

Nossaman Scores \$169 Million Verdict in FDIC's Case Against IndyMac Execs

By Victor Li
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Three former IndyMac Bank officers who presided over one of the biggest banking busts in U.S. history were hit with a \$168.8 million jury verdict on Friday.

After a 16-day trial, a U.S. district court jury in Los Angeles found in this verdict that former IndyMac Homebuilders division president Scott Van Dellen, ex-chief lending officer Richard Koon, and former chief compliance officer Kenneth Shellem had been negligent and violated their fiduciary duties in connection with 23 failed homebuilding loans. After deliberating for just four hours, the jury found Van Dellen liable for his conduct related to all 23 loans. Shellem was found liable for 18 out of 20 loans for which he faced claims, and Koon was found liable for 14 of 15 loans.

The Federal Deposit Insurance Corp. and its lawyers at Nossaman sued the IndyMac execs in July 2010, accusing them of pushing risky loans without regard for the declining housing market in order to meet production goals and win bonuses. The defense—Paul Hastings for Shellem and Koon and Corbin Athey & Martinez for Van Dellen—countered that the defendants were merely victims of an unforeseen housing bust.

The verdict counts as a big win for Nossaman and for the FDIC, which has filed dozens of cases against former execs at failed banks in the wake of the housing crisis. As the D&O Diary's Kevin LaCroix points out, however, the FDIC may be facing a major obstacle in the IndyMac litigation related to depleted D&O policies. U.S. District Judge Gary Klausner in Los Angeles ruled in June that the FDIC's case is "interrelated" with a securities class action against the bank that was filed

in 2007. That decision lumped the case in with other IndyMac suits that arose in 2007-2008 that have an \$80 million coverage limit. Most of that \$80 million, according to D&O Diary, has already been slated to satisfy other liabilities.

For now, FDIC lawyer Thomas Long of Nossaman is savoring the verdict. "We were pleased that the jury was able to sift through a lot of complicated facts and hold the bankers accountable for loans that were quite careless," he said. Long, who split trial duties with Nossaman partners Patrick Richard and David Graeler, said he thought that credit approval memos and loan applications introduced at trial made a big impression on the jury. "The documents revealed a lot of the weaknesses of the loans," Long told us. "The bankers had ample warning of the economic uncertainty ahead and made loans that had inadequate features to assure repayment."

In a statement, Kirby Behre of Paul Hastings called the verdict "a deliberate effort by the government to scapegoat a few men for the impact that the unforeseen and unprecedented housing collapse in 2007 had at IndyMac and at many, many other financial institutions." He added: "Mr. Shellem and Mr. Koon used the utmost care in making loan decisions, and there is no doubt that all of the loans at issue would have been repaid except for the housing crash." Van Dellen's attorney, Robert Corbin, did not respond to a request for comment.

The FDIC's case against former IndyMac CEO Michael Perry is still pending in Los Angeles federal district court.