

EXHIBIT C

*Lacey Laducer v. Dish Network Service LLC, Case No. 40-09-C-99,
Motion Hr'g Tr., 22:17-23:1, August 10, 2010*

1 [The before-entitled matter came on for
2 hearing before the court, the Honorable Michael
3 Sturdevant, District Judge, presiding, commencing at
4 9:00 o'clock a.m. on August 10, 2010, in the Bottineau
5 County Courthouse in Bottineau, North Dakota. Present
6 were Thomas Dickson of Bismarck, North Dakota,
7 representing the Plaintiff, Lacy Laducer; and
8 Christopher Nyhus and Ariston Johnson of Bismarck,
9 North Dakota, representing the Defendant, Dish Network
10 Service.]

11 THE COURT: We are here - - this is a Rolette
12 County case, although we are in the Bottineau County
13 Courtroom because, frankly, I thought we were going to
14 be doing it by phone, but I'm happy to see you here.
15 This is Lacy Laducer - - did I pronounce it correctly,
16 I had a fifty fifty chance there - - versus Dish
17 Network. Mr. Dickson is here and - -

18 MR. JOHNSON: Ariston Johnson, Your Honor.

19 THE COURT: Thank you. Welcome. Welcome.
20 And then Mr. Nyhus? Did I pronounce that one
21 correctly?

22 MR. NYHUS: Yes.

23 THE COURT: I couldn't get your client wrong,
24 Dish Network - - on behalf of Dish Network. We're here
25 this morning to consider a motion brought by Dish to

1 add Brian Laducer as a third party defendant in this
2 matter. I have read the briefs, but I would be happy
3 to hear anything that you have to say. Mr Nyhus?

4 MR. NYHUS: Thank you, Your Honor.

5 THE COURT: At your convenience.

6 MR. NYHUS: May it please the Court. I guess
7 I'm not going to go too far from the briefs, but I just
8 want to stress that any possible factual situation
9 involves Brian Laducer in this case. It was his
10 contract with Dish. It was he that provided the credit
11 card information to Dish and it was his default that
12 prompted any damages and, quite frankly, Dish didn't do
13 anything wrong by charging his card, and Dish needs to
14 be able to exercise its rights to bring these cross
15 claims against Brian Laducer if at all possible.

16 THE COURT: Now are we talking cross claim or
17 third - -

18 MR. NYHUS: Well, third party. Well this has
19 been muddied a little bit. As you know, this went up
20 to federal court and - - on removal from state court.
21 The reason it was removed was there was a demand letter
22 that we believe exceeded the amount in controversy.
23 The federal court disagreed. They said it was
24 unreasonable and puffery and on remand - - well, when
25 it was removed we issued a third party complaint, and

1 now there's a question on whether or not the third
2 party complaint is still viable. We contend that it
3 is. We'd like to see it remain. I believe it's been
4 entered in the docket in this case.

5 THE COURT: Well, what came in in terms as
6 the docket would have just been the entire - - I don't
7 know what you would call it, not a judgment roll but
8 the entire file from federal court. Judge Hovland
9 referred to it as being dismissed - - the motion - -
10 which he hadn't ruled on.

11 MR. NYHUS: Mm-hmm.

12 THE COURT: And he dismissed the motion and
13 referred to it as moot.

14 MR. NYHUS: As moot, yeah.

15 THE COURT: I guess moot in federal court
16 means I don't have to do this. But I don't know, it
17 works the same way here. But that - - so I - -

18 MR. NYHUS: I under - Your Honor, I guess
19 I'll clarify why - -

20 THE COURT: We're here on a new motion as far
21 as I'm concerned.

22 MR. NYHUS: All right. That's fine, and I
23 guess the reason that we're treading lightly is because
24 we've been smacked once in this case. We issued the
25 third party complaint in federal court and we issued it

1 under supplemental jurisdiction. We still believe
2 that it existed and that'll be probably contended, you
3 know, or not agreed to by Mr. Dickson and Mr. Johnson,
4 but that's why we issued it there and then as soon as
5 we did - - as soon as we cut the complaint and before
6 it was even served in federal court we got sued in
7 tribal court for doing that - - for exercising our
8 rights.

