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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: CenturyLink)	File No. 17MD2795
Residential Consumer Billing)	(MJD/KMM)
Disputes Litigation)	
)	
)	Minneapolis, Minnesota
)	December 14, 2017
)	1:30 P.M.
)	
)	
)	

BEFORE THE HONORABLE JUDGE MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT
(STATUS CONFERENCE)

Court Reporter: Kristine Mousseau, CRR-RPR
300 South Fourth Street
Suite 1005
Minneapolis, MN 55415

Proceedings recorded by mechanical stenography;
transcript produced by computer.

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1 1:30 P.M.

2
3 (In open court.)

4 THE COURT: Good afternoon. Please be seated.
5 Let's call this matter.

6 THE CLERK: In Re: CenturyLink Residential
7 Consumer Billing Disputes Litigation, which is MDL case
8 number 17MD2795.

9 Counsel, please state your appearances for our
10 record.

11 MS. ANDERSON: Good morning, Your Honor. Carolyn
12 Anderson from Zimmerman Reed on behalf of plaintiffs.

13 THE COURT: Good afternoon.

14 MR. O'MARA: Good afternoon, Your Honor. Mark
15 O'Mara from O'Mara Law Group also on behalf of the
16 plaintiffs.

17 MS. FELDMAN: Good afternoon, Your Honor. Lori
18 Feldman, Geragos & Geragos, on behalf of plaintiffs.

19 THE COURT: Good afternoon.

20 MR. GUDMUNDSON: Good afternoon, Your Honor.
21 Brian Gudmundson from Zimmerman Reed also on behalf of
22 plaintiffs.

23 THE COURT: Good afternoon.

24 MS. REGAN: Good afternoon. Anne Regan from
25 Hellmuth & Johnson on behalf of plaintiffs.

1 THE COURT: Everyone turn on their microphones.

2 MR. HEDLUND: Hello, Your Honor. Dan Hedlund,
3 Gustafson Gluek, on behalf of plaintiffs.

4 MS. CONLIN: Good afternoon, Your Honor. Roxanne
5 Conlin from Des Moines, Iowa, on behalf of the plaintiffs.

6 THE COURT: Good afternoon.

7 MR. McDONOUGH: Good afternoon.

8 THE COURT: When you go back to Des Moines, say
9 hi to Judge Pratt for me.

10 MS. CONLIN: I will, Your Honor. Thank you.

11 MR. McDONOUGH: Good afternoon, Your Honor. Jim
12 McDonough from Heninger Garrison Davis on behalf of
13 plaintiffs.

14 THE COURT: Good afternoon.

15 MR. DUBANEVICH: Good afternoon, Your Honor.
16 Keith Dubanevich with Stoll Berne on behalf of the State of
17 Oregon, the securities case.

18 THE COURT: Welcome.

19 MR. DUBANEVICH: Thank you, Your Honor.

20 MR. SANCHEZ: Good afternoon, Your Honor. Alfred
21 Sanchez from Albuquerque, New Mexico, on behalf of the
22 plaintiffs.

23 THE COURT: Welcome.

24 MR. SANCHEZ: Thank you.

25 MR. LOBEL: Good afternoon, Your Honor. Douglas

1 Lobel on behalf of CenturyLink and the affiliates.

2 THE COURT: Welcome.

3 MR. LOBEL: Thank you.

4 MR. McNAB: Good afternoon, Judge Davis. Bill
5 McNab, Winthrop & Weinstine, on behalf of the CenturyLink
6 defendants.

7 THE COURT: Good afternoon.

8 MR. VOGEL: Good afternoon, Your Honor. David
9 Vogel from Cooley on behalf of defendants.

10 THE COURT: Good afternoon.

11 MR. MOSS: Good afternoon, Your Honor. Dana Moss
12 from Cooley on behalf of the defendants.

13 MR. AAFEDT: Good afternoon, Your Honor. David
14 Aafedt from Winthrop & Weinstine on behalf of defendants.

15 THE COURT: Good afternoon.

16 MS. LLOYD: Channa Lloyd at the O'Mara Law Group
17 on behalf of the plaintiffs.

18 MR. MEISELAS: Good afternoon, Your Honor. Ben
19 Meiselas, M-e-i-s-e-l-a-s, Geragos & Geragos from Los
20 Angeles, on behalf of the plaintiffs.

21 THE COURT: Welcome.

22 MS. LOOBY: Good afternoon, Your Honor. Michelle
23 Looby from Gustafson Gluek on behalf of the plaintiffs.

24 THE COURT: Good afternoon.

25 MS. WANG: Good afternoon, Your Honor. Ling Wang

1 with Gustafson Gluek on behalf of the plaintiffs.

2 THE COURT: Good afternoon.

3 MR. RIDDLE: Good afternoon, Your Honor. This is
4 Bryce Riddle with the law firm of Zimmerman Reed on behalf
5 of the plaintiffs.

