

COURT OF APPEALS, STATE OF  
COLORADO

2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

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(Appeal from)

DENVER COUNTY DISTRICT COURT  
COLORADO

Denver City and County Building  
1437 Bannock St.  
Denver, CO 80202  
Judge John W. Coughlin, Courtroom 1  
Case Number **00-CV-4142**

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**Plaintiffs:** **ADELE BRODY**, et al., On Behalf of  
Themselves and All Others Similarly Situated.

v.

**Defendants:** **PETER S. HELLMAN, JERRY  
COLANGELO, SOLOMON D. TRUJILLO,  
MANUEL A. FERNANDEZ, DR. CRAIG R.  
BARRETT, FRANK P. POPOFF, MARILYN  
CARLSON NELSON, HANK BROWN, GEORGE J.  
HARAD, LINDA G. ALVARADO, QWEST  
COMMUNICATIONS INTERNATIONAL, INC. and  
JOSEPH P. NACCHIO,**

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(Attorney for **Objectors-Intervenors-Appellants**)  
**ASSOCIATION OF U S WEST RETIREES,  
ELDON H. GRAHAM, HAZEL A. FLOYD  
and MARY M. HULL)**

Curtis L. Kennedy  
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Denver District Court  
Case Number: **00-CV-4142**  
Courtroom 1

Colorado Court of Appeals  
Case Number: \_\_\_\_\_

**OBJECTORS - INTERVENORS - APPELLANTS'  
NOTICE OF APPEAL**

TO: PLAINTIFFS-APPELLEES, DEFENDANTS, AND ALL COUNSEL OF  
RECORD:

PLEASE TAKE NOTICE that, pursuant to Colorado Appellate Rules, Rule 3(d),  
Objectors-Intervenors-Appellants Association of U S WEST Retirees, Eldon H. Graham, Hazel  
A. Floyd and Mary M. Hull, file their notice of Appeal and state:

1. **Trial Court, Ruling/Judgement, Case and Party Filing Appeal:** This appeal  
is taken from the Denver County District Court's August 30, 2005 "Order Awarding Class  
Counsel's Attorneys' Fees and Reimbursement of Expenses" entered in Civil Action 00-CV-  
4142 overruling the objections made by Objectors-Intervenors-Appellants. A copy of the Order  
is attached hereto. The appeal is filed by Objectors-Intervenors Association of U S WEST  
Retirees, Eldon H. Graham, Hazel A. Floyd and Mary M. Hull.

2. A. **Brief description of the nature of the case:**

This is a class action on behalf of the public stockholders of the former U S WEST, Inc.  
against U S WEST's former directors, Qwest Communications International, Inc., and Joseph P.  
Nacchio, a former director and former CEO of Qwest. In this case, the alleged unlawful  
conduct concerns the non-payment of U S WEST's Second Quarter 2000 dividend to  
shareholders of record. In the Amended Complaint, Plaintiffs brought a class action for breach  
of contract, breach of third-party beneficiary contract, breach of fiduciary duty, aiding and  
abetting a breach of fiduciary duty, and commission of ultra vires acts. The case has been class  
certified for the following: "The last U S WEST common stock shareholders of record before

the U S WEST - Qwest merger closed on June 30, 2000. Excluded from the class are defendants and any person affiliated with or related to any defendant.” (Courts’ Order of February 8, 2005, *nunc pro tunc*, January 31, 2005).

In June 2005, on the eve of trial of this case, the parties agreed to cancel the trial and enter into a settlement agreement. On June 20, 2005, the parties executed a “Stipulation of Settlement.” A Settlement Fund was established in the amount of \$50 million. The Settlement Fund will first be used to pay the expenses of sending out the class notice and claim form. Then, the Settlement Fund will be used to pay the attorneys’ fees. The attorneys requested and awarded \$15 million in fees, plus approximately \$1.3 million for expenses and costs.

After notice was sent to the class, a fairness hearing occurred on Tuesday, August 30, 2005, at 9:00 a.m. in Courtroom 1, Denver District Court, 1437 Bannock Street, Denver, CO before the Honorable John W. Coughlin for his determination of the fairness of the proposed settlement. At the hearing, Judge Coughlin granted Objectors’ motion for intervention. Objectors contended the total fee requested - \$15 million - was excessive, not reasonable. In addition, Objectors contended none of the requested expenses - \$1.3 million - were adequately explained or documented and, therefore, it was unreasonable to charge those unknown expenses against the Settlement Fund.

