

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In re)
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Cases Filed by DIRECTV, INC.,)
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O R D E R

This Order Pertains to
the Following Related Cases:

- CV 03-00884-PHX (HRH); CV 03-00967-PHX (HRH); CV 03-00968-PHX (HRH);
- CV 03-00969-PHX (HRH); CV 03-00970-PHX (HRH); CV 03-00971-PHX (HRH);
- CV 03-00972-PHX (HRH); CV 03-00973-PHX (HRH); CV 03-00975-PHX (HRH);
- CV 03-00976-PHX (HRH); CV 03-00977-PHX (HRH); CV 03-00978-PHX (HRH);
- CV 03-00979-PHX (HRH); CV 03-00981-PHX (HRH); CV 03-00982-PHX (HRH);
- CV 03-00984-PHX (HRH); CV 03-00985-PHX (HRH); CV 03-00989-PHX (HRH);
- CV 03-00991-PHX (HRH); CV 03-00992-PHX (HRH); CV 03-00993-PHX (HRH);
- CV 03-00995-PHX (HRH); CV 03-00997-PHX (HRH); CV 03-00998-PHX (HRH);
- CV 03-00999-PHX (HRH); CV 03-01000-PHX (HRH); CV 03-01001-PHX (HRH);
- CV 03-01002-PHX (HRH); CV 03-01424-PHX (HRH); CV 03-01774-PHX (HRH);
- CV 03-01775-PHX (HRH); CV 03-01776-PHX (HRH); CV 03-01777-PHX (HRH);
- CV 03-01778-PHX (HRH); CV 03-01794-PHX (HRH); CV 03-02147-PHX (HRH);
- CV 03-02148-PHX (HRH); CV 03-02149-PHX (HRH); CV 03-02181-PHX (HRH);
- CV 03-02182-PHX (HRH); CV 03-02352-PHX (HRH); CV 03-02450-PHX (HRH);
- CV 04-00172-PHX (HRH); CV 04-00173-PHX (HRH); CV 04-00174-PHX (HRH);
- CV 04-00175-PHX (HRH); CV 04-00176-PHX (HRH); CV 04-00177-PHX (HRH);
- CV 04-00178-PHX (HRH); CV 04-00179-PHX (HRH); CV 04-00180-PHX (HRH);
- CV 04-00182-PHX (HRH); CV 04-00183-PHX (HRH); CV 04-00184-PHX (HRH);
- CV 04-00185-PHX (HRH); CV 04-00191-PHX (HRH); CV 04-00192-PHX (HRH);
- CV 04-00193-PHX (HRH); CV 04-00195-PHX (HRH); CV 04-00196-PHX (HRH);
- CV 03-02180-PCT (HRH); CV 04-00181-PCT (HRH); CV 04-00194-PCT (HRH);
- CV 03-00593-TUC (HRH); CV 03-00618-TUC (HRH); CV 04-00043-TUC (HRH);
- CV 04-00044-TUC (HRH); CV 04-00045-TUC (HRH); CV 04-00046-TUC (HRH)

Case Management Order No. 1

The clerk of court shall enter this and similarly captioned future orders in each of the above-numbered cases and cause a copy thereof to be delivered to all PARTIES.¹

A.

General Provisions

(1) Unless and until otherwise ordered by the court, all of the above-numbered cases--henceforth referred to as "JMC" (meaning "jointly managed cases)--will be managed by the court as a group but are not consolidated.

(2) This Case Management Order No. 1 shall govern proceedings in the JMC until, after consultation with the PARTIES, a more detailed case management order(s) and/or scheduling order(s) have been entered.

(3) Judge Holland has been designated by the Ninth Circuit Court of Appeals to the District of Arizona for purposes of, among other things, managing this block of related civil cases filed or hereafter filed by DirectTV, Inc. The JMC remain pending in the District of Arizona. Case management and decision-making will be carried on from chambers in Alaska. Trial and any other proceedings requiring the participation of all PARTIES will, insofar as possible, be scheduled in the District of Arizona.²

¹ By PARTIES, the court refers to counsel for represented defendants and pro se defendants.

