

Litigator of the Week: Skadden's Thomas Nolan

By Dimitra Kessenides

It isn't often that we pick a Litigator of the Week whose client was just ordered to pay \$100 million in damages. But context is everything, especially in high-stakes commercial IP disputes.

Last month, a federal jury in Riverside, California found that Nolan's client, MGA Entertainment, had infringed Mattel's copyright in manufacturing a popular line of big-headed dolls called Bratz. The jury determined that an MGA designer made the first drawings of the dolls that would become Bratz while still an employee at Mattel. The verdict seemed so momentous that the Litigation Daily named Mattel's lead lawyer, John Quinn of Quinn Emanuel Urquhart Oliver & Hedges, its Litigator of the Week when it came in. Quinn continued his winning ways when Nolan lost a motion to have the liability verdict thrown out after a juror's racist comments came to light.

In the second phase of the trial, Nolan told us, the question before the jury was complicated: Did MGA infringe Mattel's copyright on only the first version of the Bratz doll, which has long been off the market, or on all the editions of the doll that have followed? Quinn argued the latter, telling jurors that MGA and its chief executive owed Mattel as much as \$2 billion.

Nolan, obviously, argued that the infringement was limited to those first, since-abandoned dolls. He told us that his strongest case to the jury was based on the copyright concept of "substantially similar." He explained: "We introduced 77 themes of dolls. If the dolls were similar, you would expect sales to be similar, but they weren't." Nolan asked jurors to award damages of about \$30 million. Math isn't our strong suit, but even we can tell that \$100 million

is a lot closer to \$30 million than it is to \$2 billion. What's more, Nolan told us that he expects the final judgment to be much less than \$100

million. Jurors awarded damages on three separate claims against MGA, with the total adding up to \$100 million. But Nolan says the claims were all based on the same conduct by his client. Under California tort law, he asserts, the court has the discretion to throw out multiple damage awards based on the same conduct, so Nolan intends to file post-trial motions asking Judge Larson to cut the jury's verdict. He estimates that the final number will be between \$20 million and \$40 million, which comes awfully close to what Mattel spent litigating the case. (The Litigation Daily has previously reported that Mattel spent \$44 million in the first half of 2008 on legal fees for the Bratz case and a consumer class action.)

Nolan, a graduate of Loyola Law School and a former Los Angeles AUSA, said his client already regards the jury award as a victory and vindication. John Quinn told the Am Law Daily that he considered the verdict "mildly disappointing."

This is Skadden's second important success in the Bratz litigation. The first came at the beginning of the trial, when Quinn lawyers were aced out in the Great Bratz Hotel Fight. MGA's contract with the Mission Inn, the swankiest hotel in Riverside, California, specified that no Quinn attorneys be permitted to stay at the hotel for the duration of the trial. Quinn attorneys were forced to slum it at the Marriott. "Nice, but not as nice as the Mission Inn," Nolan said, in an appropriately Bratz-y comment.

