

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RANDAL SIMONETTI, SHAMIM BOYCE,
ROBERT EBERTZ, MARY JO YATTEAU,
on Behalf of Themselves and All Others
Similarly Situated,

Plaintiff

vs.

JOSEPH PERRONE, LINDA WOODRUFF (formerly
DeBalso), JOHN COMPARIN, MARK L. ATTANASIO,
WILLIAM S. COHEN, GEOFFREY J.W. KENT,
WILLIAM NORRIS, KENNETH P. SCHIRMUHLY,
FRONTIER CORPORATION/GLOBAL CROSSING
CHANGE OF CONTROL SEVERANCE PLAN, and
JOHN DOES 1-30,

Defendants

**AMENDED
CLASS ACTION COMPLAINT
FOR VIOLATION OF THE
EMPLOYEE RETIREMENT
INCOME SECURITY ACT**

CIV No. 02-CV-6129L (WDNY)
CIV No. 03-CV-1188 (SDNY)

Plaintiffs, RANDAL SIMONETTI, SHAMIM BOYCE, ROBERT EBERTZ and MARY JO YATTEAU, on behalf of themselves and all other persons similarly situated, by their attorneys, Chamberlain, D’Amanda, Oppenheimer & Greenfield, Matthew J. Fusco, Esq., of counsel, allege the following based on personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through their attorneys, and plaintiffs further believe that substantial evidentiary support will exist for the allegations set forth hereinafter after a reasonable opportunity for discovery.

NATURE OF THE ACTION:

1. This is a class action brought by the plaintiffs on behalf of themselves and a class consisting of all participants in the Frontier Corporation/Global Crossing, Ltd., Change of Control Severance Plan (hereinafter “the Plan”). The Plan was adopted by Frontier Corporation (hereinafter “Frontier”) and Global Crossing, Ltd., to ensure that employees in salary bands

twenty-five (25) and above would continue in employment for Frontier during the period of time negotiations for Frontier's purchase by Global Crossing, Ltd. (hereinafter "Global" or "the Settlor"), were under way and for two (2) years thereafter. On September 28, 1999, coincident with Frontier's acquisition by Global, the Plan became effective.

2. This class action is brought pursuant to Employee Retirement Income Security Act of 1974, as Amended ("ERISA"), for breach of fiduciary duty as to the individual fiduciary defendants and as a claim for failure to pay benefits as against the defendant Plan.

JURISDICTION and VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to ERISA, 29 USC §1132(e) and pursuant to 28 USC §1331.

4. Venue is proper in this judicial district pursuant to 29 USC §1132(e)(2) in that the Severance Plan was administered within the district and pursuant to 28 USC §1391(b)(2) in that a substantial part of the events or omissions giving rise to the claim occurred within the Western District of New York.

PARTIES

5. Plaintiff, Randal Simonetti (hereinafter "Simonetti") is a former employee of Frontier and Global. Plaintiff's employment was terminated on August 8, 2001, at which point plaintiff became a participant within the meaning of the Plan. Simonetti resides within the Western District of New York.

6. Plaintiff Shamim Boyce (hereinafter "Boyce") is a former employee of Frontier and Global. Plaintiff's employment was terminated on September 28, 2001, at which point she became a participant in the Plan. Boyce reside within the Western District of New York.

7. Plaintiff Robert Ebertz (hereinafter “Ebertz”) is a former employee of Frontier and Global. Plaintiff’s employment with Global was terminated on September 28, 2001, on which point he became a participant in the Plan. Ebertz resides within the Western District of New York.

8. Plaintiff Mary Jo Yatteau (hereinafter “Yatteau”) is a former employee of Frontier and Global. Plaintiff’s employment was terminated on June 30, 2001, at which point she became a participant in the Plan. Yatteau resides within the Western District of New York.

9. Defendant Joseph Perrone (hereinafter “Perrone”) is the Executive Vice-President of Finance for Global, a member of the Employees’ Benefit Committee, and a named fiduciary of the Plan. Perrone is a fiduciary of the Plan within the meaning of the Employee Retirement Income Security Act (“ERISA”) §3(21), 29 USC §2002(21).

