

Daily Journal

FEBRUARY 20, 2019

TOP VERDICTS OF 2018

The largest and most significant verdicts and appellate reversals in California in 2018

TOP DEFENSE VERDICTS

Consumer Financial Protection Bureau v. CashCall Inc. et al.

case
INFO

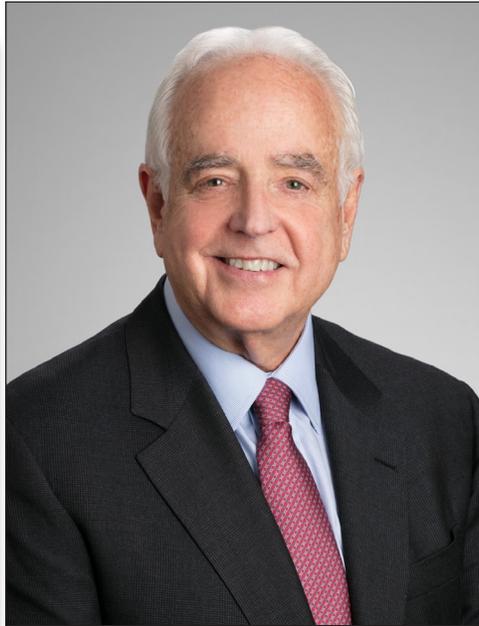
Deception related to loan payments not owed

Central District

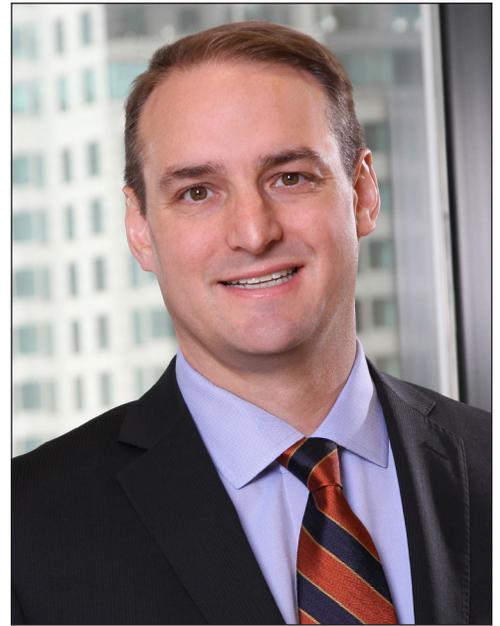
U.S. District Judge John F. Walter

Defense Lawyers: Thomas J. Nolan, Peter Durning, Latham & Watkins LLP; Allen L. Lanstra, Joseph L. Barloon, Austin K. Brown, Caroline Van Ness, Kasonni M. Scales, Julia M. Nahigian, Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates

Plaintiff's Lawyers: Owen P. Martikan, Christina Coll, Barry Reiferson, Leanne Hartmann, U.S. Consumer Financial Protection Board



THOMAS J. NOLAN



ALLEN L. LANSTRA

“It was a white-knuckle ride because of our exposure.”

Thomas Nolan

Payday lender CashCall Inc., which had been found liable under federal law in an enforcement action by the Consumer Financial Protection Bureau over the servicing of thousands of consumer loans purchased from a lending entity on the Cheyenne River Sioux Tribe Reservation in South Dakota, faced consumer restitution and civil penalties of \$287 million.

But in a remedies bench trial before U.S. District Judge John F. Walter of Los Angeles, defense attorneys for the company persuaded U.S. District Judge John F. Walter of Los Angeles to award the CFPB just \$10 million, the lowest penalty tier, in January 2018. *Consumer Financial Protection Bureau v. CashCall Inc. et al.*, 15-CV07522 (C.D. Cal., filed Sept. 25, 2015).

“It was a white knuckle ride because of our exposure,” said Thomas J. Nolan of Latham & Watkins LLP, who tried the case for CashCall with Allen L. Lanstra of Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates.

After the two-day trial and a suspenseful 30-

day wait, Walter rejected the big dollar demand and also the CFPB’s request for injunctive relief.

On the day Walter published his ruling, “I was getting measured for a new suit,” Nolan said. “I’m sure the tailor is still surprised at hearing this grown man screaming out in glee at the news on his iPhone.”

Walter wrote that “the evidence indicated quite clearly that consumers received the benefit of their bargain — i.e., the loan proceeds. ... Defendants plainly and clearly disclosed the material terms of the loans to consumers — including fees and interest rates — before the loans were funded.”

Nolan, who moved from Skadden to Latham in 2017, tried the case with the Skadden col-

leagues he’d started it with. Both sides have taken the outcome to the 9th U.S. Circuit Court of Appeals, Nolan and Lanstra to contest the liability finding and the \$10 million award; the CFPB’s lawyers to argue CashCall should pay more.

“The liability finding was a disappointment to us,” Nolan said. “To us, when put to the test of a trial, that would not stand scrutiny.”

The CFPB’s lead lawyer, Owen P. Martikan, did not respond to a request for comment.

The defense team divided the work so that Lanstra did the writing and Nolan handled cross-examination of the live witnesses. The bench trial rules were that opening and closing statements were written and all direct testimony was in the form of written declarations.

“Having swallowed that the court found us liable, it was a bit of a comeback for us to win no restitution and no injunctive relief,” Lanstra said. “The client was very happy that we kept fighting.”

— John Roemer