9 Now jurisdiction is different in state court. We
10 recognize that, and if we just went and cut a third
11 party complaint we may be facing an identical lawsuit
12 so I don't know if you would add another count in
13 tribal court or whatever. But we definitely don't want
14 to invite another lawsuit in this matter.

15 THE COURT: Well but this seems to me that
16 I'm looking at this as a fresh motion. I'm not looking
17 at this as - -

18 MR. NYHUS: Right.

19 THE COURT: - - a carry-over motion from
20 federal court. I'm just looking at this as a new
21 motion and to me it matters not one way or the other.
22 I don't want to be too much of a smart aleck here.

23 MR. NYHUS: That's fine.

24 THE COURT: You said you weren't going to
25 stray too far from your brief. I don't care how much

1 you stray from the brief but just don't stray too far
2 from the microphone.

3 MR. NYHUS: Oh. Sure. Let me see, where was
4 I? I guess - -

5 THE COURT: Well you were in federal court
6 with your motion there.

7 MR. NYHUS: We were in federal court with the
8 motion and the reason we brought this motion is because
9 we believe Brian Laducer is an indispensable party. I
10 mean, our actions in this case - - if you look back to
11 the inception of it we tried to bring him in from the
12 get go as soon as we knew that this was going to be the
13 case that would be litigated, and we did so promptly in
14 federal court, and we ask that he be joined as in
15 indispensable party here.

16 Now we ask that he be joined under Rule 19(a)
17 which says that a person must be joined if in the
18 person's absence complete relief cannot be accorded
19 among those already parties, and Dish needs to be able
20 to have complete relief in this situation. We've
21 already got a situation of piecemeal litigation and we
22 want to stem that tide.

23 Complete relief to Dish would be being allowed to
24 tell the whole story, being allowed to have everybody
25 present and joined in the matter, and exercising our

1 rights and defenses that all arose out of the same
2 transaction, the same contract, and that needs to
3 happen, and the only way it can happen is if Brian
4 Laducer is made a party to this action. And Dish is
5 already a party so I believe Rule 19(a) applies and
6 squarely applies.

7 There are four factors that the Court is directed
8 to look at under 19(b), and those factors come into
9 play when jurisdiction is in question. I believe it's
10 in the reply brief that we filed last month. It's on
11 the fifth page of the reply brief at the bottom. Rule
12 19(b) directs the Court to decide whether in equity in
13 good conscious the action should proceed among the
14 parties before it, or should be dismissed, the absent
15 party being regarded as indispensable, and the citation
16 to Estate of Murphy v. Murphy says, in summary, that
17 when jurisdiction is a question that - - let's see here
18 - - then if they're not able to be made a party then
19 they're indispensable and the remedy for an
20 indispensable party in an action which has not been
21 brought in is a dismissal. And I guess that we would
22 ask that first Brian Laducer be ruled as - - be ruled
23 to be a necessary party and, because of the
24 jurisdiction issue, if he does not appear then he be
25 deemed indispensable because the Court cannot get

1 jurisdiction over him and this matter be dismissed.

2 THE COURT: Well let's not put the cart in
3 front of the horse.

4 MR. NYHUS: Okay.

5 THE COURT: We've only got the one motion
6 that we're looking at now and that's whether or not to
7 add.

8 MR. NYHUS: Thank you, Your Honor. We ask
9 that he be added and then, if he isn't, we'll address
10 the remedy later. But that is where we would be going
11 would be asking for a dismissal if he doesn't step
12 forward because every factual scenario involves him,
13 and if you look at the discovery in this matter a
14 majority of them reference him. It's been alluded to
15 many times that jurisdiction is a question and I don't
16 think it's a good faith statement that he would be
17 produced as a witness if we subpoenaed him. I think
18 making him a party or deeming him a necessary party is
19 the only remedy that this Court should - - it's the
20 only way that this case can be brought in front of a
21 jury and the whole story told. And in equity in good
22 conscious this case shouldn't be allowed to proceed
23 without that.

