans Trusteed by PBGC file on the PBGC website.)*

Benefit Payments Guaranteed by the PBGC

When the PBGC takes over a plan, it pays pension benefits through its insurance program. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. Additionally, the PBGC limits the amount of benefits it guarantees for individuals. Many participants and beneficiaries receive all of the pension benefits they would have received under their plan, but others may lose certain benefits that are not guaranteed or are limited by the PBGC.

The amount of benefits that the PBGC guarantees is determined as of the plan termination date. However, if a plan terminates during a plan sponsor's bankruptcy and the bankruptcy proceeding began on or after September 16, 2006, then the amount guaranteed is determined as of the date the sponsor entered bankruptcy.

The PBGC maximum benefit guarantee is set by law and is updated each calendar year. For a plan with a termination date or sponsor bankruptcy date, as applicable in 2012, the maximum guarantee is $4,653.41 per month, or $55,840.92 per year, for a benefit paid to a 65-year-old retiree with no survivor benefit. If a plan terminates during a plan sponsor's bankruptcy, and the bankruptcy proceeding began on or after September 16, 2006, the maximum guarantee is fixed as of the calendar year in which the sponsor entered bankruptcy. The maximum guarantee is lower for an individual who begins receiving benefits from the PBGC before age 65. For example, for a benefit paid to a 55-year-old retiree as a single life annuity (i.e., no survivor benefit), the maximum guarantee for 2012 is $2,094.03 per month, or $25,128.36 per year. The maximum guaranteed by age can be found on PBGC's website, www.pbgc.gov. The guaranteed amount is also reduced if a benefit will be provided to a survivor of the plan participant.

The PBGC guarantees "basic benefits" earned before a plan is terminated, which includes:

- pension benefits at normal retirement age;
- annuity benefits for survivors of plan participants; and
- disability benefits for a disability that occurred before the date the plan terminated or the date the sponsor entered bankruptcy, as applicable.

The PBGC does not guarantee certain types of benefits:

- The PBGC generally does not pay lump sums exceeding $5,000.
- The PBGC does not guarantee benefits for which you do not have a vested right, usually because you have not worked enough years for the company.
- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements.
- Benefit increases and new benefits that have been in place for less than one year are not guaranteed. Those that have been in place for less than five years are only partly guaranteed.

- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.

- Benefits in excess of the PBGC maximum benefit guarantee, as described above, will likely not be payable by the PBGC. This includes early retirement benefit amounts in excess of the maximum guarantee amount.

- Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay, are not guaranteed.

In some circumstances, participants and beneficiaries still may receive some benefits that are not guaranteed. This depends on how much money the terminated plan has and how much the PBGC recovers from employers for plan underfunding.

Where to Get More Information

For more information about this notice, you may contact the Employee Benefits Committee, c/o Verizon Benefits Center, P.O. Box 1457, 100 Half Day Road, Lincolnshire, Illinois 60069-1457. Or call 1-877-4VzBens. For identification purposes, the official plan number is 001 and the plan sponsor's name and employer identification number or "EIN" is Verizon Corporate Services Group Inc., 13-1675522. For more information about the PBGC, go to PBGC's website, www.pbgc.gov.

Summary of Material Modification

This notice contains important information on your pension plan benefit. Due to the pension plan merger in 2011, this notice is intended to update the Summary Plan Description (SPD). See the Events Having a Material Effect on Assets or Liabilities section for more information. Please keep this document with your other important pension records including the SPD.

This notice is intended to comply with the requirements of section 101(f) of the Employee Retirement Income Security Act of 1974, as amended. The disclosures provided in this notice are based on information available and believed to be accurate as of the date this notice is provided. All computations reflected in these disclosures have been performed based on a good faith interpretation of the applicable statutory and regulatory guidance in effect on the date this notice is provided. Such information and computations include, but are not limited to, the measurement of plan liabilities, reported values of plan assets, and allocation of assets. However, actual results for the Plan Year may change and will not be considered final until filed with the Department of Labor as part of the Annual Report (i.e., the Form 5500). Subsequently, such results will change only by amendment of the Annual Report for the Plan Year. See the Right to Request a Copy of the Annual Report section for information about how to obtain a copy of the Annual Report. The plan sponsor does not undertake any obligation to update or publicly release any revisions to this notice, and no such revisions will be issued, to reflect any changes, including but not limited to, changes in the manner in which particular calculations are performed, changes in expectations, the adoption of plan amendments or any other events or circumstances occurring after this notice is provided.

Exhibit B

September 28, 2012

Mr. J. Kelly Hartnett
Verizon Communications Inc.
One Verizon Way
Mail Code: VC53S435
Basking Ridge, NJ 07920-1097

Dear Kelly:

Subject: Certification of Funded Status for PPA Benefit Limitations—VzC and VzB Plans

Under the provisions of the Pension Protection Act of 2006 (PPA), certain benefit limitations apply to plans that have a funded status under 80% beginning with the 2008 plan year. The funded status for benefit limitation purposes is referred to as the Adjusted Funding Target Attainment Percentage ("AFTAP").