6 THE COURT: Good afternoon.

7 MR. ROBINOVITCH: Good afternoon, Your Honor.
8 Hart Robinovitch, also from Zimmerman Reed, from our
9 Arizona office.

10 THE COURT: I could tell. He is the only one who
11 has got a tan from the Zimmerman Reed Law Firm.

12 MR. FERNALD: Good afternoon, Your Honor.
13 Brandon Fernald from the Fernald Law Group from Nevada on
14 behalf of plaintiffs.

15 THE COURT: Okay.

16 MR. LANGLEY: Good afternoon. Ryan Langley from
17 Spartanburg, North Carolina, on behalf of plaintiffs.

18 THE COURT: Welcome to the north.

19 MR. LANGLEY: Thank you.

20 THE COURT: The winning side.

21 MR. KURTZ: Good afternoon, Your Honor. Orin
22 Kurtz for the plaintiffs from the law firm of Gardy & Notis
23 in New York.

24 THE COURT: Welcome. All right. Let's proceed.

25 Who is going to take the lead here?

1 MS. ANDERSON: Your Honor, Carolyn Anderson again
2 from Zimmerman Reed on behalf of plaintiffs. First of all,
3 we just want to thank the Court. We are pleased to be able
4 to be here to do the initial hearing for this important
5 case. We had originally decided to -- we wanted to make
6 sure the Court was introduced to those in the plaintiffs'
7 group that had leadership roles, but we were able to do
8 that.

9 So we wanted to first look at some of the issues
10 that the Court invited in the PTO, looking at the
11 leadership structure and the Case Management Order, and so
12 we have decided that among some of our counsel to be able
13 to address some of those issues that we expected the Court
14 would want to hear on and then possibly respond to some of
15 the Court's questions or agenda items that we might not
16 have prepared for.

17 I am going to be asking Lori Feldman from
18 Geragos & Geragos to be able to speak about the background
19 of the case, some of those issues that are pertinent to
20 this status conference and then the leadership structure,
21 and we will also take into account some of the discussion
22 we have had with the Court already.

23 Brian Gudmundson from my firm would be speaking
24 about the CMO and discussing issues around that and
25 informal exchange of information that we are working out

1 with defendants on that and giving the Court an update on
2 some of the efforts that have been engaged in already with
3 the parties.

4 And then finally, Mr. O'Mara will be looking at
5 highlighting issues for discussion that, you know,
6 occasions that we believe the Court would be interested in,
7 as well as talking about some of the coordination and
8 scheduling.

9 So with that, Lori Feldman will start on the
10 background of the case. Thank you.

11 THE COURT: You may begin.

12 MS. FELDMAN: Good afternoon, Your Honor. Lori
13 Feldman from the Geragos firm. The first complaint filed
14 in this MDL was filed in June of 2017 by the Geragos firm.
15 Law firms across the country then began being contacted by
16 CenturyLink customers who experienced similar losses and
17 struggles by the same deceptive conduct as alleged in the
18 Geragos complaint.

19 Our firm alone was contacted by more than a
20 thousand CenturyLink customers. This is quite striking.
21 Many of us have been in this practice for more than 20
22 years. We began coordinating with counsel from across the
23 country. First, in the various cases, we were coordinating
24 with various counsel, and we heard people telling us
25 stories.

1 It's important to note. The cases were initiated
2 by virtue of a former CenturyLink employee who is a
3 whistleblower. She, and her name is Heidi Hozler, and her
4 complaint was attached to the initial complaints, told her
5 story, and her story was ratified by several other stories
6 that we had been told by other whistleblowers. You will
7 see some of these stories in our consolidated complaint.

8 In addition, the case has gotten national
9 interest by other attorneys general, but in particular by
10 Attorney General Lori Swanson here in this great state of
11 Minnesota. Here, she was able to obtain an injunction by
12 CenturyLink, an agreement by CenturyLink with respect to
13 eliminating certain of the deceptive conduct that we're
14 alleging.

15 Again, the conduct that we are hearing concerns
16 repetitive consistent patterns of improper deceptive
17 practices, and the company itself had set up its own
18 internal investigation of the practices. Now, you will
19 hear two sides of the story, and I believe you already
20 have, Your Honor, heard two different sides of the story.

21 Defendants in their papers, they have indicated
22 that the thousands of consumers who have contacted us and
23 the representatives who have stepped forward are really
24 just an aberration, that it's a minuscule portion of the
25 customer base.

1 But for the attorneys that were fielding these
2 calls, we see something different, and we see something
3 deeply disturbing and striking. So it's going to be for
4 discovery to show whether the defendants' arguments that
5 their overcharges and mischarges were not widespread or
6 systemic or whether our story, which we believe is deeply
7 compelling, are accurate, whether the AGs' allegations
8 which defendants consented to on an injunction are accurate
9 or whether these whistleblowers and the consumers stepping
10 forward who are exposing these allegations about what was
11 really going on were accurate.

12 These form the core allegations of our case, and
13 we are looking forward to litigating those allegations
14 expeditiously, efficiently and aggressively. We have
15 before us, Your Honor, a lease structure which we discussed
16 a few minutes ago. We understand that Your Honor --

17 THE COURT: Excuse me. We forgot to identify the
18 people that are on the phone.

19 THE CLERK: That's true. Sorry about that.
20 Those on the phone, if you don't mind announcing your name
21 and the firm you're from.

