

# CARLTON FIELDS

ATTORNEYS AT LAW

## TELECOMMUNICATIONS LITIGATION PRACTICE GROUP NOVEMBER/DECEMBER 2003 TELECOM LITIGATION UPDATE

### **COURT REJECTS DEAL IN CLASS ACTION INVOLVING LATE FEES FOR TELEPHONE SERVICE** *Dotson v. Bell Atlantic-Maryland, Inc.*, Nos. CAL 99-21004 and 00-09962 (Md. Cir. Ct., Prince George's County, Nov. 12, 2003)

A Maryland state-court judge rejected a proposed settlement in a consumer class action involving late fees for telephone service. The court found no rational connection between the \$13 million in attorneys' fees awarded to plaintiffs' counsel and the amount of actual distribution to the class.

Following a 1999 decision by the Maryland Court of Appeals holding that excessive consumer late fees violate a state constitutional limit on interest rates that are not specifically authorized by statute, numerous class action lawsuits were filed against businesses who finance payments to consumers. In the Bell Atlantic cases, which were consolidated, plaintiffs alleged that the late fees charged by Bell Atlantic violated the Maryland Constitution.

In response to the lawsuit, Bell Atlantic lobbied the legislature, obtaining enactment of a state statute retroactively authorizing the late fees that it charged. However, the statute was struck down as unconstitutional. Bell Atlantic and plaintiffs' counsel then entered into a settlement agreement, whereby class members who filed claims would receive between \$6 and \$50 each, with total class liability capped at \$51.9 million, and plaintiffs' counsel would receive \$13 million in attorneys' fees.

The court rejected the settlement agreement, because (1) the notice of settlement did not inform class members of the attorneys' fee award, (2) including lobbying work by plaintiffs' counsel in the fee award was inappropriate, because it was not client-directed or authorized, (3) the fee award was significantly higher than the time spent by plaintiffs' counsel on the case, and (4) there was no relationship between the attorneys' fee and the amount that would be actually awarded to class members who returned claim forms. The court found the "transaction costs" of the settlement was not justified by the small benefit received by members of the class.

**Comments:** Many states limit the amount of interest that may be charged to consumers. Companies may want to research state law before setting fees for late payments. In addition, companies defending class-action litigation may want to consider the Maryland court's ruling before agreeing to a settlement.