

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 01-cv-1451-REB-PAC

(Consolidated with Civil Action Nos. 01-cv-1472-REB-PAC, 01-cv-1527-REB-PAC, 01-cv-1616-REB-PAC, 01-cv-1799-REB-PAC, 01-cv-1930-REB-PAC, 01-cv-2083-REB-PAC, 02-cv-0333-REB-PAC, 02-cv-0374-REB-PAC, 02-cv-0507-REB-PAC, 02-cv-0658-REB-PAC, 02-cv-755-REB-PAC, 02-cv-798-REB-PAC and 04-cv-0238-REB-PAC)

In re QWEST COMMUNICATIONS INTERNATIONAL, INC. SECURITIES LITIGATION

**LEAD COUNSEL'S RESPONSE TO THE MOTION BY INTERVENORS/OBJECTORS
GRAHAM, FLOYD, HULL AND AUSWR FOR AWARD OF FEES AND COSTS**

Lead Counsel submits this response to the motion by intervenors/objectors Eldon Graham, Hazel Floyd, Mary M. Hull, and the Association of U.S. West Retirees ("AUSWR") (collectively, the "Graham Objectors") for an award of fees and costs. On September 29, 2006, the Court entered an Order Awarding Attorney Fees and Expenses ("Order") to Lead Counsel. The Graham Objectors assert that their counsel should be entitled to an award of attorneys' fees and expenses because their objections were partially sustained and the Court reduced the amount of attorneys' fees and expenses requested by Lead Counsel.¹

The general rule is that an objector is not entitled to a fee award unless the objector has had a meaningful impact on the proceedings. See *Powers v. Eichen*, No. 96 CV 1431-B (AJB), 2001 U.S. Dist. Lexis 13561, at *6 (S.D. Ca. Aug. 29, 2001), *aff'd*, 2002 U.S. App. LEXIS 24159 (9th Cir. Nov. 22, 2002). Lead Counsel do not believe the Graham Objectors played any role in the Court's Order. It is clear the Court conducted its own thorough review of the settlement and fee and cost request.

In addition, the majority of the Graham Objectors' objections were either overruled or not relied on by the Court in its determination of the amount of attorneys' fees and expenses awarded to Lead Counsel.² For example, the Graham Objectors challenged the inclusion of time spent by paralegals, in-house accountants and document clerks as a basis

¹ The Graham Objectors seek an award of attorneys' fees in the amount of \$40,500.00 and expenses of \$24,070.46.

² Prior to the final approval hearing, the Court denied the Graham Objectors' request to take discovery on the issue of attorney fees and costs and delay the final approval hearing until they had an opportunity to review the discovery. See Order Concerning Motions to Intervene filed on April 13, 2006 (Docket #979).

for Lead Counsel's lodestar. The Court, however, concluded that "such costs properly may be considered along with time spent by attorneys as part of the first **Johnson** factor." See Order at 6. Similarly, the Court rejected the Graham Objectors' challenge to the amount of time billed by Lead Counsel, concluding "that there has not been a persuasive challenge to the reasonableness of the time spent by lead counsel on this case." See Order at 7. The Graham Objectors also submitted the expert report of Professor Michael A. Perino to support their assertion that in "megafund" cases, the percentage recovery for attorneys' fees should decrease as the size of the settlement fund increases. The Court, however, concluded that "neither the lead plaintiffs nor any objector has proposed a persuasive analytical scheme that explains why high percentages or high lodestar multiples are awarded in some cases, and lower percentages or lodestar multiples are awarded in other cases." See Order at 10.³

The above said, Lead Counsel believe that the Graham Objectors' objections were filed in good faith by counsel who has frequently represented AUSWR. In short, counsel for the Graham Objectors is not a professional objector who sought to insert himself in this process simply to obtain a windfall in the event this Court reduced the requested fee. As a result, Lead Counsel will voluntarily pay the \$64,570.60 from the attorneys' fees and

³ With respect to Lead Counsel's expenses, the Court noted that "[o]n a relatively insignificant note, I agree with the observation of [the Graham Objectors] that charging 25 cents per copy for high volume, in-house copying exceeds the bounds of reason." Order at 17.

expenses awarded to plaintiffs' counsel by the Court. In this way, the Class will not bear the burden of paying Mr. Kennedy's fees and expenses.⁴

DATED: October 30, 2006

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⁴ Lead Counsel, however, does not intend to extend this offer to professional objectors' counsel. Lead Counsel will oppose such motions in their entirety.

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ MICHAEL J. DOWD

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