



Littler Mendelson, P.C.
400 Linden Oaks
Suite 110
Rochester, NY 14625

May 9, 2011

Margaret A. Clemens
585.203.3444 direct
585-203-3400 main
585.486.1720 fax
mcclemens@littler.com

VIA FAX AND U.S. MAIL

Hon. David G. Larimer
U.S. District Court Judge
2500 U.S. Courthouse
100 State Street
Rochester, New York 14614

Re: *Richard Clouthier v. Lawrence Becker, et al.*
Case No. 08-06441

Dear Judge Larimer:

This letter is submitted by defendants in accordance with this Court's March 21, 2011 and April 27, 2011 Orders, requesting that the parties summarize their respective positions as to what motions are currently pending that need to be decided by the Court, as well as motions that need to be briefed either for the first time or with supplemental briefing in light of the decisions from the Second Circuit Court of Appeals and the United States Supreme Court in *Conkright v. Frommert* ("*Frommert*"). See *Frommert*, 130 S. Ct. 1640 (2010). Although the above matter is presently pending in the District Court for the Western District of New York before Judge Telesca, it is related to the claims asserted by plaintiffs in the *Frommert* action. According, it appears to us to come within the Court's Orders.

In this case, which was commenced on or about September 26, 2008, Plaintiff Clouthier sued defendants Xerox Corporation Retirement Income Guarantee Plan ("*RIGP*"), Lawrence M. Becker as the plan administrator, Xerox Corporation and Hewitt Associates, seeking additional pension benefits under the Employee Retirement Income Security Act ("*ERISA*") on substantially similar grounds as the claims asserted by plaintiffs in *Frommert*. Plaintiff is represented by George Newton of the law firm of Muehe & Muehe.

On November 19, 2010, Defendants moved for summary judgment on the basis that Plaintiff's claims are time-barred and because plaintiff released any claims that he may have had against defendants when he executed a release in exchange for salary continuance benefits. On January 4, 2011, plaintiff filed his opposition, and defendants filed a Reply on January 18, 2011. Defendants' motion was submitted without oral argument. To date, the Court has not ruled on the pending motion.

Hon. David G. Larimer
May 9, 2011
Page 2

No further briefing on the pending motion to dismiss is required as a result of the Supreme Court's decision in *Frommert* or the Second Circuit's August 2, 2010 Order remanding that case for further proceedings. Unlike the *Frommert* plaintiffs, who had timely commenced their ERISA action, plaintiff in this case did not do so. Additionally, the Second Circuit's ruling on the enforceability of the Xerox releases reported at *Frommert v. Conkright*, 535 F.3d 111 (2d Cir. 2008), supports the dismissal of plaintiff's claims.

Respectfully submitted,



Margaret A. Clemens

MAC/smb

cc: George F. Newton

101116422.1