Attached is a certification of the 2012 plan year funded status for the Verizon pension plans, other than those sponsored by Verizon Wireless, which must be provided to the Plan Administrator. This is the final certification for the 2012 plan year and will apply for purposes of determining benefit limitations applicable to 2012.

As shown in the attachments, all plans have an AFTAP over 100%. This certification reflects the adjusted segment interest rates and other provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21), and updates the specific AFTAP for MIDA plan as certified on September 11, 2012 to reflect additional 2011 plan year contributions.

Since the AFTAPs for all plans are at least 80%, none of the plans are subject to the limitation on accelerated benefit distributions for the 2012 plan year. Note that if an unpredictable contingent event (UCE) occurs or a plan amendment takes effect on or after the date of this certification, the certified AFTAP should be further adjusted and used in the determination of whether the benefit limitations apply to the UCE benefits or plan amendment. The expected bargaining amendments are not anticipated to reduce the VPPA or MIDA AFTAP below 100%.

Under the final Section 436 regulations, the presumed AFTAP for the 2013 plan year will be the same as the 2012 AFTAP until the earliest of: October 1, 2013; the date a 2013 AFTAP is certified; or the date (if any) on which the presumed AFTAP must be modified to reflect certain significant events. The plans may become subject to the limitation on accelerated benefit distributions on October 1, 2013 if a 2013 AFTAP of at least 80% has not been certified prior to that date. In addition, the plan may become subject to the limitation on benefit accruals on October 1, 2013 if a 2013 AFTAP of at least 60% has not been certified prior to that date.

Consulting | Retirement
100 Half Day Road | Lincolnshire, IL 60069
t 847.295.5000 | f 847.771.5407 | aonhewitt.com

Verizon should retain a copy of this certification in its files for future reference as necessary. There is no formal filing requirement. However, as noted above, the Plan Administrator should be provided with a copy of this certification, and any applicable benefit limitations must be applied as appropriate.

Please let us know if you have any questions, or if we can be of additional assistance.

Sincerely,

Hewitt Associates LLC, operating as Aon Hewitt

Daniel F. McFall
FSA, EA
Partner

DFM:clm
Attachments
cc: Mr. James E. Beckert, Verizon Communications Inc.
Mr. Owen J. Patterson, Verizon Communications Inc.
Mr. Marc Schoenecker, Esq., Verizon Communications Inc.
Mr. Philip I. Storms, Verizon Communications Inc.
Ms. Heidi E. Andorfer, Aon Hewitt
Ms. Maureen A. Long, Aon Hewitt
Ms. Mary Susan Welch, Aon Hewitt
Mr. Anthony P. Yezzi, Aon Hewitt

V8730L011-FINAL2012AFTAP-VzCVzB

Certification of the Adjusted Funding Target Attainment Percentage for the Verizon Communications and Verizon Business Plans for the 2012 Plan Year

To: Plan Administrator for:

- Verizon Management Pension Plan
- Verizon Pension Plan for Associates
- Verizon Pension Plan for Mid-Atlantic and South Associates ("MIDA Plan")
- GTE Florida Inc. Plan for Hourly-Paid Employees' Pensions
- GTE Southwest Inc. Plan for Hourly-Paid Employees' Pensions
- Western Union International, Inc. Pension Plan

Date: September 28, 2012

The Adjusted Funding Target Attainment Percentage (AFTAP) for the 2012 plan year is shown for each plan on page 4 of this certification.

This certification reflects the interest rate corridor and other provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and supersedes all prior certifications (if any) for the 2012 plan year, effective immediately.

If an unpredictable contingent event (UCE) occurs or a plan amendment takes effect on or after the date of this certification, the certified AFTAP should be further adjusted and used in the determination of whether the benefit limitations apply to the UCE benefits or the plan amendment.

The change in the MIDA AFTAP from the amount previously certified is the result of additional contributions for the prior plan year subsequent to the issuance of the prior certification.

In determining the 2012 AFTAP, we have relied on:

- A Funding Target as of January 1, 2012 as shown in the attachments to this certification. The Funding Target has been determined pursuant to Internal Revenue Code (IRC) section 430 without regard to the at-risk rules under IRC section 430(i);
- The Funding Target was determined using personnel data and plan design information supplied by Verizon as described in the attachments to this certification;
- A Value of Plan Assets as of January 1, 2012, as shown in the attachments to this certification. The Value of Plan Assets has been determined pursuant to IRC section 430;
- The Value of Plan Assets was determined using the Market Value of Assets as of January 1, 2012 as supplied by Verizon (reflecting an adjustment for the Frontier payable) and including discounted accrued contributions for the 2011 plan year;

- The Funding Standard Carryover Balance and Prefunding Balance as of January 1, 2012 are shown in the attachments to this certification. The Funding Standard Carryover Balance and Prefunding Balance reflect an adjustment for the actual return on plan assets during the 2011 plan year (calculated separately for each plan). Since the Value of Plan Assets was equal to at least 100% of the Funding Target for the 2012 plan year, the Value of Plan Assets was not reduced by the Funding Standard Carryover Balance in the determination of the AFTAP; and
- Aggregate annuity purchases for Non-Highly Compensated Employees participating in the pension plans of $0 for the 2010 plan year and $0 for the 2011 plan year.

