

\$11M Settlement In Frontier TCPA Row Gets Final Nod

By **Allison Grande**

Law360, New York (June 2, 2017, 8:18 PM EDT) -- A Connecticut federal judge gave his final stamp of approval Friday to an \$11 million settlement — which includes \$3.6 million in fees for plaintiffs' counsel — to close out a proposed class action alleging Frontier Communications Corp. violated the Telephone Consumer Protection Act by placing thousands of illegal telemarketing calls.

On the heels of a May 31 hearing to determine whether the proposed settlement should be finalized, U.S. District Judge Michael P. Shea issued an order concluding that the deal, which was **first floated in December**, was fair, reasonable and adequate and should therefore win final approval.

"The settlement agreement is ... consistent with and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, and the United States Constitution (including the Due Process Clause), and any other applicable law; and in the best interests of Plaintiff, Defendant, and the Settlement Class Members," the judge concluded.

The judge also granted class counsel's request for an award of more than \$3.66 million in fees and costs and an additional \$76,000 in out-of-pocket costs, both of which will be paid from the \$11 million settlement fund that Frontier will finance.

The remainder of the fund will be paid out to a nationwide settlement class that includes any individual or entity who received a telemarketing call from Frontier or an agent working on behalf of the telecom provider or who got more than one call in a 12-month period on a number that had been on the National Do Not Call Registry.

In a preliminary approval motion **filed in January**, the parties revealed that under the settlement, each member of the settlement class would get a base payment of \$90. The balance of the fund would then be divided on a per-call basis to class members who received multiple calls.

The deal also calls for lead plaintiff Diana Mey to receive a \$20,000 incentive award, and for any unclaimed funds to be distributed to Connecticut Legal Services Inc., the designated *cy pres* recipient appointed by the court, according to the judge's order Friday.

Mey **originally lodged her complaint** in 2013, claiming that she and thousands of others received automated telemarketing calls that were commissioned by Frontier and placed to them by Virido on the Five9 predictive dialer pursuant to a contract between Frontier and Virido using a list of telephone numbers that Frontier provided.

The complaint alleged that the calling practices violated the TCPA's Do Not Call provisions and the statute's prohibition against autodialed and prerecorded calls to cellphones, and sought statutory damages of \$500 for each negligent violation of the TCPA and \$1,500 for each knowing violation.

Frontier **lost a bid to nix** the suit in 2014, with Judge Shea ruling that the telecom's offer to settle Mey's claims for \$6,400, which she refused, did not moot her claims because it was a settlement offer, not an offer of judgment.

The telecom then renewed its dismissal bid, arguing that the complaint should be dismissed

because Mey did not suffer an injury that was concrete enough to establish Article III standing under the U.S. Supreme Court's May 2016 ruling in *Spokeo Inc. v. Robins*, which held that plaintiffs must allege a concrete injury and cannot rely on mere statutory violations to maintain standing.

That motion was pending when the parties revealed in December that they had reached a settlement agreement.

In pushing for preliminary approval, Mey argued that the settlement provided a strong result for the proposed class of individuals and entities that own 36,219 unique telephone numbers that have been identified as having received allegedly unlawful calls from Frontier.

"In the absence of this class settlement, the individual litigation of this large number of claims would consume a vast amount of judicial resources in trial courts across the United States," Mey said in her preliminary approval motion. "Class settlement of this dispute is by far the most efficient and effective means to resolve the claims of the named plaintiff and absent class members."

Mey also pointed out that the proposed payments to potential class members exceed those handed out in other TCPA pacts that have been given court approval. She specifically cited four settlements reached since 2010 that have offered claimants payments ranging from \$15 to \$61.49.

Judge Shea granted preliminary approval to the settlement on Jan. 26.

Mey is represented by Anthony I. Paronich and Edward A. Broderick of Broderick & Paronich PC, John W. Barrett of Bailey & Glasser LLP, Nicholas J. Cicale of The Law Office of Nicholas J. Cicale, and Matthew P. McCue of The Law Offices of Matthew P. McCue PC.

Frontier is represented by Lauri A. Mazzuchetti, Elizabeth W. Swedock and Henry T. Kelly of Kelley Drye & Warren LLP and Archis A. Parasharami of Mayer Brown LLP.

The case is *Mey v. Frontier Communications Corp.*, case number 3:13-cv-01191, in the U.S. District Court for the District of Connecticut.

--Editing by Edrienne Su.