



THE RETIREE GUARDIAN

Newsletter of AUSWR — representing retirees of CenturyLink (US WEST, Qwest and predecessor companies)

2011 Issue 3

www.AUSWR.org

Federal Court Says “No” to Group Life Insurance Appeal

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On June 22, 2011, the Denver Tenth Circuit Court of Appeals ruled against retirees in the case of *Kerber, et al v. Qwest Group Life Insurance Plan, et al*, ending a more than four year

sustained effort by AUSWR and its membership to restore life insurance to amounts promised by AT&T, Mountain Bell, Northwestern Bell, Pacific Northwest Bell, U S WEST and Qwest.

Group Life Insurance remains at \$10,000 for retirees — bargained-for and management.

A three appellate judge panel published a decision that fully upholds all of the lower court's rulings and affirmed the judgment against retirees. The 44-page appellate court decision is posted at AUSWR's website:

www.uswestretiree.org/Docket%20177%20-%20Appellate%20Court%20Decision%20060211.pdf

Curtis Kennedy, AUSWR Litigation Attorney, writes a summary of the final decision on page 6.

NRLN Proposal On Social Security

Are you confused from all the media reports about changes to Social Security? Some members of Congress say they need to address the budget income and spending shortfalls — the budget deficit — by cutting Social Security while other Congressional members say, “It’s off the table.”

Given these mixed messages on Capitol Hill, the National Retiree Legislative Network (NRLN) Board of Directors issued a news release stating its proposal on what Congress should do to protect Social Security for current and future retirees. The NRLN's proposal states that since Social Security's Trust Funds are sufficient to pay 100 percent of benefits over the next 25 years, Congress should address the long-term funding

gap by focusing on modest increases in the payroll tax rate and increasing the cap on maximum wages subject to the tax.

The NRLN maintains that Social Security is not and was never designed to be a welfare program paid for by the U S Government. Social Security beneficiaries and their employers have paid into the Social Security Trust since 1937. The payroll tax for Social Security has generated tens of billions of surplus dollars — and every dollar was ‘borrowed’ by Congress to cover other federal spending. In the future, the Social Security Trust should be insulated from access by Congress and never again be loaned out as a ‘piggybank’ to cover other government spending.

“To preserve and protect the pension and benefits that we earned.” — AUSWR Mission

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Email: donnetta.mitchell@gmail.com

Retiree Guardian Staff

AUSWR Regional & Arizona Editor:

Kitty Kennedy

Tel: 520-883-8272 / cell 520-444-6617

Email: kathleen_kennedy@earthlink.net

Barbara Wilcox, AUSWR Colo/Wyo, reports
retiree health care issues — Email your
health care questions to: **BMW@mho.com**

Colo/Wyo/New Mexico Editor: Pamela Davis

Tel: 303-985-8279

Email: psdavis25@hotmail.com

Utah/Idaho/Montana Editor: Susan Johnson

Tel: 801-963-6220

Email: dick.sooz@comcast.net

Oregon/ Washington Editor: Gary White

Tel: 253-952-4612

Email: garyw39@aol.com

IA/MN/NE/ND/SD Editor: Jerry Miller

Tel: 763-424-3524

Email: jerrymiller1215@earthlink.net

AUSWR President's Message



Mimi Hull

As I look back at the mid-year point of 2011 and review all that has happened so far this year to retirees, I want to share with you the priorities of the AUSWR organization going forward. My retrospective of this year includes:

- the Qwest merger to become CenturyLink (take a look at page 1 again and notice that now we are all retirees of CenturyLink),
- the legal cases that we fought and lost for benefits we truly believe we earned and would have for our retirement years, and
- the commitment to join with more than 30 other national retiree organizations within the National Retiree Legislative Network (NRLN) to advocate for retiree federal legislation protections.

