

Bankruptcy Court Orders Freedom Communication to Pay Class Action Plaintiffs' Attorneys' Fees

By: Callahan & Blaine

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On September 25, 2012, the Honorable Brendan Shannon, United States Bankruptcy Judge in Delaware presiding over the Freedom Communications bankruptcy proceeding, ordered Freedom Communications to pay the attorneys' fees and costs incurred by the Gonzalez Class, finding that the Gonzalez Class not only protected its own interest but provided a substantial contribution to the benefit of the Debtor and all other creditors in bringing a swift resolution to the bankruptcy proceedings.

In 2003, the newspaper carriers for the *Orange County Register* filed a class action in Orange County, California against Freedom Communications, aka The Orange County Register. After seven weeks of jury trial in 2009, a settlement was reached but before Freedom paid the settlement to the Class, it filed bankruptcy in Delaware. Daniel J. Callahan of Callahan & Blaine in Santa Ana, counsel for the Class in the state court proceeding, became Chair of the Unsecured Creditors Committee in Freedom's bankruptcy proceeding. Simultaneously, on behalf of the Class, he also retained independent counsel to protect the interest of the Class valued at \$29 million. According to Judge Shannon, while the Class protected its own interest, it also conferred a substantial contribution for the benefit of all creditors and the Debtor resulting in the expedited resolution of the Freedom bankruptcy proceeding.

The Court found that under bankruptcy law, a creditor may be reimbursed for attorneys' fees and expenses incurred in making a substantial contribution to the bankruptcy proceeding. The Court defined "substantial contribution" to include "efforts which resolved in an actual and demonstrable benefit to the Debtor's estate and the creditors." The Court continued that: "Substantial contribution must be more than incidental and the applicant has the burden of satisfying the Court that its efforts have transcended self protection" . . . "the services must directly and materially contribute to the reorganization."

The Court found "the record reflects that the efforts of the Gonzalez Class Plaintiffs, while presumably commenced to improve recovery for themselves, significantly benefited other creditors and played an important role in the consensual plan confirmation."

The Court went on to state: "This was a large and complex restructuring that was successfully resolved through negotiation and confirmation of a plan in a relatively short time frame. . . . The record reflects that the Gonzalez Class Plaintiffs' role in this process was considerable and conferred a benefit to all similarly situated creditors, not simply the Gonzalez Class Plaintiffs. . . . Further the Court finds that their efforts in the context of the plan process were beyond mere efforts at self advancement and resulted in a consensual plan that manifestly served the interest of all creditors."

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