While we cannot verify the accuracy of all this information, the supplied information was reviewed for consistency and reasonability. As a result of this review, we have no reason to doubt the substantial accuracy or completeness of the information and believe that it has produced appropriate results. This information, along with any adjustments or modifications, is summarized in the attachments to this certification.

The actuarial assumptions and methods used in this certification are described in the attachments to this certification. The interest rate and mortality assumptions used to measure the Funding Target are prescribed by IRC section 430. Aon Hewitt provided guidance with respect to the alternative interest rate and mortality table options, and it is our belief that the option prescribed by Verizon is appropriate for funding purposes. It is our belief that all other actuarial assumptions used for this certification represent reasonable expectations of anticipated plan experience. While the method used to value plan assets is prescribed by Verizon, Aon Hewitt provided guidance with respect to the use of this method, and it is our belief that the method is appropriate for funding purposes.

This certification reflects the provisions of the Pension Protection Act of 2006 and the Worker, Retiree, and Employer Recovery Act of 2008 and any regulatory guidance provided prior to the issuance of this certification. This certification also reflects the provisions, including the interest rate corridor, of the Moving Ahead for Progress in the 21st Century Act and any regulatory guidance provided prior to the issuance of this certification. The certification may need to be modified if subsequent regulatory guidance or law changes affect the results of this certification.

Determinations for purposes other than the funding-based benefit limitations under IRC section 436 may be significantly different from the results reported herein. Thus, the use of this letter for purposes other than those expressed here may not be appropriate. The results as of other dates may also be significantly different from the results reported herein, and the scope of this letter does not include an analysis of the potential range of results as of other dates.

The undersigned is familiar with the near-term and long-term aspects of pension valuations and meets the Qualification Standards of the American Academy of Actuaries necessary to render the actuarial opinions contained herein. Each section of this letter is considered to be an integral part of the actuarial opinions.

To our knowledge, no associate of Aon Hewitt providing services to Verizon has any direct financial interest or indirect material interest in Verizon. Thus, we believe there is no relationship existing that might affect our capacity to prepare and certify this AFTAP for Verizon.

Respectfully submitted,

Hewitt Associates LLC, operating as Aon Hewitt

Daniel F. McFall
Enrolled Actuary No. 11-04341

Attachment—Certification of the Adjusted Funding Target Attainment Percentage for the Verizon Communication and Verizon Business Plans for the 2012 Plan Year

	Management Pension Plan	Pension Plan for Associates	Mid-Atlantic Associates	Florida Hourly	Southwest Hourly	WIDS
Ongoing Valuation Results, 1/1/2012						
Market Value of Assets per Trust Statement	$ 9,719,527,829	$ 8,986,909,901	$ 3,885,816,529	$ 481,673,432	$ 639,763,490	$ 71,224,683
Adjustment for Frontier Payable	$ (18,439,576)	$ 0	$ (6,526,377)	$ 0	$ 0	$ 0
Accrued Contributions	$ 1,448,494,422	$ 212,388,553	$ 151,071,101	$ 0	$ 0	$ 0
Discounted Accrued Contributions	$ 1,402,348,149	$ 208,371,201	$ 146,686,770	$ 0	$ 0	$ 0
Market Value of Assets (MVA)	$ 11,103,436,402	$ 9,195,281,102	$ 4,025,976,922	$ 481,673,432	$ 639,763,490	$ 71,224,683
Value of Plan Assets (VPA)	$ 11,032,208,636	$ 9,127,855,299	$ 3,995,883,977	$ 477,716,560	$ 634,838,071	$ 70,794,891
Funding Standard Carryover Balance (FSCB)	$ 0	$ 0	$ 0	$ 1,929,811	$ 4,417,263	$ 8,299,645
Prefunding Balance (PB)	$ 0	$ 100,256,608	$ 0	$ 0	$ 0	$ 0
Funding Target (FT)	$ 10,995,590,741	$ 8,523,726,608	$ 3,861,615,617	$ 384,257,149	$ 271,258,896	$ 56,941,672
Annuities Purchased for NHCEs	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
Security	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
VPA / FT for 2012 Plan Year	100.33%	107.08%	103.47%	124.32%	234.03%	124.32%
Subtract FSCB/PB for AFTAP?	NO	NO	NO	NO	NO	NO
Adjusted VPA for AFTAP	$ 11,032,208,636	$ 9,127,855,299	$ 3,995,883,977	$ 477,716,560	$ 634,838,071	$ 70,794,891
2012 AFTAP	**100.33%**	**107.08%**	**103.47%**	**124.32%**	**234.03%**	**124.32%**