In March, the D.C. Circuit Court of Appeals bounced back a 2015 Order from the FCC interpreting the Telephone Consumer Protection Act (TCPA), the main legal defense against unwanted robocalls. Disappointingly, the court order unwound key consumer protections, such as the definition of autodialers, that the previous FCC had imposed against unwanted calls to cell phones that plague consumers.

Since then, the courts have issued conflicting opinions on the critical interpretations of the TCPA. One bright spot was a case in which NCLC submitted an amicus brief, resulting in a decision by the Ninth Circuit holding that systems which called and dialed from a list met the definition for autodialers.

Fighting to Uphold Consumer Protections on the Hill
In April, NCLC Senior Counsel Margot Saunders testified before the U.S. Senate Committee on Commerce, Science, and Transportation at a hearing titled “Abusive Robocalls and How We

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NCLC Executive Director Rich Dubois welcomes plenary speaker Seth Frotman to the podium.

Advocates Rally in Denver for Consumer Justice!

The nation’s leading consumer attorneys gathered this year in Denver for NCLC’s 27th annual Consumer Rights Litigation Conference (CRLC) to network, learn from each other, and attend sessions by leading experts in consumer law. NCLC welcomed more than 800 attendees and featured plenary addresses from former CFPB Student Loans Ombudsman Seth Frotman, Washington State Attorney General Bob Ferguson, litigation expert attorney Jan Sawyer, and consumer and constitutional law expert attorney Deepak Gupta, among others.

Highlights of the gathering included the annual awards luncheon and the presentation of the 2018 Vern Countryman Award to attorney Karen E. Brown, the director of Atlanta Legal Aid’s Home Defense Program. For more than 20 years, Karen has fought against predatory lenders and con artists; advocated for individual clients in courtrooms and in the offices of elected representatives, the CFPB, and the Federal Reserve; and worked nonstop to tell her clients’ stories and to strengthen legislation and regulations for low-income borrowers. Karen’s colleagues describe her as “totally dedicated to her low-income clients ... their champion” and as an extraordinary leader and mentor.

The Vern Countryman Consumer Law Award is presented each year to a legal services or other public interest attorney whose special contributions to the practice of consumer law have strengthened and affirmed the rights of low-income Americans.

Also presented were the 2018 Rising Star Awards, honoring up-and-coming attorneys who have made significant contributions to consumer law by trying or settling a recent case of great success and significance. This year’s Rising Stars are Rick Berlin and Stephanie Eberhardt of the Texas Attorney...
Dear friends:

As the dust settles from the 2018 midterm elections and a new Congress prepares to begin its work, there is reason to hope that better days lie ahead for consumer protection. And while we look forward to having more allies in Congress, we are under no illusions about the ongoing challenges on the policymaking horizon in 2019.

First, we will continue to face serious threats to consumer rights. The Consumer Financial Protection Bureau will still have a leader seeking to dismantle as many consumer protections as possible while they are in control. Pro-consumer victories of the past decade will remain in the crosshairs of big banks, financial services companies, predatory lenders, and their allies in Washington, DC who are intent on rolling back essential consumer protections.

We will fight them every step of the way – and I am confident that when the political tide turns and pro-consumer leadership is restored to the government agency most explicitly tasked with looking out for consumers, we will emerge from this dark period ahead of where we started, with a CFPB that has many (though far from all) of the tools needed to protect consumers, when it chooses to use them.

Second, we will continue to find – and further – opportunities to better protect consumers, even in this challenging political environment. Even now, we’re able to find ways to advance reforms at the national level. We’re also increasingly working to expand and strengthen our work with allies in the states, to better protect consumers there. And at all times NCLC is building the rationale and arguments for stronger pro-consumer laws and regulations to put into play when the timing is right, and doing more to influence the political debate to make the timing right.

NCLC is a thoroughly nonpartisan organization. We’ll work with those who want to protect consumers regardless of their party affiliation – and we’ll strenuously oppose those working against the interests of consumers no matter which side of the aisle they’re on.