I want to assure you that at this time the **TOP** commitment among the AUSWR leaders is to forge an amiable, respectful relationship between the decision-makers of CenturyLink and its retirees that will work to the benefit of us all. In the last edition of the *Retiree Guardian* I reported to you on our meeting in March with CenturyLink compensation and benefits executives.

On page 5 **please** read my report on a June meeting with Stacey Goff, CenturyLink Executive Vice President, General Counsel and Secretary. Future meetings between AUSWR leaders and CenturyLink decision-makers are planned.

In this edition we sadly tell you that there is no further legal action we can pursue on our Group Life Insurance loss. Each retiree has \$10,000 Group Life Insurance and that will not increase. We do not anticipate a further loss or elimination of the Group Life Insurance although the U S Supreme Court has ruled on several major cases during the last three months that tell corporations they can do anything to reduce or eliminate the benefits of retirees without reasonable recourse through litigation. Pensions are protected under federal law, but we must keep an eye on Congress and pension managers to ensure our future pension assets are protected.

That brings me to ask for your continued support of us as we ally AUSWR with many other national retiree groups under the leadership of the NRLN to lobby Congress for the protection of retirees' pensions and remaining benefits.

The NRLN is sponsoring a September Fly-in to meet with members of Congress and to share our retiree concerns and solicit their support. Please read on and take action to help us.

—Mimi

AUSWR Meets With CenturyLink Leader

by Mimi Hull, AUSWR President

June 9, 2011. —Report To All on meeting with Stacey Goff, CenturyLink Executive Vice President, General Counsel and Secretary

This morning I had a very productive meeting with Stacey Goff. The overall sense that I got was that CenturyLink is looking for a non-adversarial relationship with AUSWR and with all of their retirees. Stacey's demeanor was very unassuming. No business suit—just a sports shirt, with rolled up sleeves. No briefcase, just a backpack. He programmed reminders of the things he committed to me into his phone. He also gave me his office phone number, his cell phone number, and told me to call him anytime. If I couldn't reach him to call his Administrative Assistant—he gave me her contact information saying she would track him down. He also gave me some contact information which will greatly facilitate communication.

I verbally gave Stacey the history and purpose of our retiree organization. He was amazed when I told him that our membership was close to 15,000.

When I talked with him about our AUSWR affiliation with the NRLN (our national lobbying organization), he suggested that where possible we partner on legislative initiatives. He offered that our folks who go to Washington, DC for the September fly-in should introduce themselves to the CenturyLink legislative group in Washington and establish an ongoing relationship. Also he offered a place for our members to use in Washington if we need it—our members could arrange to work out of the CenturyLink's Washington office.

Stacey applauds our Retiree Advocate program, and he said he wishes to see it continue in



AUSWR reaches out to CenturyLink—and CenturyLink responds with actions to create a new relationship with retirees.

full force. Also he is encouraging us to stay close to Marina Pearson and her staff. (See the last edition of the *Retiree Guardian* for my report on our March meeting with Marina who is responsible for CenturyLink Compensation and Benefits).

If any changes are forthcoming for retirees, Marina and her staff will always give us a heads up well in advance. Stacey thought it was a great idea to have our annual AUSWR board meeting in November in Portland, so we can invite Marina and her staff to spend time with us. He asked that we deal directly with Marina and her staff on questions we have about pensions and benefits.

Stacey and I talked a lot about communicating with retirees. Under Qwest, generally the communications with retirees were kept to only those notifications that were legally required. Stacey said he would like to change that and work with us to give retirees information about retiree issues, but also about CenturyLink business goals and aspirations. It sounded to me sort of like he wants to win back the hearts and minds of the retirees, as well as their business.

Stacey said he is going to have his communications director get in touch with me, and will have her work with us to identify communication needs of retirees, and to perhaps feed us information for our *Retiree Guardian* newsletters when and if it is appropriate.

