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May 9, 2011

VIA TELEFAX AND U.S. MAIL
585/613-4045

Chambers of Judge Larimer
Kenneth Keating Federal Building
100 State Street
Rochester, NY 14614

Re: *Frommert v. Conkright*, 00-cv-6311

Dear Judge Larimer:

Stris & Maher LLP and Shaun P. Martin represent the majority of plaintiffs in *Frommert v. Conkright* [hereafter, the “Frommert Plaintiffs”] and submit the following pursuant to this Court’s Orders of March 21, 2011 and April 27, 2011. Stris & Maher LLP and Shaun P. Martin do not represent any individuals in any of the non-*Frommert* actions, and this letter will accordingly address only the *Frommert* lawsuit. Additionally, although Xerox’s letter of May 9, 2011 states that plaintiff Frommert has retained the Chamberlain and Strain firms, this is not accurate; plaintiff Frommert is represented solely by Stris & Maher LLP and Shaun P. Martin.

The Frommert Plaintiffs have filed a Motion to Reenter Judgment, Xerox has filed a cross-motion, and an *amicus* brief has been filed by John Strain, Esq. on behalf of plaintiff Testa. This motion is fully briefed and is scheduled for argument on June 2, 2011. All parties (including the Frommert Plaintiffs) agree that resolution of these motions is appropriately the first step in reaching closure of this long-running action, including the related lawsuits.

Were this Court to reenter its judgment on the independent notice ground previously articulated this Court’s 2007 Order, the lawsuit would be largely over. The Court would still need to resolve the pending Motion to Intervene (to the extent Mr. McNeil continued to request it) alongside the pending Motion for Declaratory Judgment, both of which address whether this Court’s ruling should apply to all similarly-situated Xerox employees, and the Frommert Plaintiffs suggest that supplemental briefing be permitted in light of the intervening years and events. The Court would also need to resolve the pending (and any future) requests for fees and interest, and the Frommert Plaintiffs would again suggest supplemental briefing.

Were this Court to decline to reenter its former judgment on notice grounds, the lawsuit would then proceed on both notice and plan interpretation issues, and with respect to the latter, discovery would need to be taken on conflict of interest, bad faith, and other plan interpretation issues in light of the Supreme Court's decisions in *Frommert* and *Metropolitan Life*. Discovery would also be required as to what "Plan Administrator" approach Xerox wishes to adopt, as Xerox has articulated in discovery four different (conflicting) "Plan Administrator" approaches as alternatives to the *Layaou* and "new hire" approaches. The Court would also then need to resolve the pending intervention, interim fee, and other motions, several of which have not yet been fully briefed.

The Frommert Plaintiffs thus agree that the first step, in all the related cases, should be the determination of the pending Motion to Reenter Judgment on June 2, 2011, and subsequent briefing (if necessary) of any pending, non-withdrawn motions in light of that decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. P. Martin', written in a cursive style.

Shaun P. Martin
Co-Counsel for Plaintiffs

cc: Chris Pistilli, Esq.
Maggie Clemens, Esq.
John Strain, Esq.
Edward Haber, Esq.