10. Defendant John Comparin (hereinafter “Comparin”) is the Executive Vice-President of Human Resources of Global, a member of the Employees’ Benefit Committee, and a named fiduciary of the Plan. Comparin is a fiduciary of the Plan within the meaning of the Employee Retirement Income Security Act (“ERISA”) §3(21), 29 USC §2002(21).

11. Defendant Linda Woodruff (formerly DeBalso) (hereinafter “Woodruff”) is Vice-President of Compensation and Benefits of Global, a member of the Employees’ Benefits Committee, and a named fiduciary of the Plan. Woodruff is a fiduciary of the Plan within the meaning of ERISA §3(21), 29 USC §2002(21).

12. Defendant William Norris (hereinafter “Norris”) was at all times relevant hereto the Director of Human Resources for Global, a member of the Employees’ Benefits Committee and a named fiduciary of the Plan. Norris is a fiduciary of the Plan within the meaning of the Employee Retirement Income Security Act (“ERISA”) §3(21), 29 USC §2002(21).

13. Defendant Kenneth P. Schirmuhly (“Schirmuhly”) was at all times relevant hereto the Director of Compensation for Global, a members of the Employees’ Benefits Committee, and named fiduciary of the Plan. Schirmuhly is a fiduciary of the Plan within the meaning of the Employee Retirement Income Security Act (“ERISA”) §3(21), 29 USC §2002(21).

14. Mark L. Attanasio (hereinafter “Attanasio”) was at all times relevant hereto a member of the Board of Directors of Global, a member of the Employees’ Benefits Committee and a named fiduciary of the Plan. Attanasio is a fiduciary of the Plan within the meaning of the Employee Retirement Income Security Act (“ERISA”) §3(21), 29 USC §2002(21).

15. William S. Cohen (hereinafter “Cohen”) was at all times relevant hereto a member of the Board of Directors of Global, a member of the Employees’ Benefits Committee and a named fiduciary of the Plan. Cohen is a fiduciary of the Plan within the meaning of the Employee Retirement Income Security Act (“ERISA”) §3(21), 29 USC §2002(21).

16. Geoffrey J.W. Kent (hereinafter “Kent”) was at all times relevant hereto a Director of the corporation, served as Chair of the Employees’ Benefits Committee and a named fiduciary of the Plan. Kent is a fiduciary of the Plan within the meaning of the Employee Retirement Income Security Act (“ERISA”) §3(21), 29 USC §2002(21).

17. Defendant John Does 1-30 are other members of the Employees’ Benefits Committee and are named fiduciaries of the Plan.

18. Defendants Perrone, Comparin, Woodruff, Attanasio, Cohen, Kent, Norris, Schirmuhly and John Does 1-30 are hereinafter collectively referred “Individual Fiduciary Defendants.”

19. Defendants Attanasio, Cohen and Kent are hereinafter collectively referred to as “the Outside Director Fiduciaries.”

20. Defendant Change of Control Severance Plan (“the Plan”) is an employee welfare benefit plan within the meaning of ERISA §3(1), 29 USC §1002(1). The Plan is a separate legal entity from Global.

SIGNIFICANT NON-PARTY:

21. Global (“the Settlor”) is a Bermuda corporation with its principal place of business at Wessex House, 45 Reid Street, Hamilton, HM 12, Bermuda. Global’s North American headquarters is located at 180 South Clinton Avenue, Rochester, New York 14646. Global is, upon information and belief, the Settlor of the trust that is the defendant Plan. Global is not a party to this action pursuant to the automatic stay in bankruptcy as the result of its filing for Chapter 11 bankruptcy on January 28, 2002.

22. Any assets of the Plan are not the property of Global’s bankruptcy estate pursuant to 11 USC §541(d).

23. This action is not subject to the Global bankruptcy stay.

CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action as a class action pursuant to the Federal Rules of Civil Procedure 23(a), 23(b)(1)(B) and 23(b)(2) on behalf of a class (“the Class”) consisting of all participants and beneficiaries of the Plan.

25. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of the Class members is unknown to the plaintiffs at this time, and can only be ascertained through appropriate discovery, plaintiffs believe there are close to one thousand (1,000) members of the Class.

26. Common questions of law and fact exist as to all members of the Class and predominate over any question solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

A. Whether the Individual Fiduciary Defendants breached their fiduciary duty to the Plan through active conflicts of interest;

B. Whether the Individual Fiduciaries Defendants knew of and failed to take action on the breach of fiduciary duty by co-fiduciaries;

C. Whether the Individual Fiduciaries Defendants took action to prevent payment of benefits to the Class;

D. Whether the individual fiduciaries who are Outside Directors failed to oversee the administration of the Plan; and

E. Whether the members of the Class are entitled to benefits under the Plan.

27. Plaintiffs' claims are typical of the claims of the members of the Class as the plaintiffs and other members of the Class each became both participants and beneficiaries of the Plan as of the termination of their employment and are entitled to benefits as provided for in the Plan document.

28. The individual defendants have acted, or failed to act, on grounds generally applicable to the Class, thereby making appropriate monetary relief, final injunctive and other equitable relief with respect to the Class as a whole.

29. Plaintiffs and other members of the Class each sustained damages arising out of defendants' wrongful conduct in violation of Federal law as complained of herein.

30. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action and ERISA litigation.

31. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

32. Plaintiffs and all Class members are participants within the meaning of §3(7) of ERISA, 29 USC §1002(7) and beneficiaries within the meaning of ERISA §3(8), 29 USC §1002(8).

33. Plaintiffs and all Class members bring their claims pursuant to §502(a)(1)(B) and §205(a)(2) and (3) of ERISA, 29 USC 1132(a)(1)(B) and (a)(2) and (3), and §1105(a)(1) of ERISA 29 USC 1109(a).

34. Based upon the factors set forth in the preceding paragraphs, plaintiffs and the other Class members constitute a Class and the current action constitutes a class action within the meaning of Federal Rule of Civil Procedure 23.

ADOPTION OF THE PLAN

35. On or about May 19, 1999, Frontier Corporation adopted a Change of Control Severance Plan which was issued to employees in salaried band levels twenty-five (25) and above, a copy of which is annexed as Exhibit "A".

36. At the time of the adoption of the Plan, Frontier Corporation was in negotiations to be acquired by Global Crossing, Ltd.

37. Pursuant to the terms, the Plan's effective date is the date on which a change in the ownership of Frontier occurs pursuant to the March 6, 1999, merger agreement signed between Frontier Corporation and Global Crossing, Ltd.

38. Pursuant to the recitals of the Plan, the Plan was adopted for the purpose of retaining "the services of certain employees" during the period of time leading up to the merger and for a period of two (2) years thereafter.

39. Global Crossing, Ltd., acquired Frontier Corporation on September 28, 1999.

40. After September 28, 1999, the Summary Plan Description was issued by Global Crossing, Ltd., a copy of which is annexed as Exhibit “B”.

41. Plaintiffs and other Class members relied upon the assurances from Frontier and Global that the Plan would be in existence should they be terminated or demoted in the period between September 28, 1999, and September 28, 2001, in making their decisions to remain in the employ of Frontier Corporation and, subsequently, Global Crossing, Ltd.

***THE FIDUCIARY STATUS OF THE
INDIVIDUAL DEFENDANTS:***

42. The individual defendants had discretionary authority respecting management and administration of the Plan and/or management or disposition of the Plan’s assets and had discretionary authority or responsibility for the administration of the Plan.

43. All of the individual defendants acted as fiduciaries of the Plan pursuant to ERISA, §3(21)(a), 29 USC §2002(21)(A), and the law interpreting that section.

44. ERISA requires every Plan to provide one or more fiduciaries who have authority to control and manage the operation and administration of the Plan, ERISA §402(a)(1), 29 USC §1102(a)(1).

45. The individual defendants all served as members of the Settlor’s Employees’ Benefits Committee. Pursuant to the Plan, The Employees’ Benefits Committee is the named ERISA fiduciary.