Nevertheless, at the conclusion of the hearing on August 30, 2005, the trial court granted the full request for attorneys’ fees and expenses and executed the order prepared by counsel.

This appeal is timely.

B. **The order being appealed and statement indicating the basis for the appellate court's jurisdiction.** After the conclusion of the Fairness Hearing on August 30, 2005, Judge Coughlin confirmed the settlement and awarded attorneys' fees and expenses to be charged against the Settlement Fund. A final judgment was entered on August 30, 2005.

This appeal is timely, within 45 days after the August 30, 2005, final Order and Judgment.

C. **Whether the order resolved all issues pending before the trial court including attorney's fees and costs.** The August 30, 2005 final Order and Judgment resolved all issues including attorney's fees and costs.

D. **Whether the order was made final for purposes of appeal pursuant to C.R.C.P. 54(b).** The August 30, 2005 order is final for purposes of appeal pursuant to C.R.C.P. 54(b).

E. **The date the order was entered.** The Order and Judgment was entered on August 30, 2005.

F. **Whether there were any extensions granted to file any motions for post-trial relief.** None.

G. **The date any motion for post-trial relief was filed.** None.

H. **The date any motion for post-trial relief was denied.** None..

I. **Whether there were any extensions granted to file any notices of appeal.** None.

3. **Advisory listing of issues to be raised on appeal.** Whether the District Court erred on August 30, 2005 when overruling Objectors-Intervenors-Appellants' objections to the requested attorney's fees and undocumented expenses. Whether the trial court erred when awarding \$15 million in attorney's fees and approximately \$1.3 million in expenses.

4. **Whether a transcript is necessary.** There was a hearing held on August 30, 2003, which hearing was tape recorded and a transcript has or will be ordered.

5. **Whether a pre-argument conference is requested.** There are very few cases published by the Colorado Court of Appeals concerning the issues raised in the trial court and, considering the amount in controversy, over \$16.3 million, a pre-argument conference will prove helpful and is requested.

6. **Names of counsel for the parties and addresses.**

Curtis L. Kennedy (Counsel for Objectors-Intervenors-Appellants)  
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Keith F. Park, Esq.  
Rick Nelson, Esq.  
LERACH COUGHLIN, et al                      *Lead Counsel for Class Representatives*  
401 B. Street, Suite 1600  
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E-mail: ltheis@musgravetheis.com (Lawrence Theis, Esq.)

7.        **Copy of Orders.** A copy of the following is attached hereto: August 30, 2005  
“Order Awarding Class Counsel’s Attorneys’ Fees and Reimbursement of Expenses.”

8.        **Certificate of Service.** See last page attached hereto.

DATED: September 21, 2005.

  
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**CURTIS L. KENNEDY #12351**  
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*Attorney For OBJECTORS-INTERVENORS-  
APPELLANTS*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of September, 2005, in accordance with Section XI of the "Notice of Settlement of Class Action" a true and correct copy of above and foregoing **OBJECTORS - INTERVENORS - APPELLANTS' NOTICE OF APPEAL** was delivered via United States mail, postage prepaid, to the following Counsel:

Keith F. Park, Esq.  
Rick Nelson, Esq.  
LERACH COUGHLIN, et al                      *Counsel for Class Representatives*  
401 B. Street, Suite 1600  
San Diego, CA 92101  
Tele: 619-231-1058  
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Email: debg@lerachlaw.com (c/o Debbie Granger, Legal Secretary)


B. Lawrence Theis, Esq.  
MUSGRAVE & THEIS, LLP                      *Counsel for Defendants*  
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370 Seventeenth Street  
Denver, CO 80202  
Tele: 303-385-4700  
Fax: 303-385-4725  
E-mail: ltheis@musgravetheis.com (Lawrence Theis, Esq.)

and a copy of the same was delivered via United States mail, postage prepaid to the following:

Clerk - Denver County District Court 1437 Bannock Street Denver, CO 80202	Clerk - Colorado Court of Appeals 2 East 14 <sup>th</sup> Avenue Denver, CO 80203
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Kathy Trostel, (for Transcript of Digital Recording)  
Denver City and County Building  
1437 Bannock Street, Room 256  
Denver, CO 80202  
Tele: 720-865-8688

and a copy of the same was sent via email to OBJECTORS - Association of U S WEST Retirees, Eldon H. Graham, Hazel A. Floyd and Mary M. Hull.

  
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Curtis L. Kennedy