22 MR. FULLER: Michael Fuller from OlsenDaines for
23 plaintiffs.

24 MR. WALSH: Bonner Walsh, Walsh PLLC, for
25 plaintiffs.

1 MR. GUTKIN: Jeff Gutkin from the Cooley firm for
2 defendants.

3 MR. BLATCHLEY: Mike Blatchley of the firm of
4 Bernstein Litowitz Berger & Grossmann on behalf of the
5 State of Oregon and lead plaintiff in the CenturyLink
6 securities class action.

7 MR. HAGSTROM: Richard Hagstrom, Hellmuth &
8 Johnson, for plaintiffs.

9 THE COURT: Welcome. I apologize for not calling
10 you earlier.

11 Proceed.

12 MS. FLOOD: I'm sorry. This is Alyssa Flood from
13 the O'Mara Law Group for the plaintiff.

14 THE COURT: Welcome.

15 MR. O'MARA: If I may interrupt, an instruction
16 to the people on the phone to mute their calls will avoid
17 the almost unavoidable interruption when something like
18 that does happen, Your Honor.

19 THE COURT: Please mute your phones. Thank you.

20 MS. FELDMAN: Our proposed leadership structure
21 is cohesive. We have been meeting regularly for months.
22 It's collaborative. We have been dividing our work into
23 meaningful projects. It's filled with experienced lawyers.
24 We have been in this business for many years, I myself for
25 more than, I hate to say, 25 years, and we know what to do

1 in these kind of cases.

2 We have been in MDLs before. We will do it again
3 here, again efficiently, hopefully effectively. We will
4 make sure that time reports are collected monthly, and we
5 will do our best to, without overlap, work this case in
6 such a way to bring about a successful resolution.

7 We respectfully submit that we believe that our
8 leadership slate is appropriate with respect to the
9 modification that Your Honor would like, when a particular
10 firm for which to have a voice. That will be proposed.
11 With that modification, we ask that the Court approve that
12 particular leadership structure, and thank you, Your Honor.

13 THE COURT: Thank you. Let me tell the people
14 that are on the telephone, we had a conference prior to
15 coming into court and just introducing myself to lead
16 counsel for both sides, plaintiffs and defendant. The one
17 aspect of the structure of the leadership for the
18 plaintiffs, there is three proposed co-counsel.

19 That's agreeable to me, but there has to be one
20 that is more equal than the other two that the Court will
21 be dealing with as lead counsel and will have the most
22 communication with dealing with for the plaintiffs' side.
23 So I just wanted people to understand that.

24 You may proceed.

25 MR. GUDMUNDSON: Thank you, Your Honor. Brian

1 Gudmundson from Zimmerman Reed, and I'm just going to make
2 a few remarks about the case management order that the
3 parties submitted. As you may have been able to determine
4 from the submission, the parties did meet and confer on
5 that quite successfully and came to an agreement that came
6 before Your Honor.

7 In the chambers conference you just referenced,
8 the Court didn't express any concerns as of yet with that
9 yet, but we remain open to discuss any concerns that may
10 pop up. A couple of things of note: We do have some time,
11 as you'll note, between now and when the consolidated
12 complaint is proposed to be filed, 60 days, approximately
13 60 days from now on February 15th, followed by a status
14 conference in March.

15 I believe it was raised with Your Honor in
16 chambers that there is going to be some preliminary things
17 going on during that time so that we're not, we're making
18 good use of our time and that some issues may pop up. I
19 wanted to highlight just a couple of those.

20 I know we referenced EESI, and one of the other
21 we referenced was the preliminary exchange of some informal
22 discovery to get some information moving. One of the
23 things that has been requested of the plaintiffs by the
24 defendants is the account numbers, and on its face that's a
25 very reasonable request, and it would be hard, I would be

1 hard pressed to come up with an argument as to why we
2 shouldn't turn over our account numbers so that we may be
3 identified.

4 But the matter is a little bit more complicated
5 than that, Your Honor, and one of the things that we intend
6 to raise with defendants, as we have let them know and I'm
7 letting you know now, is that we would like all the
8 information they have about the plaintiffs as well because
9 among these allegations that we make and that the attorneys
10 general make are duplicate accounts, accounts that people
11 may not even know about and accounts that may have been
12 used to create billings that were unauthorized and that
13 were in fact billed and attempted to be collected on.

14 So we will be requesting the full files for each
15 of the plaintiffs who have been on file so far, including
16 any contracts that the defendants assert should be applied
17 to them that they argue the plaintiffs have agreed to, the
18 invoices and any communications with customer service, and
19 those are just a few things.

20 I'm sure there is more in the file than that.
21 One of the other things that we intend to ask of the
22 defendants is to turn over the documents that were produced
23 to the government in any of the governmental actions, and
24 that's something we have not produced to them yet, and I'm
25 sure they will have a fulsome response to that when we do.

