

# Bailey Glasser Class Action Featured in Wall Street Journal

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Bailey Glasser's class action against Dish Network was featured in a recent article in The Wall Street Journal titled, *You May Be Eligible For a Cash Award—No, Really, Wait, Don't Hang Up*.

*By Sara Randazzo*

*April 15, 2018 1:32 p.m. ET*

West Virginia attorney John Barrett really wants his clients to know he won a \$61 million verdict against Dish Network Corp. on their behalf after a company contractor badgered people with marketing phone calls.

There is just one hitch: His clients keep hanging up when he calls to convey the good news.

One woman said “that’s ridiculous” and hurried off the phone when told that every unwanted Dish call is now worth \$1,200.

There was the voice mailbox that said, “This is not a real phone, it is a fake phone, and if you know me, call me on my regular number.” Some people thought they were being sued. Others hung up before law firm staff could spit out the basics.

Taking a page from the telemarketing playbook, Mr. Barrett and his colleagues at law firm Bailey Glasser LLP have called hundreds of people, many on nights and weekends, to tell them they could be eligible for a slice of the judgment.

“I do see the irony of a bunch of lawyers calling people who have been bombarded with telemarketing calls,” says Mr. Barrett, who co-led a trial team with partner Brian Glasser.

Last year the pair won a \$20.4 million jury verdict against Dish in a class action claiming the satellite provider called people on the national do-not-call list.

The judge later tripled the verdict.

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That means 18,066 people who received calls from Dish several years ago are in line for between \$2,400 and \$30,000 apiece, before attorneys' fees and expenses are paid.

Dish plans to appeal the verdict and argues it shouldn't be responsible for actions of the contractor that made the calls. Dish said in a court filing it told the contractor to stop contacting do-not-call-list numbers and any calls made to the contrary "violated Dish's express instructions."

U.S. mailboxes are littered with postcards alerting consumers to class-action settlements over false marketing claims or privacy violations, though many offer at most a few dollars or a coupon. But there is real money to be had in the Dish case, if it survives an appeal.

Massachusetts resident Douglas Pierce remembers getting a letter in the mail about the Dish verdict in November but "I thought it was something similar to those Publishers Clearing House you get in the mail all the time: 'You might be a winner!'"

The 64-year-old has had the same landline telephone number since 1984 and reckons he gets between 10 and 20 telemarketing calls daily. On the day after Christmas as he cleared out his answering machine—"I go through and click delete, delete, delete"—he said he heard a message from Mr. Barrett and remembered that mailer he had thrown away.

He called the law office back, and learned he could get up to \$18,000.

Mr. Barrett personally called the man in line for the most cash, 85-year-old retiree Keith Skriver in Arizona, who received 25 Dish calls now worth \$30,000.

When Mr. Skriver heard the voice mail, he said he called a lawyer friend in Detroit to do some research.

"When anybody tells you something, you're going to win, or whatever...you treat it with care these days," Mr. Skriver said. "Not like in the old days."

His friend called back after looking up the case and "said go ahead," Mr. Skriver said.

So he called back the law firm and signed up. If the money eventually comes, great. But if not, "I don't need to go to Paris anymore," he said.

Under the federal Telephone Consumer Protection Act, telemarketing calls aren't just annoying, but sometimes illegal. Companies decry TCPA lawsuits as plaintiffs-lawyer shakedowns; a lawyer for Dish said at trial, "the plaintiff is trying to seek a windfall for a phone call."

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North Carolina jurors disagreed in a rare trial over the telemarketing law, finding in January 2017 that Dish should be liable for its contractor's improper calls.

The judge overseeing the trial chided Dish's characterization of the calls as a "minor nuisance" and "inconvenience," writing that the "description has left out 'illegal,' not to mention 'infuriating.'"

At the trial, plaintiff Thomas Krakauer, a 75-year-old retired science museum director in North Carolina, testified that he wanted to bring the lawsuit because "if no efforts are taken to enforce this, wealthy telemarketers are free to continue to make calls forever." He is in line for \$6,000 from 5 calls he got, plus an incentive award for being involved in the litigation.

The court issued a final judgment in early April, kicking off Dish's ability to appeal.

In a typical class action, paper or email notices are all that a consumer can hope to get as notification they have some money coming to them. Calling plaintiffs is extremely uncommon and often cost-prohibitive, said Cameron Azari, a class-action notifications expert at legal-services company Epiq.

Mr. Azari said clients have been tempted to send texts in TCPA cases but they've ultimately decided, "ehh, maybe we don't want to do the thing the company is being sued for."

Mr. Barrett said they hit the phones when, six weeks after letters went out, they had less than an 8% response rate. Response rates in class actions vary, but that was lower than they expected. He started making calls himself to find out why people weren't returning forms that came with their letters—and found out many thought it was too good to be true.

Sue Polston, a Bailey Glasser paralegal in St. Louis recruited to make calls to around 150 class members in-between her other work, said she has never undertaken a phone campaign like this in her more than 30 years at law firms and in the federal court system. Patience has been the key.

"I had a gentleman just bound and determined this was a hoax," she recalled. "I said, ask me all your questions, see if you'll believe me."

It took almost 30 minutes, but by the end, she said he agreed to turn in the form, concluding: "I guess you're legitimate."

*Retrieved from <https://www.wsj.com/articles/you-may-be-eligible-for-a-cash-award-no-really-wait-dont-hang-up-1523813548>*

## **Attorneys**

John W. Barrett

## **Practice Areas**

Class Actions

Telephone Consumer Protection Act (TCPA)