When I recently attended retiree meetings in Pueblo, CO and Tacoma WA, some of the retirees who live in areas served by CenturyLink before the merger with Qwest wondered if they would be eligible for telephone concession. Stacey said that he would look into it, and he will get back with me. He unequivocally stated that there will be NO CHANGE to current retirees' concession service. (...continued on the next page....)

(...continued from the previous page...)

Stacey is going to personally call the four CenturyLink Regional Presidents who reside in our traditional 14-state serving area (Denver, Minneapolis, Phoenix, Seattle) and encourage them to meet with the Retiree Association leadership in their states and to accept invitations to speak at our annual retiree meetings.

I told him about Duane Ring who is the Regional President based in Minneapolis attending the AUSWR NWB annual meeting, and how well received he was.

Each state will also have a leader reporting

to these Presidents, and Stacey has urged us to be in contact with those leaders since they will control most of the community involvement and funding that is available. Stacey also said that he would be happy to facilitate an introduction to CenturyLink CEO Glen Post and the other executive team members as opportunities present themselves.

What a refreshing time to put the past behind us as we develop a new retiree relationship with CenturyLink.

—Mimi

Retiree Advocates —Here To Help YOU!

**If you have questions about your benefits,
FIRST contact the:**

**Service Center 800-729-7526 —Press Option 2,
then select the appropriate options.**

**If you are unable to resolve your problem or get an answer to
your question, THEN call your state *Retiree Advocate*:**

<u>State</u>	<u>Tel. No.</u>	<u>Email</u>	<u>State</u>	<u>Tel. No.</u>	<u>Email</u>
ARIZONA:			NEW MEXICO:		
Jim Heinze	303-442-1831	JJonrr@ecentral.com	Cassie Kelley	505-298-8666	cassiek@comcast.net
COLORADO:			NO. DAKOTA:		
Jim Heinze	303-442-1831	JJonrr@ecentral.com	Barb Hermanson	763-757-4985	brbrhr@msn.com
IDAHO:			OREGON:		
Shirley Moss	208-342-3449	samoss05@q.com	Jim Haynes	503-628-0555	Jghaynes2@msn.com
IOWA:			SO. DAKOTA:	LLFar-	
Vikki Farrand	605-332-3670	LLFarrand08@yahoo.com	Vikki Farrand	605-332-3670	rand08@yahoo.com
MINNESOTA			UTAH:	801-963-6220	dickie1934@hotmail.co
Barb Hermanson	763-757-4985	brbrhr@msn.com	Dick Johnson	801-295-4653	m bylem-
MONTANA:			Byron Lemmon		mon99@msn.com
Shirley Moss	208-342-3449	samoss05@q.com	WASHINGTON:		
NEBRASKA:			Shirley Jones	206-368-8686	benefit65@clear.net
Jim Heinze	303-442-1831	JJonrr@ecentral.com	WYOMING:		
			Jim Heinze	303-442-1831	JJonrr@ecentral.com

We Need Your Personal Retirement Hardship Testimony

*Please...Tell Us Your Personal Retirement Hardship Story
-and We Will Take Your Message to Congress*

In mid-September AUSWR members will join retirees in Washington, DC for the NRLN-organized national fly-in to meet with members of Congress, their staffs, and committee members who decide federal laws that affect pensions and benefits.

Since 2009 we have joined other retirees from companies such as Lucent Alcatel, Chrysler, General Motors, Delta Airlines, Kodak, and Boeing who are among the more than 30 retiree organizations of the NRLN. During our meetings we share personal stories of retirees (*and withhold your name if you request it*) who have incurred hardships because of corporations who make changes to earned retirement benefits and pensions.

Past testimonies also were shared with reporters. Some stories, with permission from the individuals, will be included in a book by *Wall Street Journal* writer Ellen Schultz titled "*Retirement Heist: How Companies Plunder and Profit from the Nest Eggs of American Workers.*" The book is due to be published in September.