² But see paragraph C(3) having to do with oral argument on motions.

(4) Judge Holland does not have easy access to the original case files of the clerk of court and must therefore construct a chambers file for each of the JMC. It is the court's perception that wholesale reproduction of the case files should not be necessary. Many miscellaneous filings, although required, have no ongoing utility in the development of a case. Therefore, each of the PARTIES shall, within 14 days following the docketing of this Case Management Order No. 1, provide the court at Anchorage with all documents filed in each case which the PARTIES perceive to have ongoing importance for the development of the case, such as plaintiff's complaints, defendants' answers, and filings having to do with undecided motions. Each PARTY shall be responsible for providing the court with copies of documents generated by the PARTY.³

(5) Communications with the court, except as to routine administrative matters shall be in writing in an appropriate pleading, served upon the opposing PARTY and Judge Holland, and filed with the court. PARTIES should not communicate with the court by letter and shall not copy the court with correspondence exchanged between counsel. Facsimile transmission of documents to Judge Holland is discouraged and shall be accepted only when prearranged with chambers based upon a clear need for expedited delivery.⁴

The court is considering setting up a DirectTV site on the Arizona District Court internet page by which the court may infor-

³ The PARTIES need not provide the court with copies of orders, as these documents are readily available to the court electronically.

⁴ Prior authorization for each transmission is required.

mally advise PARTIES of recent developments in the JMC. i.e., the entry of an order on some subject.

(6) Referrals of any of the JMC or motions pending in them to a United States magistrate judge are vacated.

(7) Beginning with the entry of this Case Management Order No. 1, the court will be setting compliance dates. The court will always endeavor to provide a reasonable amount of time within which PARTIES are to act or respond. In order that the JMC may proceed smoothly and expeditiously, it is absolutely necessary that priority attention be given to obligations in the JMC. Not returning telephone calls or "I'm busy with something else" will not be tolerated. Except where the court has expressly stated otherwise, PARTIES are at liberty to stipulate for an extension of time so long as such extension of time does not adversely impact other obligations on some PARTY in this case and so long as the extension of time is brief and reasonable. A stipulation for an extension of more than seven days calendar days in duration shall state the reason for the stipulation, and multiple extensions of the same obligation will, except for compelling circumstances, be rejected.

B.

Filings Submitted to the Court

Ordinarily, counsel are required to submit to the clerk of court a copy of any document tendered for filing. That copy, after docketing, is forwarded to the chambers of the Arizona judge to whom the case is assigned. Commencing upon receipt of a copy of

this order, the PARTIES in these JMC shall accomplish the following with respect to any document that is to be filed in these cases:

(1) The originals only of all documents shall be presented to the clerk of court as usual.⁵

(2) A legible, complete copy shall be mailed by priority mail to:

Judge H. Russel Holland
United States District Court
222 West 7th Avenue - No. 54
Anchorage, Alaska 99513

concurrent with the filing of the original with the clerk of court.

(3) Counsel shall incorporate into their certificate or affidavit of service a certification or affirmation that:

A complete, duplicate copy of this document has been forwarded directly to Judge Holland.

C.

Motion Practice

(1) Motion practice is stayed pending the development of a second, more detailed case management order which will make provision for phased motion practice and/or limited consolidation of the JMC for purposes of determining issues common to some or all of the JMC. Excepted from this stay order are the following:

⁵ Do not send extra copies to the clerk's office or a previously assigned judge. Doing that causes confusion and needless work.

- (a) applications for pro hac vice status by counsel;
- (b) applications for the entry of default for failure to answer; and
- (c) stipulations for orders in lieu of motion practice.

(2) The court will consider, ex parte, applications⁶ to lift the stay on motion practice for purposes of considering emergency matters. A PARTY wishing expedited consideration of a matter not otherwise permitted by a case management order shall serve and file an application for relief from the stay on motion practice and shall serve and lodge the proposed motion. The application shall be supported by a brief memorandum of reasons explaining why the matter should be taken up on an expedited basis.