24 So I guess I'll stop there. We rest on the
25 briefs, and I guess we'd ask for a couple seconds to

1 respond.

2 THE COURT: Sure.

3 MR. NYHUS: Thanks.

4 THE COURT: Okay, thank you. Who's - -

5 MR. DICKSON: Mr. Johnson, Your Honor.

6 THE COURT: All right, thank you.

7 MR. JOHNSON: Good morning, Your Honor. I'm
8 Ariston Johnson, as I pointed out earlier.

9 THE COURT: Yes.

10 MR. JOHNSON: And I'm here representing Lacy
11 Laducer. I'm here before the Court to be - - our brief
12 is succinct and hopefully my argument will remain the
13 same. I can't make any promises.

14 THE COURT: Promises.

15 MR. JOHNSON: No promises at all, but I will
16 do my best.

17 THE COURT: Sure.

18 MR. JOHNSON: The problem with this motion is
19 that Dish has not pointed out any of the claims or
20 defenses in this action that actually require Brian
21 Laducer to be a party to this action for the Court or
22 the jury to reach a decision on. It's a claim by Lacy
23 Laducer against Dish Network for conversion and, to the
24 extent that Brian Laducer is necessary in the discovery
25 process, that's not surprising because it was through

1 his account that the actual conversion that we allege
2 took place. But that doesn't make him a necessary
3 party. He is certainly a necessary witness and Dish
4 has not so far done anything to attempt to take his
5 deposition or subpoena him or otherwise obtain
6 discovery from him.

7 Their argument is that it would be impossible to
8 do so without him being a party to this lawsuit, but
9 that's just not the case. The subpoena power is the
10 remedy for Dish Network in this matter.

11 Moreover, to the extent that everyone must be in
12 front of the Court to tell the whole story, well
13 there's a lot more to the story than just Brian
14 Laducer, and the Court has entered a protective order
15 limiting discovery - - quite severely limiting
16 discovery recognizing that, of course, by limiting
17 discovery the whole story cannot be told. But in the
18 interest of the efficiency of litigation the Court has
19 deemed it appropriate to limit the story that will be
20 told. So Dish Network should not be allowed to come in
21 here on one day and say that this case is so small that
22 discovery should not be allowed any further by the
23 plaintiff, and then on another day come in and ask the
24 Court to add a party all of a sudden.

25 THE COURT: Well now and in the order that I

1 cut last week you noted more than one or two
2 references to as the status of the matter at this time
3 or the status of pleadings.

4 MR. JOHNSON: Yes.

5 THE COURT: So I grant this motion that - -
6 status changes so I wouldn't - - if I grant the motion
7 I'm not handcuffing you on the discovery on the status
8 quo there so...

9 MR. JOHNSON: Well I appreciate that, Your
10 Honor, but - -

11 THE COURT: So we're understood there.

12 MR. JOHNSON: - - the efficiency concerns
13 that the Court was addressing in granting that
14 protective order still exist today, and the whole
15 purpose of the rules of procedure are to make the
16 lawsuit more efficient to litigate.

17 THE COURT: I guess I - -

18 MR. JOHNSON: And by adding a party at this
19 stage just so that we can call him as a witness, that
20 does not make this a more efficient litigation. The
21 allowing Dish Network to subpoena Brian Laducer and
22 take his deposition would be a much more efficient
23 solution than bringing him in as a party when Dish
24 Network cannot point to a single claim or defense in
25 the pleadings that actually requires Brian Laducer's

1 presence in order to resolve.

2 Furthermore, Dish Network had the opportunity to
3 bring Brian Laducer in previously and did not do so
4 until bringing this motion. They had the opportunity
5 in serving their answer to raise any third party
6 complaint that they may have, and the law is that they
7 are required to do that on their own accord, not to
8 come to the Court and ask the Court to bring in someone
9 that they failed to earlier on.

10 Given that he's not a necessary party at all and
11 would only complicate the litigation beyond the scope
12 that we already have for what the Court has seen as a
13 situation that needs to be made more efficient not
14 less, I think that the motion here is inappropriate and
15 should be denied.