1 So without any questions from the Court about the
2 CMO or anything, I will take my seat and allow Mark O'Mara
3 to address some other issues right now.

4 THE COURT: Thank you.

5 MR. O'MARA: A couple of issues to address, one
6 of which we had --

7 THE COURT: Announce yourself so the people on
8 the phone know who is speaking.

9 MR. O'MARA: Yes, Your Honor. Mark O'Mara from
10 the O'Mara Law Group out of Orlando, Florida. Good
11 afternoon. One of the issues that we addressed with the
12 JPML was our concern over what seemed to be a particularly
13 pointed way of naming the MDL. It's not particularly
14 relevant to almost anybody outside this courtroom, but it
15 does suggest that this is limited to residential.

16 The panel suggested that that be deferred, I
17 believe, to this Court and may even need to be deferred
18 further until a decision is made by the panel or by this
19 Court as to whether or not the securities cases will become
20 part of this MDL.

21 In either case, I'm going to avoid an overuse of
22 adjectives. I think the pleadings today, particularly
23 defense pleadings, were replete with adjectives that didn't
24 really help move the case forward, but if we call this
25 simply the CenturyLink Billing Practices MDL if the

1 securities cases doesn't come, it does exactly that. We
2 have known from our research and from contacts that about
3 10 percent or thereabouts of the cases are business cases.

4 We know, for example from CL's, CenturyLink's own
5 website, that they acknowledge they make about 60, 65
6 percent of their revenue from the business side as opposed
7 to the residential side. So I believe as we go further
8 into this, we're going to find more and more business
9 clientele.

10 I just don't think there is any reason to suggest
11 that it is residential when it seems not to be. I would
12 suggest that if it does, if this Court or the panel brings
13 the securities cases here, we just add those couple of
14 words, that it would then be the CenturyLink Billing
15 Practices and Securities MDL. Again, it doesn't matter
16 much.

17 I just don't think that the initial suggestion
18 that it's residential would be necessary.

19 THE COURT: Well, my understanding is that the
20 securities cases are before the panel in January, is that
21 correct?

22 MR. O'MARA: Yes, Your Honor.

23 MR. LOBEL: Your Honor, January 25th, I believe.

24 THE COURT: Right. And so until they arrive, I'm
25 not going to be worried about them.

1 MR. O'MARA: Agreed.

2 THE COURT: All right?

3 MR. O'MARA: And I think it would be premature --

4 THE COURT: I'm assuming that they're going to
5 show up here.

6 MR. O'MARA: With that presumption, perhaps the
7 Court would consider once that is a final decision by the
8 panel that we consider this CenturyLink Billing Practices
9 and Securities Litigation MDL, our suggestion, and maybe
10 the defense can respond so that you at least have the
11 arguments before you.

12 There is also a question as to whether or not the
13 size of this, I think at least four times, but I may be
14 exaggerating by one, the term "minuscule" was used by the
15 defense in their pleadings before this Court, suggesting
16 that if we only have 2,000 clients to date, and they have
17 over 5.9 customers, that when you do the numbers, this is
18 minuscule.

19 To respond to this: One, I don't believe that
20 any of those clients and customers believe that their loss
21 of money over a several year period is minuscule to their
22 pocketbook, but more importantly for your purposes, we just
23 don't know the numbers yet. We do know that we have not
24 done any type of reach-out. There has only been real
25 reach-in.

1 I do take issue with the suggestion that we are
2 headline grabbing. I don't know why that's a relevant
3 consideration to the Court or why it showed up in the
4 pleadings. Rest assured we're not going to be doing that,
5 just as we're not going to be illogical, another adjective
6 that was used, and we're not going to perversely twist
7 anything.

8 We are going to move forward and find out how
9 many of these cases are actually out there. We're going to
10 do that as best we can staying within the confines that we
11 need to, and hopefully we will continue to work forward
12 with the defense and try and identify those because if we
13 are actually going to move this case forward, we truly do
14 need to identify how this happened.

15 My quick analogy, if I might. If this was a
16 casino, we're trying to figure out what happened. What we
17 can tell so far is the casino managers, CL, took it on to
18 have a system set up because we know, and I'm interested in
19 the defense response, we know that there were, because of
20 some collaboration and some mergers and whatnot, numerous
21 different billing platforms that are out there.

22 So if, in fact, you're playing what you believe
23 to be poker or blackjack with somebody, and across the
24 table comes the first card, and it's a jack, it might make
25 sense. In this, the recipient are the customers. However,

1 the next card is something out of Uno or the next card is
2 something like Park Place from Monopoly, and it doesn't
3 really make a lot of sense to the customer because they're
4 getting inundated with a bunch of different services
5 provided solely by the defense, CL, and their seemingly
6 inconsistent billing practice platforms.

7 That's what we're going to need to try and find
8 out and try and coordinate. It is our position that it
9 wasn't happenstance. It wasn't just one software not
10 talking to another because of a merger, that it goes up the
11 list, and we know that because of some of the
12 whistleblowers. We know that because of these type of
13 activities we're having nationwide.