In preparing for its third annual Washington, DC Fly-In on September 19 and 20, 2011, the NRLN once again wants your stories to distribute on Capitol Hill along with its proposals for protecting Social Security, Medicare, pensions and benefits.

Because many members of Congress are proposing legislation that would reduce Social Security and Medicare, please share with the NRLN how important these benefits are to you.

How do Social Security and Medicare make a difference in your life?

Also, if you are experiencing a health, emotional or financial hardship such as, but not limited to, the following please share your situation with us. Often, the emotions caused by a real life story will motivate a member of Congress to take action when facts and figures do not.

To gain greater credibility with U S Senators and Representatives, we ask that you allow us to **include with your story your name, age and city and state where you live** -but tell us if we should withhold your name when we share your story.

Consider these situations and tell us how they maybe effect you:

- Your company life insurance was part of your retirement financial plan and you are fearful about how your spouse will survive financially after your death.
- Your company has eliminated your life insurance, and at your age it is too costly to replace it or insurance companies won't accept you because of your health.
- You must decide between buying your medicines or purchasing food or making your mortgage or rent payment.
- You are cutting your pills in half to make them last longer because they are so expensive.
- You are paying very high prices for a brand-name prescription drug and this has changed the life you had expected to live in retirement.
- Half or more of your pension and/or Social Security income is going for doctor and/or hospital bills and prescription drugs.
- Your employer-sponsored health care insurance has been eliminated and you don't have health care coverage because it is too expensive to purchase at your age or insurance companies won't accept you because of a pre-existing health condition. And you are still a few years away from being eligible for Medicare.
- Your employer-sponsored health care plan has been reduced and you no longer have a limit on out-of-pocket costs (catastrophic coverage) and your dental and vision coverage is gone.
- Your pension plan was eliminated and it is tough to live on your Social Security check.
- You have become dependent on your children in your retirement because you have lost your pension and benefits.
- Your company went bankrupt, and when your pension plan was taken over by the PBGC you suffered a significant reduction in your pension.

Email your personal story to nrlnmessage@msn.com. Or send your written personal testimony to: Kitty Kennedy, Retiree Guardian Editor, P O Box 22483, Tucson, AZ 85734-2483.

Curtis Details Group Life Insurance Ruling



Curtis L. Kennedy
AUSWR Litigation Attor-

Our arguments that that the federal courts should enforce against Qwest the plan's rules for retiree's Basic Life Coverage, which rules state that the company "shall not reduce below" the stated levels, were completely refused by the judges. Just like the trial court judge, the appellate judges concluded those rules constituted merely an unenforceable "Minimum Benefits Provision" that could be overwritten by the reservation of rights clause found elsewhere in the 1998 plan document:

"In sum, there is simply no indication that the Minimum Benefits Provision of subsection 2.6(a) somehow serves as an overarching limitation on the entire Plan. It is safe to assume that the drafters of the Plan did not intend to "hide elephants in mouseholes." . . . the Minimum Benefits Provision serves as a limitation on the Reduction Formula, while the Reservation of Rights Clause governs the entire Plan. . . [t]he Minimum Benefits Provision does not proscribe Qwest's rights to amend the Plan under the Reservation of Rights Clause."

The fact that the Plan Design Committee ("PDC") when attempting to change the governing plan terms used incorrect terminology, didn't matter:

"The PDC actually amended the Basic Life Coverage, regardless of the minor differences in language."

The fact that the change made by the PDC in October 2005 was only a recommendation and federal courts are supposed to look only at the ordinary meaning of the words used in the governing plan documents and not consider 'affidavits' of intentions, didn't matter:

"Our conclusion is bolstered by affidavits from the members of the PDC, wherein each member states [in his or her affidavit] that he or she intended the 2005 Resolutions to amend the Plan."

The fact that the PDC's paperwork only reflected a recommendation and the actual amendment was not adopted until over a year later, didn't matter:

"The overwhelming evidence supporting the conclusion that Qwest, acting through the PDC, actually amended the Plan cannot be overcome by the slight confusion caused by styling the amendment as a recommendation."