16 THE COURT: Frankly, I wasn't real subtle
17 when you - - on your comments on efficiency there. So
18 is it - - and I'm not trying to play devil's advocate
19 here necessarily but you've got me thinking. So is
20 there a problem the fact that the effort to bring in
21 your client's father wasn't brought earlier or is there
22 some kind of an estoppel here or what's...

23 MR. JOHNSON: Well, Your Honor, Rule 19(a)
24 requires the defendant here to have brought him in when
25 they filed their answer or within a certain period of

1 time after having done so under the rules of pleading.
2 So I guess I would argue that they are estopped by
3 their failure to bring him in at the appropriate time.
4 I think that there was another rule involved besides
5 19(a) but - -

6 UNIDENTIFIED SPEAKER: Rule 14?

7 MR. JOHNSON: I think it is. We did cite to
8 it in our brief.

9 THE COURT: Yeah.

10 MR. JOHNSON: Rule 14(a), yeah. They have
11 ten days after filing their answer to make an amendment
12 to bring a third party complaint.

13 THE COURT: Okay.

14 MR. JOHNSON: But really the important issue
15 here, Your Honor, is that there is no point to bringing
16 Brian Laducer in. It doesn't serve any of the ends of
17 justice in this case. He is, admittedly, an
18 indispensable witness, but he's not even a relevant
19 party to any of the claims, and as to bringing in as
20 parties anyone that's necessary to tell the whole
21 story, well there are a lot of Dish Network subscribers
22 out there, and the sheer volume of consumer complaints
23 that they have received in this state and other states
24 is indicative that there are many people that have a
25 story to tell about Dish Network. So saying that we

1 need Brian Laducer to tell his part of the story would
2 just indicate opening the flood gates for far too many
3 witnesses to come before the Court. I'm hoping I'm
4 making sense with that.

5 THE COURT: Well what's troubling me, to be
6 candid with you right now, is that I was a Dish Network
7 subscriber. Now does that make me a potential witness?
8 I mean, do I need to bail out on this?

9 MR. JOHNSON: Well, according to Dish
10 Network's argument, it makes you a potential party.
11 Not just a witness but a potential party, and I think
12 that that's wrong. I don't think that you would be a
13 potential party. I don't think that my family members
14 that are Dish Network subscribers are potential parties
15 or witnesses to this case. But Dish Network is saying
16 that because Brian Laducer was the subscriber here and
17 it was his account through which they - - as we alleged
18 fraudulently charged our client's banking card that
19 he's a necessary party and that - - it's just a
20 non-sequitur argument. There is a missing step in the
21 logic from where they're standing to getting Brian
22 Laducer in here as an indispensable party.

23 THE COURT: The - - in fairness - - because
24 it really hadn't occurred to me until you started
25 talking about other Dish Network - - I was a Dish

1 Network subscriber when I moved here four and a half
2 years ago and when cable came through two years ago?

3 MS. PARRILL: Yeah, I think so.

4 THE COURT: Okay, two years ago then. I
5 became a very happy cable subscriber. Whatever
6 difference that makes it's now been disclosed so...

7 Okay I - -

8 MR. JOHNSON: Oh, that makes no difference to
9 me, Your Honor, but it's - - it is a salient point that
10 for Brian Laducer to be an indispensable party here the
11 Court could very well itself be an indispensable party,
12 as could millions of Dish Network subscribers, and
13 that's not appropriate in this litigation, and for that
14 reason alone Brian Laducer should not be brought in as
15 a party.

16 THE COURT: All right. Is that - - are you
17 pushing your chair back because is that your signal
18 that he's done?

19 MR. JOHNSON: Your Honor, I believe that I've
20 covered the points that need to be made.

21 THE COURT: Okay.

22 MR. JOHNSON: If you have any further
23 questions I'd be happy to address those.

24 THE COURT: Okay.

25 MR. JOHNSON: Otherwise I will rest.

1 THE COURT: Thank you.

2 MR. JOHNSON: Thank you.

3 THE COURT: Now on the Rule 14 it's - - the
4 ten days is to bring in third party is a matter of
5 right otherwise they have to go the route that we're
6 here on today. So, any response? You're ready to
7 pounce.