14 That is really going to be the focus of this
15 case, and that's sort of the context that we intend to stay
16 focused on because after all, once that hand is dealt and
17 the customers are trying to figure out what they have
18 purchased, it then goes to the billing, and it's at the
19 billing that the real problems exist.

20 And that's where we look into trying to get the
21 discovery we're going to be focused on is the customer
22 contact with CL, what they said, how they responded or
23 failed to respond, and what they did in response to what
24 were legitimate problems.

25 We know very recently their own, suggested to be

1 their independent own funded survey suggested problems
2 there. That's what we're going to have to focus on.
3 Terabytes of information have already been identified by
4 the defense. It's going to take a lot. One issue this
5 Court is going to have to deal with, and I am sure we will
6 hear from the defense on this, there are potentially
7 arbitration clauses existing in these contracts.

8 If we are going to get to that point, for
9 example, the defense has suggested, as Mr. Gudmundson said,
10 we need to get the account numbers so we know who we're
11 talking about. Legitimate and makes sense. We need the
12 contracts. We need to know what arbitration costs because
13 we know that there will be a few different categories.

14 One, there will be people who we allege very
15 simply do not have contracts, period. Secondly, we presume
16 that there is going to be individual or different
17 categories of contracts that were begun by CL. I give you
18 an example of a real concern that we have. After this MDL
19 was identified by the panel, our clients received
20 communication from CenturyLink.

21 They are allowed to do that, but they are only
22 allowed to do it with certain conditions. All they sent
23 out was a new arbitration clause and with an opt-in
24 provision that if you don't opt out within 30 days, you're
25 in. Seemingly, that suggests that they acknowledged

1 problems with previously existing arbitration clauses.

2 We will get into that. Today is not a closing
3 argument day, but these are issues that we're going to have
4 to look at. If we're going to work together on trying to
5 get some of this massive discovery done, let's not forget
6 that CL has all of the discovery in this case. Very few of
7 the clients, like everybody else, keeps copies of bills
8 going back months or years and keeps contracts.

9 We'll get into the issue of whether or not the
10 arbitration clause is valid. We're not going to -- we
11 understand that valid arbitration clauses are valid. We
12 just contend that these arbitration clauses and how you
13 cannot find them when you try to find them should not be
14 enforced. That's going to be a primary issue for this
15 Court to consider through motion practice and requests for
16 coming to arbitration.

17 Those are some of the primary issues that we sort
18 of need to get to. We have already talked about the
19 coordination of the different cases, the state cases. We
20 will talk amongst ourselves regarding leadership, to get
21 that figured out for the Court probably before the day is
22 up and also who we are going to use to liaise with some of
23 these other cases that we know are going to come up and
24 come out there.

25 That is my presentation. I don't know if any of

1 that raised concerns or questions that the Court would like
2 answered. Thank you very much for your time.

3 THE COURT: No. Thank you.

4 MS. ANDERSON: One more minute, Your Honor.
5 Carolyn Anderson, again. I just wanted to close the
6 plaintiffs' presentation with the fact, we believe there
7 are important issues that have been alleged in this case.
8 We believe there is going to be some very compelling and
9 interesting legal arguments being brought before the Court,
10 and there is also a variety of corollary actions.

11 We have got the securities cases with some of the
12 securities counsel sitting here today and on the phone, I
13 believe, with the attorneys general cases and also with
14 subsequent state court cases that might initiate. As a
15 group, we're committed to keeping open channels of
16 communications with all those actions, and we also commit
17 to the Court, we have had prior experience with many of the
18 counsel representing CenturyLink here.

19 We have had very positive and professional
20 relationships, and we're committed to that, and we're all
21 very thankful that the Court has been appointed in this
22 case, and we very much look forward to pursuing this case
23 before this Court. Thank you.

24 THE COURT: Thank you.

25 Good afternoon.

1 MR. LOBEL: Good afternoon again, Your Honor.
2 Douglas Lobel on behalf of CenturyLink and its affiliates.

3 THE COURT: Welcome.

4 MR. LOBEL: Thank you. It's clear from the
5 presentations that the plaintiffs feel very passionate
6 about their case and the allegations in their complaints,
7 and I can assure you we feel equally passionate about the
8 lack of validity of the allegations and also the defense in
9 this case, and this case will be hard fought, and there are
10 those defenses, and those will play out at the appropriate
11 time.

12 Let me just start addressing some of the comments
13 that Ms. Feldman made about the nature of the cases. I
14 know the Court is very familiar with consumer protection
15 and deceptive practices cases, and these allegations in
16 these complaints, those so far, and we know we're going to
17 see many additional allegations that will evolve in the
18 consolidated complaint, are not the typical kinds of
19 allegations that you see in those kinds of cases, at least
20 in my experience, perhaps the Court's experience, because
21 here, in order to justify the class-wide litigation that
22 they are advocating, they're advancing an entirely false
23 premise.

24 And that is that CenturyLink engaged in a *Wells*
25 *Fargo*-like, and that's the name I think everybody

1 understands, business model, that CenturyLink's business
2 model was a fraudulent business model, that it was
3 management driven to systematically bilk its customers out
4 of money. That's a rather extreme allegation. It's far
5 more than you often see, but that is what they are
6 maintaining.

