



## Eighth Circuit Holds that Dish Network Must Exhaust Tribal Remedies

In *Dish Network Service LLC v. Laducer*, 2013 U.S. App. LEXIS 16097 (8th Cir. 2013), the Eighth Circuit Court of Appeals ruled that it was not “plain” that tribal courts lack jurisdiction over a tribal member’s abuse of process claim and upheld the federal district court’s refusal to enjoin tribal court proceedings on that claim.

**Background:** The dispute arose from service account that Brian Laducer, a member of the Turtle Mountain Band, opened with Dish Network in 2007. Mr. Laducer used his daughter’s credit card to open that account. Both Mr. Laducer and his daughter, Lacy, reside on the Turtle Mountain Indian Reservation. When Mr. Laducer stopped making payments on the account, Dish charged \$323 to Lacy’s credit card, which included a prorated cancellation fee and a partial unreturned equipment fee. Shortly thereafter, Lacy filed a complaint against Dish in state court alleging consumer fraud and conversion. Dish removed the case to federal court and filed a third party complaint against Mr. Laducer alleging conversion, breach of contract, fraud, and implied indemnification. Before being served with the federal court summons, Mr. Laducer filed his own action in tribal court alleging that Dish’s third party complaint was an abuse of process.

The federal court remanded the case to state court and Dish sought and was granted leave to join Mr. Laducer as an indispensable party. Mr. Laducer responded by filing an abuse of process counterclaim. In January 2011, the state court granted summary judgment in Dish’s favor dismissing Laducer’s abuse of process counterclaim. The state court dismissed all remaining claims several months later. Dish next moved the tribal court to dismiss Mr. Laducer’s abuse of process claim for lack of jurisdiction. The tribal court denied that motion and the Turtle Mountain Court of Appeals declined to review the question until after the tribal trial court had conducted a trial on the merits.

Dish then filed suit in federal court seeking a preliminary injunction barring the tribal court from proceeding with the abuse of process claim. The federal district court denied Dish’s motion and Dish appealed to the Eighth Circuit.

**Holding:** The Eighth Circuit affirmed, holding that it “is not ‘plain’ that a tribal court lacks jurisdiction over tort claims closely related to contractual relationships between Indians and non-Indians on matters occurring on tribal lands.” The Eighth Circuit explained that “Dish’s sole argument in its brief for why it does not need to exhaust tribal remedies was its claim that tribal courts plainly lack jurisdiction.” The court noted that “[o]ur court has not discussed how ‘plain’ the issue of tribal court jurisdiction need to be before the exhaustion requirement can be waived, but the Supreme Court indicated in *Strate [v. A-1 Contractors]*, 520 U.S. 438 (1997)] that the bar is quite high.” In the Eighth Circuit’s view, the requirement to exhaust “should be waived only if the assertion of tribal court jurisdiction is frivolous or obviously invalid under clearly established law.” The court elaborated, asserting that in “circumstances where the law is murky or relevant factual questions remain undeveloped, the prudential considerations



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outlined in *National Farmers Union [Insurance Cos. v. Crow Tribe of Indians]*, 471 U.S. 845 (1985)] require that the exhaustion requirement be enforced.”

The Eighth Circuit then declared that “[s]everal factors prevent us from accepting Dish’s position as ‘plain.’” First, the court rejected Dish’s position that the “abuse of process occurs at the location where the allegedly abusive legal filing was made.” The court explained that “under North Dakota law abuse of process occurs through the extortionate effect the process has on the target, rather than the filing of the process itself,” and that the location of the tort “may properly be wherever the alleged victim resides, which in this case was on the Turtle Mountain Indian reservation.” Next, the court noted that even if “the alleged abuse of process occurred off tribal lands, jurisdiction would not be lacking in the tribal court because the tort claim arises out of and is intimately related to Dish’s contract with [Laducer] and that contract relates to activities on tribal land.” As a consequence, the Eighth Circuit concluded that “it is not plain that the tribal court lacks jurisdiction over the . . . abuse of process claim. When contracting with [Laducer] to provide satellite television, Dish could have reasonably anticipated that any litigation over this contract would occur in tribal courts.”

**Take Away:** This decision is a reminder of the importance of addressing dispute resolution in contracts with tribes and tribal members involving delivery of goods or services in Indian country.

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