8 MR. NYHUS: Sorry, Your Honor.

9 THE COURT: That's okay.

10 MR. NYHUS: I didn't mean to be projecting
11 but would probably agree that - - or it's obvious that
12 we don't agree with a lot of those statements. One, I
13 guess I was thinking about this newly posed question
14 about the scope of this case and the scope of
15 permissible parties prompted by your disclosure that
16 you used to be a Dish customer. I'm sure Dish would
17 welcome you back as a customer but - - they might even
18 give you a real good deal.

19 THE COURT: Yeah, probably. Yeah.

20 MR. NYHUS: I'm kidding. How about we limit
21 it to those people that were involved in the contract
22 in this case signed by Brian Laducer? It seems like a
23 logical way to do it. I agree, I mean the scope of
24 this thing it should not be ridiculously expanded and
25 it's been limited. The status of the pleadings here

1 involve Lacy and Dish. We want them to involve Brian
2 because he was a party to the Dish contract. It
3 wouldn't involve any other customers of Dish because,
4 frankly, they're not relevant. But those parties that
5 we've been discussing here today are absolutely
6 relevant and they're indispensable.

7 The claims that Dish will bring, they've been set
8 forth in the third party complaint that was in federal
9 court. I believe there's four of them: conversion for
10 not returning the equipment, breach of contract,
11 implied indemnification, and fraud. There's a question
12 as to the extent of his authority to provide the card,
13 and he told us in the contract that he had authority to
14 use it, and then now this lawsuit is hinging on the
15 question of well no he didn't and Dish is a bad, bad
16 corporation for believing that when he told us he had
17 authority that he actually did. And so that is what
18 makes him an indispensable party here and, I mean,
19 either way you cut it if he didn't have authority our
20 claims are viable, and if he did have authority we were
21 okay in charging the card. So he needs to be made a
22 party to this action.

23 And then, I mean, there's the breach of contract
24 claim which arises out of the transaction or occurrence
25 involved in this litigation, and we should be able to

1 exert that claim against him. The equipment claim is
2 pretty straight forward. We haven't received the
3 equipment back. It's been deposited in Mr. Dickson's
4 office, but that's not returning it. We sent the boxes
5 to have him provide the equipment back to us, which he
6 didn't do. I mean, if Dish had to go and retrieve
7 their equipment they would have done it at his house
8 when they went and cancelled the services. So I
9 believe that's a viable claim..

10 And then there's a claim for implied
11 indemnification. There is no indemnification clause in
12 the contract, and under North Dakota law we are
13 authorized to bring a claim for implied
14 indemnification, and we need to be able to show the
15 Court and the jury the essence of that claim.

16 Regarding the Rule 14 - - I believe it was Rule 14
17 that we were discussing, the Court has wide latitude in
18 allowing the amendment to the pleadings for joining the
19 parties, and so I don't think there's been any sort of
20 violation here especially, you know, since we are
21 going to the Court and asking them to - - asking you,
22 Your Honor, to join Mr. Laducer. I don't see any
23 possible way how that could be improper.

24 I'm trying to think if there is any other points
25 that I need to address. No, I just need to reiterate I

1 think the logical way to run this case is to have
2 Brian Laducer here because he's the whole reason that
3 Lacy Laducer has any purported damages, and they may
4 not even be damages. I mean, he was authorized to
5 charge the card. She said as much in her pleadings.
6 How can Dish possibly be liable under any theory for
7 doing what we were authorized to do by all parties
8 involved? So if we're going to somehow be liable for
9 that, all parties should at least be before the Court.