7 It's complete fiction. If we ever get to
8 discovery, and there is many reasons we shouldn't, they
9 will never be able to prove that, but that's what they have
10 alleged. The claims in this case are anything but common
11 and typical or systematic. They are not systematic in the
12 least, Your Honor. In fact, there is no consistent theme
13 to the claims in the existing complaints.

14 There is not going to be a consistent theme to
15 the claims in the amended complaint. Really, they fall
16 under the guise of customers with complaints about
17 CenturyLink. That's about the only unifying theme that you
18 see coming out of these complaints. For example, and these
19 come right out of the 21 accounts that are at issue in the
20 complaints in this MDL.

21 One customer alleged that he or she was charged a
22 monthly modem fee even though he or she had returned his
23 modem. A second customer alleged that he or she was
24 promised to be billed at the end of the month but instead
25 was billed at the beginning of the month. A third customer

1 alleged that his Internet speed was slower than he was
2 promised.

3 These are not uniform. These are not common.
4 These are not systematic. These disputes run the gamut of
5 every sales and billing issue you could have in a consumer
6 company with a -- for consumers. Now, what the plaintiffs
7 have done is, they have aggregated all these disparate
8 claims running the gamut of every billing and sales issue,
9 all of which are based on individual communications and
10 individual circumstances.

11 And they have aggregated them into one lawsuit,
12 and the glue that we have used to keep those together to
13 salvage the class allegations that they have made here are
14 these *Wells Fargo*-like allegations, that there was common
15 conduct that affected all customers, and if we ever get
16 there, Your Honor is going to see that there is no
17 company-wide common conduct.

18 No one is saying that there weren't errors made,
19 that people didn't have billing problems that we have all
20 experienced as consumers in our lives, but there is no
21 common company-wide conduct here, and Mr. O'Mara just
22 referred to the independent funded survey that verified
23 that.

24 Well, Your Honor, it's a little bit different
25 than that. The national law firm of O'Melveny & Myers,

1 highly respected law firm, was engaged by the company to do
2 an internal investigation, an independent investigation.
3 It came in. It spent six months crawling over the records
4 of the company, interviewing people at the company, looking
5 at or considering at least almost ten million documents.

6 And they issued a public statement recently
7 indicating that there is no, they found no evidence of
8 fraud or wrongdoing in the company after six months of
9 full-time work and consideration of almost 10 million
10 documents and almost 200 interviews.

11 So there is a different story here, and that
12 story will come out at the appropriate time, but needless
13 to say, we believe that the hurdles that the plaintiffs are
14 going to have to sustain and overcome to ever make this
15 into a certifiable class action are vast, and it's not a
16 closing argument, as Mr. O'Mara said, but we will address
17 that at the appropriate time.

18 Now, the other theme that came out to me from the
19 plaintiffs' presentations is, they want to get right to
20 discovery. They wanted the discovery to happen three weeks
21 ago. They wish discovery was completed here, but lawsuits
22 don't start with discovery, Your Honor. They start in an
23 orderly way, and they proceed in the order that the federal
24 rules have essentially laid out.

25 There are many, many deficiencies and problems

1 with these complaints. There are many motions that need to
2 be addressed by Your Honor before, in our view, it's
3 appropriate to get to discovery.

4 There are problems of personal jurisdiction with
5 many of the defendant companies. There are problems that
6 many of the defendant companies do not offer the services
7 that the plaintiffs allege are at issue here. For example,
8 almost every complaint sues a company, and I can't recall
9 the exact wording, CenturyLink Communications or something
10 of that nature. That is a company that offers prison pay
11 phone services.

12 To my knowledge, having read all the complaints,
13 there are no prisoner plaintiffs in this case that have
14 alleged that CenturyLink inappropriately billed them for
15 pay phone services in prisons. It's just the wrong
16 defendant. They don't offer those services. They're
17 improperly in the case.

18 Every lawsuit sues CenturyLink, Inc.
19 CenturyLink, Inc., is a parent holding company. It's a
20 public company that issues stock in the New York Stock
21 Exchange. It does not have any employees. It does not
22 offer any services. It's inappropriately named. We are
23 going to need to address those issues, Your Honor.

24 There are issues of standing that we're going to
25 need to address. The plaintiffs seem to think that they

1 can take one consumer who had CenturyLink high speed
2 Internet service and perhaps had a problem with it, and
3 they can then be representative of a class of consumers who
4 allege that their Prism TV service was improperly billed,
5 or someone who was a customer of Embarq of Missouri Company
6 and that they can represent individuals who were a customer
7 of a Quest service in Colorado who alleges that they were
8 misbilled.

9 In other words, they are putting up as
10 representatives individuals who do not provide services for
11 certain companies, do not use certain services and hoping
12 that they can then aggregate those and represent all these
13 members in the class, and that's not the way it works, Your
14 Honor.