46. The Settlor designated the Employees’ Benefits Committee as Plan Administrator thereby making the individual defendants, who were members of that Committee, fiduciaries of the Plan.

47. Individual defendants Perrone, Comparin, Woodruff, Norris, Schirmuhly and John Does 1 through 30 are officers and employees of the Settlor.

48. Individual defendants Attanasio, Cohen and Kent are members of the Settlor's Board of Directors and members of the Employees' Benefits Committee and are collectively referred to hereinafter as "the Outside Director Fiduciaries").

49. Individual defendant Kent chaired the Employees' Benefits Committee.

50. Individual defendants performed fiduciary functions within the meaning of ERISA §3(21)(A)(i), 29 USC §1002(21)(A)(i).

51. ERISA requires fiduciaries to act solely in the interest of and for the protection of the Plan, its participants and beneficiaries pursuant to ERISA, 29 USC §1104(a)(1).

FACTUAL ALLEGATIONS

52. Plaintiff Simonetti was terminated from employment and became a participant and a beneficiary of the Plan on August 8, 2001.

53. Plaintiff Yatteau was terminated from employment with the Settlor and became a participant and a beneficiary of the Plan on June 30, 2001.

54. Plaintiff Ebertz was terminated from employment with the Settlor and became a participant and a beneficiary of the Plan on September 28, 2001.

55. Plaintiff Boyce was terminated from employment and became a participant and a beneficiary of the Plan on September 28, 2001.

56. All Class members were terminated from employment with the Settlor and became participants and beneficiaries of the Plan no later than September 28, 2001.

57. The Plan provides participants/beneficiaries with severance pay for a period of time designated under the Plan's terms. Payment of the severance benefit is to be made "pursuant to the normal payroll practices of the Company" (Exhibit "B, §4(a)).

58. In addition to severance benefits in the form of bi-weekly payroll checks, participants/beneficiaries are entitled to receive welfare benefits in the form of "medical, dental and vision benefits for the Participant and the Participant's eligible dependents" for a period of time "equal to the number of months constituting the Severance Period" (Exhibit B, §4(c)).

59. Participants become eligible for both severance and welfare benefits upon termination from employment.

60. During 2001, the individual fiduciary defendants, in their capacities as either officers and employees of the Settlor, or outside directors of the Settlor, became aware that the Settlor was having financial problems and could not meet current obligations, including its obligation to pay benefits pursuant to the Plan.

61. The individual fiduciary defendants took no steps to inform the Class of the fact that the Settlor was having serious financial problems, could not meet its current obligations and would not be able to fund the Plan.

62. On September 28, 2001, the individual defendants were aware of the total obligations of the Plan to the plaintiffs in that all possible Plan participants and beneficiaries were identifiable as of that date and the total amount of benefits due to all of the participants was calculable as of that date.

63. Despite their awareness of the total cost to the Plan to provide benefits to which the participants were entitled, the individual fiduciary defendants took no steps to seek to have the

Settlor fund this obligation despite their knowledge that the Settlor was having serious financial problems and intended to file for bankruptcy.

64. In or about the late Fall of 2001, defendants Perrone, Comparin, Woodruff, Norris, Shirmuhly and John Does 1 through 30, participated in discussions and decisions as to which of the Settlor's obligations would be paid and honored and which would not, and made or participated in decisions not to provide funds to the Plan which they knew were necessary to meet the Plan's obligations to the participants and beneficiaries.

65. Upon information and belief, the Outside Director Fiduciaries knew of decisions by their co-fiduciaries not to provide said funds.

66. Upon information and belief, throughout the late Summer and Fall of 2001 through the Winter of 2001-2002, the Settlor was discussing whether to file, and preparing for the filing of, Chapter 11 bankruptcy.

67. The Individual Fiduciary Defendants took no steps to include Plan obligations to the plaintiff Class as payments to be continued during the operation of the Settlor in the Chapter 11 bankruptcy.