10 Now there are four factors that the Court should
11 look at, I guess. They involve more of the dismissal
12 route of this and I'll take note that I shouldn't put
13 the cart before the horse. But if we get there, that's
14 where they are is in Rule 19

15 THE COURT: Yeah. To be honest with you the
16 discussion of poten... Let's face it, I grant your
17 motion. We then enter the mine field that faces us
18 with these jurisdictional issues. This is - - moving
19 up here four and a half years ago, you know, I had
20 never contemplated how complicated life could be when
21 you've got the jurisdictional problems that we have,
22 and problems - - I don't mean that in a bad sense. I
23 mean that in a challenging sense.

24 MR. NYHUS: They're a fact of life.

25 THE COURT: That not only cases like this but

1 custody matters, criminal matters. Quite literally my
2 nightmare is that we have highways that half is on
3 reserva - - half is on trust property or reservation,
4 half is on state land, and my nightmare is that I've
5 got a trooper following someone who weaves, you know,
6 across the line, and then does that create a
7 jurisdictional problem? I don't know. It's - - so
8 this - - so I don't want to venture out there any
9 earlier than I have to.

10 I'm willing - - I'm not trying - - wanting to cut
11 anybody off. If there's anything you want to go back
12 and forth, I'll listen all day if there's anything
13 else. I'm not inviting but I'm just saying if you want
14 to - - have anything to say then you can do tag team
15 here if you want to.

16 MR. JOHNSON: Your Honor, I have no intention
17 of going all day.

18 THE COURT: Okay.

19 MR. JOHNSON: But I do have one quick - -

20 THE COURT: Sure.

21 MR. JOHNSON: - - very quick point that I
22 will remain seated throughout so that I can't even
23 speak too long.

24 THE COURT: That's fine. That's fine.

25 MR. JOHNSON: If Brian Laducer is a necessary

1 party because of his involvement in the contract that
2 made this cause of action a possibility of happening,
3 then the Dish Network installer would be another
4 necessary party, and some of our discovery that has not
5 been answered to date involves the installer that was
6 in charge of this contract and also the other
7 obligations that Dish Network had through its contracts
8 with others, including the state and attorney generals
9 of many states involving this exact type of matter.

10 THE COURT: Well that's where you and I part
11 company there.

12 MR. JOHNSON: So it's still a flood gate - -
13 even under the defendant's view of joining Brian
14 Laducer it's still a flood gate to add him as a party.

15 THE COURT: By installer I'm - - you know - -
16 my terminology would be the local agent?

17 MR. JOHNSON: Well I'm using the word
18 installer to avoid raising any kind of an argument over
19 agency.

20 THE COURT: Okay.

21 MR. JOHNSON: But certainly that would be one
22 term for it.

23 THE COURT: Well for me the Nodak store here
24 is where you go to or at least it's where I did.
25 There's other ones you can call, long distance things,

1 but is who I went to here to get the Dish hooked up.
2 It was already there. In fact, it still is. You don't
3 send the satellite back. You send the receiver thing
4 but - -

5 MR. NYHUS: Yes, Your Honor, if I could
6 respond to that. The name of the independent
7 contractor who did the installation has been provided.
8 It was provided in the discovery before the motion for
9 protective order was even filed, and I think if you
10 take another look you'll see that they're there.

11 THE COURT: Okay.

12 MR. NYHUS: And they are independent
13 contractors, not agents. But that's the only thing I
14 have to say.

15 THE COURT: Yeah that - - I misspoke.

16 MR. JOHNSON: That's all I have, Your Honor.

17 THE COURT: Okay. Thank you. You know, with
18 all the effort that is in front of me here that's been
19 put into this reading the briefs and listening to you,
20 and I keep hoping for some epiphany, you know, a light
21 bulb is going to go off and I'll be able to come up
22 with some astute observation or comments that would
23 justify all of the effort that you folks have put into
24 this, and it's been substantial and I do appreciate it.
25 You know, I editorialized somewhat in the last order in

1 terms of the amounts involved, but don't for a minute
2 think that I'm deprecating the work that's been done on
3 it, and I've enjoyed and been educated reading your
4 work products.

5 But, unfortunately, I have a rather simplistic
6 perspective here. I could look at it selfishly - - and
7 pardon me if I meander a little bit right now. The
8 easiest thing for me to do would be to deny the motion
9 because then I don't have to deal any more with the
10 jurisdictional (sic). I think I would have to be
11 dealing with jurisdictional matters.