15 So individuals who had Embarq of Missouri service
16 may represent others who had that service but not people
17 that had Quest service in Colorado. That's going to need
18 to be addressed, Your Honor. Then really the elephant in
19 the room I think is the issue of arbitration. It's not a
20 small issue. It's a very large issue.

21 And I think it's going to dominate the beginning
22 of this litigation, Your Honor, because it's not uncommon
23 for consumer companies to have arbitration clauses, and
24 another thing that wasn't mentioned, class action waiver
25 clauses in their customer contracts. Virtually all of the

1 customers that are in the putative classes had contracts
2 that contained those provisions.

3 We have a lot more discussion to do with the
4 plaintiffs about the issue of informal discovery and how we
5 proceed, but in my view, if we've got arbitration clauses
6 for the vast majority of these customers that are
7 enforceable, that are on the basis of U. S. Supreme Court
8 case law enforceable, and they will not be part of this
9 proceeding, then there is a question about whether we
10 should be providing informal discovery to the plaintiffs at
11 this point of all the records related to those customers
12 who may never be in this lawsuit and who may never even
13 file an arbitration if they're compelled to arbitration.

14 So, again, it's not as simple as the plaintiffs
15 make it seem. We're not going to rush into discovery and
16 produce ten million documents to them. I don't believe
17 that's the way anyone should proceed here. I think we need
18 to take it step by step and file the appropriate Rule 12
19 motions, file the appropriate motions to compel, file
20 motions based on the voluntary payment doctrine and waiver
21 in which some of these customers may have received these
22 services for one to three years, received a bill in the
23 mail or on the Internet, paid their bill voluntarily and
24 are now seeking to come back and make claims for those
25 charges that they voluntarily paid with knowledge.

1 There is further issues. There is people that
2 called up and complained about a problem with their bill
3 and received a credit, and essentially we've got an accord
4 and satisfaction situation. Why should those people be a
5 member of the class? Why should they now be able to come
6 in and sue to recover for moneys where they received a
7 credit and they agreed that that resolved their claim?

8 That's another issue that we're going to put
9 before the Court that the Court is going to have to
10 resolve. So much more complicated. Much more
11 deliberation. Careful thought needs to be put into the
12 issue of informal discovery and then the discovery plan.

13 Now, I will say we are 100 percent committed to
14 working consensually with the plaintiffs and to doing
15 things that are most efficient and save the Court the need
16 to direct the parties or issue orders, assuming that
17 doesn't require us to sacrifice any of our rights or waive
18 any of our rights, and we're fully committed to doing that,
19 and we will do that.

20 Your Honor, a few other points with respect to
21 the name of the proceeding. I agree with Mr. O'Mara on one
22 thing that I think it's only important to those of us in
23 the courtroom, but I do think it's appropriate to wait
24 until we see what the MDL panel does with the securities
25 cases until we address that issue.

1 I don't think we should be jumping ahead either
2 on that issue or on the discovery issue or any other issue.
3 I think we should be sensible and take things as are
4 appropriate, and, Your Honor, I don't think I have any
5 other points to make or to address, but I'm happy to answer
6 any questions the Court may have.

7 THE COURT: Well, you just made this a big black
8 hole. Everything is going to stop, and we're going to go
9 real slow. Well, I'm telling everyone now, we're not going
10 to go real slow. We're going to do it properly, and so you
11 start talking about informal discovery and start getting
12 that moving.

13 Let's not draw the line. You're drawing the line
14 before we even get started, and if that's going to be the
15 way you're going to litigate, okay, I can deal with that.
16 I have been a judge for 34 years. We can handle that. So
17 but if we're going to talk about moving this MDL along and
18 handling it in an efficient fashion, you should start
19 talking about discovery.

20 MR. LOBEL: Your Honor, and I wasn't suggesting
21 that we would not. Certainly intend to do so. There was
22 very little mentioned in the plaintiffs' presentations
23 about the procedural issues under Rule 12 that come early
24 in the case.

25 THE COURT: Of course.

1 MR. LOBEL: And I just thought it was important
2 for the Court to hear that, and of course it's always the
3 case in these consumer cases that discovery is very
4 one-sided, as it should be because we've got the records,
5 and the consumers of course have a bill maybe, and so there
6 is certainly --

7 THE COURT: And the vast majority of your billing
8 is probably electronic anyway now, so that's why I'm
9 talking about it. Let's -- you can sit down informally
10 start working on these issues, so CenturyLink can do it in
11 an orderly fashion, and the plaintiffs can get the
12 appropriate discovery so we can move forward.

13 MR. LOBEL: Yes, Your Honor. Let me just mention
14 one other thing which I think the plaintiffs have alluded
15 to, and I think it's just important for everyone to know a
16 little bit about the history of the way the company came
17 about because it very much affects the availability of
18 information and the accessibility of information.

19 This was a company that essentially cobbled
20 together from many, many acquisitions over many years.
21 Your Honor may be familiar with it.

