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TCPA Lawyers Cashing In: Court Approves Massive $20.4MM Fee Award in Favor of Class Counsel in TCPA Case Against Dish Networks

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While the saga in *Krakauer v. Dish Network, LLC* may be far from over, the Plaintiff's attorneys in that case certainly have something to smile about. Twenty million somethings.

In *Krakauer v. Dish Network,* Case No. 1:14-cv-333, 2018 U.S. Dies. Lexis 203725 (M.D.N.C. Dec. 3, 2018)–just the latest in a series of opinions in the case– the Court awarded class counsel $20,447,600.00 in attorney's fees citing the "excellent" result counsel had obtained for the class and the difficult and complex nature of the litigation.

For those of you unfamiliar with the background of *Krakauer* it is impossible to it justice in a blog, so I'll just give you the broadest of broad strokes. Plaintiff sued under the TCPA's DNC provision– 47 U.S.C. Section 227(c)– contending that Dish was commonly calling folks on the National Do Not Call Registry. Dish countered that: i) not it wasn't; ii) if it was someone else made the calls; and iii) if it was and someone else wasn't making the calls then it had an EBR. The class lawyers had experts. Dish had experts. The Court believed the class lawyer's experts. The jury believed the class case–not surprising since by the time it went to the jury the Court's earlier rulings had kind of delivered a lay up to class counsel– and found over 51,000 violations of the TCPA.

And then things got weird.

Dish filed about a 1,000 (hyperbole) post-trial motions challenging virtually every component of the case anew. Its best–in my opinion– argument was that an ancillary action in the Central District of Illinois brought on behalf of several regulatory bodies had already adjudicated the same claims that were at issue in *Krakauer*— resulting in a $280MM dollar fine that could have been so so much worse.

The *Krakauer* court denied all of Dish's motions save one– it determined that Dish had a point that not all class members had been/could be reasonably identified and held off entering judgment as a result. This was actually a rather incredible ruling because the court essentially converted a jury finding of liability on 51,000 calls into something of a claims made settlement process where judgment was only going to be entered as to class members that could be identified and made claims in the post-judgment administration process. This really could have resulted in a huge windfall for

Dish but–in the Court's view–Dish did not take advantage of the opportunity and "instead of raising such potentially legitimate arguments in a productive and orderly fashion, it engaged in obstructive efforts to avoid or delay the consequences of the jury verdict." *Krakauer* at *4.

Ouch.

So instead of affording Dish the benefit of the doubt on unidentifiable class members–which it seemed poised to do– the Court flipped around and entered judgment in the amount of $1,200 a call–yes the Court trebeled the $400.00 per call the jury had awarded (and yes, section 227(c)(5)'s private right of action allows a jury to award *up to* $500.00 per call for violating DNC rights whereas the use of an ATDS in an unlawful manner [probably] requires the award of $500.00 per call automatically under section 227(b)(3))–for a total judgment of **$61,342,800.**

And all of that brings us back to the class counsel's fee request. Class counsel sought 1/3 of the judgment as a reasonable fee award. The Court's fee order in *Krakauer* gushes about the good work class counsel put in and how robust Dish's defense efforts were. Class counsel claimed to have spent approximately 8,500 hours litigating the case to date with another 2,000 hours expected for the administration and appeals (seems a bit light if you ask me.)

Still even assuming a solid 10,000 hours sunk into prosecuting the case, the $20.4MM fee award comes out to $2,044.00 an hour. Not even I charge that much per hour. Yet.

Essentially the Court found the reasonable value of legal fees expended on the case was far less than the ultimate award– about $4.7MM. But the court found that a high lodestar multiplier was appropriate in this case given the complexity and risk attendant to prosecuting such a case through certification and a jury verdict. Indeed the court applied a lodestar multiplier of 4.39–among the highest out there–owing to the great skill displayed by class counsel (in the court's view.) So it approved the $20.4MM award as reasonable given the excellent result obtained for the class and the great number of hurdles class counsel was forced to leap to reach the finish line.

$20.4MM is a lot of money and that's tough to justify as a fee award in any case. Then again, TCPA class litigation is amongst the most complex of all complex litigation and very few of these cases try on a certified basis. You have to tip your hat to the work of class counsel in this one, even if you disagree with the result of most every ruling entered in the case–as many will. It remains to be seen what will happen on appeal. For now, however, class counsel can feel a whole lot merrier rolling into the holidays.

The real takeaway from all of this, however, is that Jay Edelson is no longer the biggest TCPA fee award winner of the year. His big *Birchmeier* award tops out at $19MM.

Nothing bruised but his ego.

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