12 We have the potential class action motion
13 forthcoming. I don't know if anything has changed on
14 that but that's - - I'm assuming that's still possibly
15 in the offing, and that's another reference that I was
16 - - had in mind when I referred to the present status
17 of the case in the discovery order. But it just seems
18 to me that but for the relationship between Brian
19 Laducer and Dish we wouldn't be here. If the credit
20 card number had not been provided by the plaintiff's
21 father to Dish there wouldn't be a case, and so it
22 seems to me that Brian Laducer is more than a witness,
23 that in a worst case scenario of his involvement he's
24 committed a fraud both on his daughter and on Dish
25 Network, taking some of the allegations that they've

1 been made that as I've been reading them here. The
2 most sympathetic view could be that both Brian and Lacy
3 are victims of a scheme that's been implemented by
4 Dish.

5 So those - - we have the perspectives and in
6 either case, from my view, Brian is unquestionably very
7 important as a witness. But it seems to me that he's a
8 party or should be a party because either he has
9 participated to an extent in the contractual
10 relationship and business relationship that makes him
11 indispensable or he's also a victim. Realizing there
12 is other litigation going on - - but that's outside of
13 my purview - - the one comment - - and it was in the
14 brief - - not today but in plaintiff's brief and I
15 don't know for sure who the author of it was - - but
16 the reference to the irrelevant contention that Brian
17 Laducer caused Dish to charge Lacy Laducer's account.
18 It seems to me that that's not irrelevant. That's the
19 very essence of the case that but for the providing of
20 the number - - rightly or wrongly done, authorized or
21 unauthorized, that remains to be resolved - - that
22 that's what this case is all about, and for that reason
23 I'll grant the motion. And I raised the question to
24 begin with and I viewed it in the federal court motion
25 your pleadings were set up as a third party defendant,

1 Mr. Nyhus. Is that what you're intention would be
2 here?

3 MR. NYHUS: Your Honor, we would issue that
4 in - - well, I don't know. I don't know if we'd issue
5 the third party complaint again or if we would ask just
6 for the joinder.

7 THE COURT: Because to me the federal court
8 is - - that's a nullity.

9 MR. NYHUS: Yeah. We can definitely refile.

10 THE COURT: It never happened.

11 MR. NYHUS: And we would ask the Court for
12 relief to refile that and see where it goes with
13 service and whether or not Brian, you know, goes the
14 route of challenging jurisdiction or whether he
15 voluntarily appears. Because the ball is in his court.
16 He could voluntarily appear and waive any
17 jurisdictional question that may exist. So we would -
18 - I think we would issue a third party complaint or
19 else - - well, I guess we've - -

20 THE COURT: Well I'll permit you to add - -

21 MR. NYHUS: We've asked for him to be joined
22 - - joined as a party.

23 THE COURT: Okay, well I'll permit you to add
24 him as a party.

25 MR. NYHUS: Okay.

1 THE COURT: And give you ten days to make up
2 your mind.

3 MR. NYHUS: We'll do that.

4 THE COURT: How you want to do it. If you do
5 - - we need to fish or cut bait - -

6 MR. NYHUS: Yeah.

7 THE COURT: - - as to just how - -

8 MR. NYHUS: I understand.

9 THE COURT: - - how it's going to be
10 accomplished and at that point not having... Well
11 having taken a position here now that opens up a whole
12 lot of other issues, I suspect we'll be hearing from
13 each other if not seeing each other again in the
14 future. Would this - - Mr. Dickson, since you were on
15 the line when we first talked about scheduling, would
16 what I'm doing here today cause you to need more time
17 to decide where you're going with a potential class
18 action? You've got until September 1st to file your
19 motion.

20 MR. DICKSON: Judge, yeah. I mean this is
21 going to change the protective order as of today, too.

22 THE COURT: I understand that. That's as I -
23 - you know, I've fully acknowledged that. I was
24 dealing with the cards that I had at the time.