22 THE COURT: Sure.

23 MR. LOBEL: Started out as CenturyTel, 70 rural
24 small phone companies. Then they added Embarq, which was
25 mid sized phone companies, about a dozen or so. Then they

1 added the regional Bell companies, the U. S. West, to the
2 conglomeration, which was Quest, and so now there is 80 or
3 so local phone companies in 37 states.

4 And it happens to be the case that these systems
5 have, in many cases, are not combined, and so those of us
6 that have worked for the company for many years have been
7 surprised at times to see how difficult it is to retrieve
8 information because there is not a push of a button, as one
9 might think there is.

10 So I just say that, and we will have many
11 discussions with the plaintiffs about that. Things are not
12 necessarily as easy as they seem to retrieve. I'm not
13 saying we are not going to do that. We will do that, but
14 at times, more time is required than people would expect.

15 THE COURT: Nothing different than the vast
16 majority of the business models that I see so --

17 MR. LOBEL: Yes.

18 THE COURT: -- you will start working on it.

19 MR. LOBEL: We will, Your Honor.

20 THE COURT: All right.

21 MR. LOBEL: Thank you.

22 THE COURT: Anything else?

23 MR. DUBANEVICH: Your Honor, if I may.

24 THE COURT: You may.

25 MR. DUBANEVICH: My name is Keith Dubanevich.

1 I'm with the Stolle Berne Firm. I'm here on behalf of the
2 lead plaintiff in the securities cases, the State of
3 Oregon. By way of background, this case was transferred on
4 October 5. The securities case was transferred on October
5 6. About 14 days later, the State of Oregon was designated
6 to be the lead plaintiff in the securities cases.

7 Unfortunately, I find myself as a bit of a man
8 without a country presently. We're very happy here in
9 Minnesota. We think it's a great forum, and given that the
10 facts of the securities case are closely intertwined with
11 the fraudulent and misleading billing practices case, it's
12 a perfect forum for us to have all of the issues in front
13 of one judge. We therefore are happy being here.

14 CenturyLink has asked the JPML to change its mind
15 and not send the securities case here. So we're waiting to
16 determine where that -- our case is going to end up. At
17 the same time, a competing movant for lead plaintiff in the
18 securities cases has challenged the magistrate judge's
19 decision to appoint the State of Oregon.

20 That matter is fully briefed and is pending
21 before Judge Hicks in the Eastern District of Louisiana.
22 So at this point, I'm not sure I'm still going to be in
23 this case, but if I am in the case, I'm not sure if I'm
24 going to be here in Minnesota or in Louisiana. So at this
25 point, it's premature for us to even engage in discussions

1 about a scheduling order.

2 While we actually have had discussions about
3 that, I think we need to get rulings on those two other
4 motions first, and then we can decide who is going to
5 proceed forward and in what jurisdiction.

6 THE COURT: Oh, you're going to love Minnesota.

7 MR. DUBANEVICH: I do. I do, Your Honor.

8 THE COURT: I don't see -- well, we're trying to
9 be as efficient as possible. My understanding, rumor has
10 it, at least, everybody wanted -- at least one side wanted
11 to be down in the Eastern District of Louisiana, and now
12 that it's in Minnesota, some part of it doesn't want to be
13 in Minnesota, but I think it's going to be in Minnesota.

14 So I will see you soon.

15 MR. DUBANEVICH: Great. Thank you, Judge.

16 THE COURT: All right. Anything else?

17 And plaintiffs are going to get a new format to
18 me dealing with the, dealing with the order of --

19 MS. ANDERSON: Leadership.

20 THE COURT: -- of the leadership.

21 MS. ANDERSON: Yes, Your Honor.

22 THE COURT: So how soon will you get that to me?
23 How much time do you need?

24 MS. ANDERSON: We should be able to have that to
25 you tomorrow.

1 THE COURT: Okay. Well, tomorrow is Friday.

2 MS. ANDERSON: We will do it Monday.

3 THE COURT: Next Wednesday. It's the holiday
4 season. So I will give you to next Wednesday to get
5 something to me.

6 MS. ANDERSON: Great.

7 THE COURT: All right. Anything else for the
8 defense?

9 MR. LOBEL: No, Your Honor.

10 THE COURT: All right. Welcome. It's -- I'm
11 glad you're here, and I think we'll be able to handle this
12 litigation in a fair and efficient manner. I have been
13 speaking at MDL conferences, and I know the lawyers don't
14 like to come into MDLs because it becomes a black hole, and
15 I try not to have my MDLs become a black hole, but
16 sometimes they do last a long time.

17 But I think we can move this one along, and I
18 appreciate the efforts for both sides of meeting informally
19 and solving some of these problems. I hope you hear me
20 dealing with the discovery. Let's not draw the line in the
21 sand, so I don't have to hear a number of motions dealing
22 with the discovery issues that should have easily been
23 agreed to without the judge's ruling.

24 All right? If there is nothing else, I've got to
25 go back to my trial. So safe travels, everyone, that is

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leaving, and I'll see you in March, if not before.

MS. ANDERSON: Thank you.

* * *

I, Kristine Mousseau, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/ Kristine Mousseau, CRR-RPR
Kristine Mousseau, CRR-RPR