The fact that the Plan expressly makes the Group Contract part of the governing plan documents and that the Group Contract was not properly amended until long after the fact

in January 2009, made no difference to the appellate court which gave little attention to those facts and arguments:

" . . . even if the Group Contract was incorporated by the Plan—and we doubt that it was. . . "

The appellate court refused to adopt our theory of an ERISA estoppel claim, which theory has been used by numerous other federal courts in the nation:

"While some other circuits have created a federal common-law cause of action premised on equitable estoppel in the ERISA context, we have yet to recognize such a claim. . . We have left open the possibility that an ERISA estoppel claim might be viable in "egregious cases," such as where the employer lied, engaged in fraud, or intended to deceive the participants. . . We need not determine whether to adopt an estoppel claim in the ERISA context. Plaintiffs do not allege circumstances such as lies, fraud, or intent to deceive."

We had argued that prior to and during the "5+5" early retirement offer, U S WEST only disclosed in the paperwork given to the retirees that the company reserved the "right to terminate or amend the plan" and U S WEST said nothing about any right to reduce benefits during retirement. Despite our request, the federal appellate court panel of judges made no reference to an ordinary dictionary existing during the "5+5" option. All such dictionaries existing before and during 1989-1990 defined the word "amend" to mean to "improve upon; to change for the better". . . Of course, reducing promised benefits is neither an improvement nor a change for the better.

Finally, the appellate court lobbed one last salvo at our arguments that the "5+5" Video Conference was completely misleading to any ordinary U S WEST employee planning on retirement and that the statements made constituted a misrepresentation, especially the statement explaining that the 'reservation of rights' provision was "really intended to make the plans more meaningful and more affordable not only for the employees but for the company:"

"Plaintiffs argue that the reduction of the life insurance coverage does not "make the Plan more meaningful and/or more affordable for retirees." . . . The video conference is completely accurate, and therefore cannot constitute a material misrepresentation."

This concludes the over 4-year litigation. The reduction of the life insurance to a mere \$10,000 for all retirees, a result of the economic carnage caused by the Nacchio regime, remains in force unless CenturyLink leadership decides to make another change – for better or for worse.

A handwritten signature in black ink that reads "Curtis L. Kennedy".



Controlling Medicare's Costs

by *Barbara Wilcox,*

AUSWR CO/WY Health Care Specialist

Medicare has been in the news a lot lately, especially in discussions of ways to cut the Federal deficit. Health care costs have been increasing faster than the rate of inflation. The Federal Government pays for roughly half of health care costs through Medicare, Medicaid, federal employee and military/veterans health care programs.

No wonder that Medicare, the largest of these federal programs, is a target of cost-cutting measures.

During the four decades since Medicare was signed into law it has been a bellwether program. Many of its policies and procedures have been adopted by other parts of the health care system, including private health insurance. Therefore, Medicare is in a position to lead the way towards controlling costs throughout the health care system.

There have been so many cost-cutting measures discussed, that it is hard to keep track. I will summarize some of the most current cost-cutting provisions of existing law and of proposals for change.

I find it to be useful to think about the proposals in terms of how they cut costs.

- Do they reform how health care is delivered and paid for in the attempt to make it more efficient and effective? These reform measures recognize that our current fee-for-service payment method encourages more procedures, more tests, more imaging, etc., which adds to health care cost inflation and is not always good for patients. These reform measures also look for ways to cut medical errors, inefficiency, poor coordination of care, etc.
- Do they cut the government's costs by shifting costs to others? This can be done by shifting more costs to patients, cutting patients' benefits, or cutting payments to the doctors, hospitals and others who provide health care ser-

vices. If providers get paid less, they may quit serving Medicare recipients, shift costs to their other patients, or both.