68. The Settlor filed for bankruptcy on January 28, 2002.

69. The fiduciary defendants took no steps in the Bankruptcy Court to represent the interests of the Plan participants.

70. From the inception of the Plan until January 28, 2002, all severance benefits under the Plan were paid as a part of the Settlor's regular payroll.

71. Upon information and belief, the Settlor's regular payroll was made on a bi-monthly basis for work performed in the preceding pay period.

72. Upon information and belief, during January 2002, individual fiduciary defendants Perrone, Comparin, Woodruff, Norris, Schirmuhly and John Does 1-30 made the decision to accelerate the last payroll check prior to the Settlor's filing for bankruptcy and specifically determined not to include payments to Plan participants and beneficiaries as part of the accelerated payroll.

73. By participation in discussions and decisions not include the Plan participants in the last payroll prior to the Settlor's filing of bankruptcy, and by their participation in the discussions and decisions not to continue funding the Plan, the individual fiduciary defendants had a clear conflict of interest in violation of their fiduciary obligations to act solely in the interest of the participants and beneficiaries [ERISA §404(a)(1)(A), 29 USC §1104(a)(1)(A)].

74. Upon information and belief, Outside Director Fiduciaries Attanasio, Cohen and Kent were aware of decisions made by their co-fiduciaries with regard to the funding of the Plan and payment of participant/beneficiary benefits.

75. The defendant Plan ceased paying severance benefits to Class members on January 28, 2002, and terminated medical, dental and vision benefits soon thereafter.

***FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT PLAN***

76. Plaintiffs repeat and reallege each of the allegations set forth herein by paragraphs numbered "1" through "75" as though fully set forth herein.

77. Plaintiffs are a Class of participants and beneficiaries in the defendant Plan. Plaintiffs have qualified to receive severance benefits and welfare benefits pursuant to the Plan's terms.

78. Plaintiffs were receiving Severance and Welfare benefits under the terms of the Plan.

79. Plaintiffs took no action to disqualify themselves from continuing coverage under the terms of the Plan. The Plan has failed and refused to provide benefits despite having acknowledged plaintiffs' eligibility.

80. The Plan contains no requirement for exhaustion of internal appeals as a pre-condition to filing suit under ERISA. The only formal appeal procedure contained within the Plan is with regard to claims for entitlement to benefits which have been denied. As a Class, plaintiffs' claims for benefits were accepted.

81. Plaintiffs have been damaged by the actions of the defendant Plan as a result of the loss of severance payments, loss of medical, vision and dental coverage, and the costs associated with the loss of that coverage.

***FOR A SECOND CAUSE OF ACTION AGAINST ALL
INDIVIDUAL FIDUCIARY DEFENDANTS PURSUANT
TO ERISA, 29 USC SECTION 1132(a)(2) and SECTION 1109(a):***

82. Plaintiffs repeat and reallege each of the allegations set forth herein by paragraphs numbered "1" through "81" as though fully set forth herein.

83. Plaintiffs are participants and beneficiaries under the defendant Plan.

84. The Individual Fiduciary Defendants are ERISA fiduciaries with regard to the Plan.

85. As fiduciaries, the Individual Fiduciary Defendants have an obligation to act in the interest of and for the protection of the Plan, its participants and beneficiaries.

86. The Individual Fiduciary Defendants made decisions, participated in decisions or were aware of decisions not to pay severance and welfare benefits to eligible participants and

beneficiaries, decided, participated in decisions, and/or were aware of decisions of the Settlor to pay other obligations in favor of its obligations to the Plan, its participants and beneficiaries, all in breach of their fiduciary duties.

87. Individual Fiduciary Defendants breached their fiduciary duty to the plaintiffs when they failed to disclose information to the participants and beneficiaries regarding said decisions.

88. The Individual Fiduciary Defendants decided, participated in the decision, or were aware that Plan benefits were to be eliminated from the regular payroll when that payroll was advanced in January of 2002.

89. Pursuant to 29 USC §1132(a)(2) and 29 USC §1109(a), the Individual Fiduciary Defendants are liable to restore the losses to the Plan caused by defendants' breaches of their fiduciary duties.