25 MR. DICKSON: Sure. No, I understand and I -

1 - that's fine, Your Honor. It will - - it's going to
2 change the complexion of the case and it... Yes,
3 September 1st will not be enough time for - -

4 THE COURT: Okay and in fairness - -

5 MR. DICKSON: That's for the class brief.

6 What was the - -

7 THE COURT: That was to make your motion to
8 bring the class action.

9 MR. DICKSON: What was the deadline to amend
10 the pleadings? I don't have that in front of me.

11 MR. NYHUS: I believe that was October. I
12 just looked...

13 MR. DICKSON: We're going to have to back
14 those dates up, yes.

15 THE COURT: You're - - you've probably got
16 something there, Chris, that's indexed. I don't.

17 MR. NYHUS: Well it would have been on the
18 scheduling order.

19 THE COURT: Yeah, if it was anywhere.

20 MR. DICKSON: You know, Judge, can we have
21 the same ten days to get back to you on the schedule?

22 THE COURT: Sure. That would be fine.

23 MR. DICKSON: I'll take a look at it when I
24 get back.

25 THE COURT: Because, in fairness, Mr. Nyhus

1 could have brought his motion on this a little quicker
2 and I realize I'm putting you in a time crunch, too.
3 Sure.

4 MR. DICKSON: I'll take a look at it.

5 THE COURT: And there's a lot going on here
6 and that's for sure, and we're in the dog days and
7 nobody is real ambitious right now and I plead guilty
8 there.

9 MR. NYHUS: It was September as well.

10 THE COURT: Okay, so we may need to look at
11 doing something on that.

12 MR. NYHUS: Okay.

13 THE COURT: So, all right, if we - - and feel
14 free to answer candidly on this - - if we have to have
15 any more hearings, unless there is testimony involved
16 I'm happy to do them by phone. I'm also happy to see
17 you. I enjoy having people up here. I don't get to
18 see new faces very often up here.

19 MR. DICKSON: It's a lot easier driving here
20 in August than in January.

21 THE COURT: Okay.

22 MR. DICKSON: Especially at the speed we went
23 this morning.

24 THE COURT: Yeah, but it - - well if you had
25 been driving about 11:00 o'clock last night you

1 wouldn't have needed lights. You've got - - you saw
2 the lightening. Boy, it was a great show. But we
3 could - - what I'm getting at is we can do hearings
4 here or in Rolla. Whatever is convenient. I'm here
5 more often. I do, on even numbered months, have a
6 little bit of a scheduling problem because that's when
7 McClintock has Rolla criminal cases.

8 MR. DICKSON: Bottineau is your home
9 chambers, isn't it?

10 THE COURT: Oh, yeah. This is where - - and
11 it is - - I know it's inconvenient for parties to have
12 to drive over, but on the other hand it's closer for
13 you guys. I just did a Rolette County case here
14 yesterday and - -

15 MS. PARRILL: Should I go off the record?

16 THE COURT: Donavin Grenz drove up from
17 Linton so...

18 MS. PARRILL: Can I go off the record?

19 THE COURT: No, not quite yet.

20 MS. PARRILL: Okay.

21 THE COURT: So, anyway, just make the point
22 that we've got flexibility, and whatever works for you
23 gentlemen location-wise or phone-wise matters not to
24 me.

25 MR. NYHUS: May Tom - - or Ari and I, we can

1 touch base on what we think the hearing would require.

2 THE COURT: And then in terms of the timing,
3 yeah, you need - - let's just - - I'd like to know
4 within ten days. It doesn't have to be formal but send
5 me a letter if you're going to need more time and any
6 suggestions that way and in terms of how you plan to go
7 about the additional party.

8 MR. NYHUS: I'll do that, Your Honor.

9 THE COURT: So, okay, now we can go off
10 party.

11 [Whereupon the proceedings were adjourned at
12 9:33 a.m.]

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C E R T I F I C A T E

I certify that the foregoing is a true, accurate, and complete transcript from the electronic sound recording of the requested portions of the proceedings in the above-entitled matter.

Lori Schlieve

Dated: November 14, 2010