EXISTING LAW:

Sustainable Growth Rate (SGR): —Formula for yearly reductions in Medicare payments to doctors. Part of the **Balanced Budget Act of 1997.**

This part of the law has almost never actually been implemented. Doctors' and seniors' lobbies have always argued against the cuts being made. The fear is that many doctors will refuse to see Medicare patients if their pay is cut. But, a permanent fix has not been made, and Congress keeps passing stopgap bills that suspend the cuts for a limited amount of time. Meanwhile, the cuts required by the SGR formula keep compounding and getting bigger. Right now, the cuts have been suspended until January 1, 2012, when a 29.4% cut will be implemented unless Congress acts again. Everyone agrees that Congress should come up with a permanent fix to this problem, but there is no agreement on how to fix it.

Patient Protection and Affordable Care Act (PPACA): Signed into law by President Obama 3/23/2010.

This new law contains a number of provisions and pilot programs that change the way providers are paid by rewarding those that meet stated goals and penalizing those who do not. These changes are designed to be reforms that will increase quality and efficiency of care. Critics fear that the measures will simply result in reduced payments to providers if they can't meet the new requirements.

Accountable Care Organizations (ACOs) –

Hospitals, doctors and other health-care providers can band together to provide coordinated care. ACOs seeks to avoid the waste and poor quality care that can happen when care is fragmented among many providers. They and Medicare share the savings.

(...continued on the next page...)

Controlling Medicare Costs (...continued from previous page...)

Partnership for Patients: —Includes hospitals, doctors, state and federal governments. Goals are, by 2013, to decrease preventable hospital-acquired conditions by 40% and hospital readmissions within 30 days by 20%. For example, the number of surgical infections and bedsores can be decreased using simple, known procedures.

Value-Based Purchasing Program – Hospitals are paid more for quality care, which is expected to save costs and improve care. Quality measures include such things as, heart attack patients quickly receiving life-saving surgery on their arteries, surgery patients receiving the right treatment at the right time to prevent blood clots, and patient satisfaction.

Independent Payment Advisory Board (IPAB): - A panel of health experts, appointed by the President and confirmed by the Senate, will recommend additional cost-saving improvements to Medicare's payment systems. The changes cannot reduce benefits or increase costs for patients. Congress can block the IPAB's measures from going into effect, but it requires a two-thirds majority. The IPAB is very controversial, and some are seeking to repeal it.

PROPOSALS BEING DEBATED

President's Deficit Commission: Final report, *The Moment of Trust*, issued 12/1/2010.

Of the several proposals made to cut money from Medicare, the one currently in the news is to restructure Original Medicare by combining Part A (hospital insurance) and Part B (medical insurance) into a single program.

It would have a single deductible of \$550 instead of today's \$1,100 deductible for Part A and \$155 for Part B. There would be 20% coinsurance after deductible is met, reduced coinsurance of 5% after the patient's costs exceed \$5,500 and a \$7,500 cap on patient out-of-pocket costs. Today there is a more complicated schedule of coinsurance payments and no cap on costs.

Most Medicare recipients would pay more in an average year, because of the higher deducti-

ble for doctor visits and other medical services, thus saving the government money. In exchange, all would get protection against catastrophic health costs that go above \$7,500 in a single year, because the government would begin paying 100% at that point. The plan is controversial because of the impact on low-income Medicare recipients who might have trouble paying the \$550 deductible.

The Path to Prosperity: Proposed by U S Representative Paul Ryan in January 2010 and included in the Budget Resolution passed by the House of Representatives April 15, 2011, rejected by the Senate May 25, 2011. Provisions include:

- Repeal PPACA.
- No change in Medicare for persons now aged 55 and above.
- Gradually increase age of eligibility to 67.
- Beginning in 2022, people reaching age 67 would receive "premium support" or "vouchers" to buy private insurance that offers benefits meeting government standards. Amount of payment to equal average Medicare cost per person in 2022, varied by age, income level and "sickness" level. Amount would increase by rate of inflation (CPI) over the years. Government cost savings would be the difference between the lower CPI inflation and the higher inflation in health care costs. As a result, recipients would pay more.
- This plan to privatize Medicare in the future has met with huge resistance, and many consider it to be politically dead.