***FOR A THIRD CAUSE OF ACTION AGAINST THE
INDIVIDUAL FIDUCIARY DEFENDANT PURSUANT
TO ERISA, 29 USC SECTION 1132(a)(2) and 29 USC 1105(a)(1):***

90. Plaintiffs repeat and reallege each of the allegations set forth herein by paragraphs numbered "1" through "89" as though fully set forth herein.

91. The decisions by Plan fiduciaries not to pay benefits pursuant to the Plan constitute a breach of fiduciary duty to the Plan, its participants and beneficiaries.

92. The Individual Fiduciary Defendants were aware of these breaches by co-fiduciaries and concealed the same.

93. By concealing the knowledge of the breach of fiduciary duty by their co-fiduciaries, the Individual Fiduciary Defendants have further breached their duty to the Plan, its participants and beneficiaries pursuant to ERISA, 29 USC §1105(a)(1).

94. Pursuant to 29 USC §1132(a)(2) and 29 USC §1109(a), the Individual Fiduciary Defendants are liable to restore the losses to the Plan caused by defendants' breach of 29 USC §1105(a)(1).

***FOR A FOURTH CAUSE OF ACTION AGAINST
THE OUTSIDE DIRECTOR/FIDUCIARIES
PURSUANT TO ERISA, 29 USC 1132(a)(2) and 1109(a):***

95. Plaintiffs repeat and reallege each of the allegations set forth herein by paragraphs numbered "1" through "88" as though fully set forth herein.

96. Defendants Mark L. Attanasio, William S. Cohen and Geoffrey J.W. Kent are members of the Settlor's Board of Directors.

97. Attanasio, Cohen and Kent are members of the Employees' Benefit Committee, the Plan Administrator, and are named fiduciaries under the Plan.

98. Defendant Kent is the Chair of the Employees' Benefits Committee.

99. As fiduciaries of the Plan, Attanasio, Cohen and Kent had a obligation to oversee the administration of the Plan.

100. The Outside Director Fiduciaries failed to oversee the administration of the Plan as described above; and, as a result, the Plan has not been able to provide benefits for severance or medical, dental and vision care to eligible participants and beneficiaries in breach of their fiduciary duty.

101. Pursuant to 29 USC §1132(a)(2) and 29 USC §1109(a), the Outside Director Fiduciaries are liable to restore the losses to the Plan caused by their breach of fiduciary duty.

***AS A FIFTH CAUSE OF ACTION AGAINST
INDIVIDUAL FIDUCIARY DEFENDANTS:***

102. Plaintiffs repeat and reallege each of the allegations set forth herein by paragraphs numbered “1” through “101” as though fully set forth herein.

103. The Individual Fiduciary Defendants have breached their duty to the Plan, its participants and beneficiaries as described above.

104. The plaintiff Class is entitled to injunctive relief pursuant to ERISA, 29 USC 1132(a)(3) enjoining the Individual Fiduciary Defendants from further breach of duty.

PRAYER FOR RELIEF

A. As Against the Defendant Plan Pursuant to USC §1132(a)(1)(B):

1. To reinstate benefits pursuant to the terms of the Plan.
2. With damage in an amount equal to the lost severance payments and any costs associated with the loss of or replacement of medical, dental and vision care insurance.
3. Reasonable attorneys’ fees and costs as provided for by ERISA, 29 USC §1132(g).

B. As Against the Individual Fiduciary Defendants Pursuant to 29 USC §1132(a)(2) and 29 USC §1109(a):

1. An Order requiring the Individual Fiduciary Defendants to pay to the Plan such amount as to make good to the Plan the losses of the Plan resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as required by ERISA, 29 USC §1109(a).
2. Injunctive relief and other appropriate equitable relief to remedy the breaches alleged above as provided by 29 USC §1109(a) and §1132(a)(2) & (3).

3. Reasonable attorneys' fees and costs as provided for by ERISA, 29 USC §1132(g).

C. For such other and further relief as to the Court may seem just, equitable and proper.

Dated: Rochester, New York
June 11, 2003

CHAMBERLAIN, D'AMANDA,
OPPENHEIMER & GREENFIELD

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