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## TELECOMMUNICATIONS LITIGATION PRACTICE GROUP SEPTEMBER 2003 TELECOM LITIGATION UPDATE

### CALLER ID PLAINTIFFS TOO DIVERSE FOR CLASS CERTIFICATION *Bell Atlantic Corp. v. AT&T Corp.*, 339 F.3d 294 (5<sup>th</sup> Cir. July 16, 2003)

The Fifth Circuit ruled that businesses alleging they suffered economic harm as a result of AT&T Corporation's refusal to allow caller-ID information to be transmitted over its long-distance lines are too diverse to be treated as a class. The court held that plaintiffs' damages formula, which was based on nationwide averages and made no effort to adjust for the varied nature of the businesses included in the proposed classes, could not reasonably approximate the actual damages suffered by class members.

Plaintiffs alleged that AT&T violated the Sherman Act when it blocked the free passage of caller-ID data over its long-distance network from 1992 to 1995. In 1995, a Federal Communications Commission regulation ordered all long-distance carriers to pass caller-ID data over their networks free of charge.

Plaintiffs attempted to certify a class of businesses who purchased reverse-billed long distance and a class of businesses that were actual or potential purchasers of caller-ID service for long-distance calls. Plaintiffs proposed to calculate damages based upon the national average number of seconds saved per call had caller ID been available and the national average cost of labor. The Fifth Circuit held that plaintiffs failed to establish that facts common to class members predominated over questions affecting only individual members, one of the requirements of class certification.

The court found that plaintiffs failed to account for numerous factors that would have affected the amount of damages suffered by any given class member. For example, plaintiffs made "highly speculative" assumptions that, had caller ID been present, the employee answering the phone would have saved time and the employee's time was otherwise fully utilized. Also, the plaintiff's class definition did not distinguish between businesses that had software enabling use of caller ID with a customer database and those that did not. As a result, the Fifth Circuit affirmed the district court's denial of class certification.

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