Other proposals have been offered, some based on existing proposals, and some combining proposals in various ways.

I hope that this guide is useful to you as you try to follow the debate.

As always, if you have an opinion on what should or should not be done, let your voice be heard. Contact your U S Senators and Representatives and tell them your ideas and opinions on these proposed changes to Medicare.

You can send your questions to
Barbara Wilcox, via email: BMW@mho.com.



Dear AUSWR Retiree:

How do we manage retiree changes?! In this edition of the newsletter you will read how the federal courts (again) are no friend to retirees having denied our appeal for Group Life Insurance –a trend to eliminate benefits already imposed on other retiree groups across the nation. U S Supreme Court recent rulings have told corporations that they can change retiree benefits and ignore statements made to those retirees who planned their retirement based on what they were told they had earned. These recent rulings caused a *Wall Street Journal* reporter to label the decisions as “OK to lie to employees and retirees.”

Where can you turn for help and future protection of the pension and benefits you have?

The NRLN! Our retiree organization teams with over 30 retiree groups to lobby members of Congress for federal legislation to help and protect retirees. We author White Papers in a form to be used as model federal legislation on vital retiree issues such as Pension Asset Protection, Prescription Drugs, Bankruptcy, Mergers and Acquisitions, and other topics. You can read these White Papers at the www.NRLN.org website.

The NRLN reacts to potential threats to your benefits by opposing or proposing countermeasures to defeat threats, such as diluting or taking back your Social Security and Medicare benefits. In addition to protecting your Social Security and Medicare benefits, the NRLN lobbies for federal legislation to protect your retirement security as stated in the 2011 NRLN Legislative Agenda at www.NRLN.org.

Another role the NRLN performs is through our state grassroots members. We educate and inform Congressional members and their staffs on what is happening to retirees. If you think members of Congress know

about retirement or pensions or benefits or Medicare, etc. --think again. Congressional staff members become informed by those who advocate and lobby and that’s why we must be active because all the corporations are already lobbying. We must balance what is told to Congress and work to eliminate how corporations find ways to renege on their commitments and outright take from pension assets and take from retirees without consequences. Here are some of the actions we propose to Congress:

The leaders of your retiree organization have joined with Bill Kadereit, NRLN President, to ask for your financial support for the NRLN to continue the strong voice that we have created in Washington, DC, and to turn the tide on the harm being done to retirees by companies, courts, federal agencies and Congress. A contribution from you makes it possible for the NRLN to continue to be a strong advocate for retirees in Washington, DC.

How You Can Help:

- Make your annual contribution of \$25, \$50, \$75 or more using the form on the back page (over).
- Sign-up for *NRLN Action Alerts* --and when you receive one be sure to CLICK and send a message to your U S Representatives and Senators. Sign-up at <http://capwiz.com/abtr/mlm/signup/>

Bill Kadereit

Bill Kadereit, NRLN President

Your state President sig

President AUSWR Your state name

NRLN MEMBERSHIP DONATION

AUSWR – Your state

Here’s your opportunity to help make our voice heard in Congress. Read inside about our meetings with members of Congress in September

Name: _____ Age: (check one) ___under 55; ___55-64; ___65 or over

Address: _____ City: _____ State: ___ Zip: _____ Zip + 4: _____

Phone: _____ Email Address (if available): _____

I get my retirement benefits from _____ (name of company)

Mail this form with your check or money order (no cash please) for \$25, \$50, \$75 or more (any amount will be appreciated) payable to: **NRLN, Inc., P.O. Box 18757, Washington, D.C. 20036-8757**

The NRLN is a non-profit, tax-exempt organization. Contributions are not tax deductible.