(3) Judge Holland has access to the Arizona court's computerized case data, including that data needed to track the progress of motion practice. Motion practice in these JMC will, as and when authorized, be conducted pursuant to Arizona Local Rules as modified by the court's case management orders. Unless otherwise ordered, oral argument on motions (when granted) will be conducted by telephone to the court at Anchorage, Alaska. Oral argument will be arranged by the court only after briefing is completed and the court has reviewed that briefing.

⁶ Objections or responses to such applications will not be considered.

(4) Counsel are reminded of their obligation to tender proposed orders when submitting motions or stipulations for the court's consideration. The original of a proposed order should be sent to Anchorage, Alaska, with the judge's copy of the motion papers.

D.

Status of Dismissed PARTIES

By order of March 27, 2004, Judge Bolton confirmed her earlier order of December 9, 2003, dismissing all but the first named party in a number of the JMC. Within 14 days following the docketing of this Case Management Order No. 1, the court desires to be informed by the PARTIES as regards the following:

(1) Does plaintiff intend to refile as to the dismissed defendants? If so, when?

(2) Are there defendants in the JMC who are not affected by the above-referenced dismissal orders but who believe that they are entitled to an order of dismissal under Rules 20 or 21, Federal Rules of Civil Procedure? If yes, any such defendant shall first, and within 14 days from the docketing of this Case Management Order No. 1, consult with counsel for plaintiff to ascertain whether plaintiff will stipulate to dismissals paralleling those ordered by Judge Bolton. Within 21 days from the docketing of this Case Management Order No. 1, any such defendants shall file either:

(a) a stipulation to dismiss for misjoinder;

or

- (b) as an exception to the stay on motion practice, serve and file an appropriate motion raising the misjoinder issue. (Plaintiff may respond and defendants may reply as authorized by local rules.)

After 21 days following the entry of this Case Management Order No. 1, further claims of misjoinder in the JMC will be deemed waived.

E.

Preview

Once the court has assembled and reviewed the files in the JMC and has received the requested information concerning the refiling of complaints and possible other misjoinder issues, the court will solicit input from the PARTIES as to such matters as:

- (1) requests for reexamination of administrative matters and possible organization of defense counsel;⁷
- (2) requiring plaintiff to make each defendant a "best early settlement" demand;

⁷ It strikes the court that if the JMC are to proceed smoothly and efficiently, it would be highly desirable for there to be some organization of defense counsel. Having said that, the court is not unaware of the fact that there are pro se litigants in this case; but inevitably it is counsel who have the expertise to assist the court with scheduling and planning for the JMC. The court encourages defense counsel to consider implementing a means of efficiently communicating with one another (presumably by e-mail). If this be done, it is hope there are pro se litigants who could join in an informal e-mail network for purposes of this case. As regards future planning, however, the court strongly urges defense counsel to collect and communicate amongst themselves their thoughts about how best to manage the JMC. Plainly, the future planning for this case would be greatly advanced if the defendants were more or less of one mind as to how the JMC should proceed.

(3) implementation of a procedure whereby defendants might agree (without further active participation in the JMC to have the benefit and burden of all rulings which affect such defendants;

(4) a calendar for preliminary motion practice--as to matters not fact-related and/or not requiring discovery;

(5) development of a discovery plan; and

(6) identification of a lead case or group of cases for purposes of litigating substantive issues common to some or all of the JMC.

F.

Conclusion

As detailed above, the PARTIES shall:

(1) on or before 14 days following the docketing of this Case Management Order No. 1, provide the court with copies of pertinent documents filed heretofore; and

(2) at the times specified herein, provide the court with reports, stipulations, and/or motions as regards the status of PARTIES and plaintiff's plans for refileing as to dismissed PARTIES.

DATED at Anchorage, Alaska, this _____ day of March, 2004.

H. Russel Holland
United States District Judge