Finally, NCLC will continue building, training, and supporting a nationwide network of consumer advocates with the necessary expertise to tackle the consumer law challenges of the present and future, through our conferences, webinars, listservs, and publication of our 20-volume set of legal treatises.

You can count on NCLC. Thank you for supporting NCLC’s work, and making it possible for NCLC to count on you. Our work – collectively – makes a huge difference for vulnerable consumers who have been victimized by unfair, deceptive, and abusive practices or who have been locked out or left behind in our financial system. Thank you again for being part of it all.

Sincerely,

Rich Dubois
Executive Director

Executive Director Rich Dubois speaks at the awards luncheon during NCLC’s 2018 Consumer Rights Litigation Conference in Denver last month.
While the mid-term election results have brought new pro-consumer voices and hope for progress to Congress, the news from the nation’s consumer protection agency continues to be mostly negative – which isn’t likely “news” to any reader. But as always in tough times, heroes can be found standing up and fighting back.

One such hero is Seth Frotman, the CFPB’s Student Loan Ombudsman until his resignation in late August. Frotman resigned in public protest against the CFPB Acting Director Mick Mulvaney’s actions to undercut enforcement of the law, undermine the CFPB’s independence, and shield bad actors from scrutiny. Frotman charged that the Mulvaney CFPB has “abandoned the very consumers it is tasked by Congress with protecting,” and has “used the Bureau to serve the wishes of the most powerful financial companies in America.”

We are fortunate to have fighters like Seth Frotman on our side – but it is most unfortunate for consumers and consumer advocates that his criticisms are entirely accurate.

Acting Director Mick Mulvaney is working overtime to dismantle as many important consumer protections as possible, and in some cases to literally disband parts of the CFPB itself. Two months before Frotman’s resignation, another consumer hero – NCLC staff attorney Chi Chi Wu – was fired, along with 24 other consumer advocates and academics, as a member of the CFPB’s Consumer Advisory Board (CAB), a group of experts brought into existence through the Dodd-Frank Act to advise and consult with the CFPB on a variety of consumer financial issues. Mulvaney has since reconstituted a much smaller CAB, with only two consumer advocates.

These examples illustrate the challenging environment we find ourselves in. While working in the new Congress to highlight consumer problems and build support for solutions, we’ll simultaneously have a lot of big fights at the CFPB and other regulatory agencies ahead of us – against an Education Department proposal to gut rules that protect students from for-profit school fraud; against a variety of threats to state interest rate caps; for a strong CFPB debt collection rule that protects people, not collectors. NCLC will also continue fighting efforts to gut the CFPB’s enforcement of fair lending laws and will push for leadership committed to addressing pernicious discrimination. These will be tough fights, but NCLC won’t back down.

It’s more important than ever that consumer advocates raise their voices to defend strong consumer protections. Please visit nclc.org/issues/take-action.html today to sign up to receive NCLC Action Alerts on important issues, and opportunities to stand up for consumer rights and economic justice. Our elected officials need to know we are paying attention!
NCLC Foreclosure Experts Train 200 Attorneys in Puerto Rico

The year-long moratoriums on foreclosures and legal actions in Puerto Rico are expiring. To address this potential foreclosure crisis, NCLC attorneys Alys Cohen and Geoff Walsh traveled to San Juan in early October to conduct a Foreclosure Prevention training. The day-long training was held at the San Juan Convention Center to accommodate over 200 legal services and pro bono attorneys as part of NCLC’s Disaster Relief & Consumer Protection Project.

NCLC attorneys toured the area and met with Servicios Legales de Puerto Rico (SLPR), the largest legal services provider in Puerto Rico; and with the University of Puerto Rico School of Law’s Consumer Legal Aid Clinic. SLPR and NCLC sponsored the training after NCLC began working with Servicios Legales and other Puerto Rico advocates following the hurricane last year. NCLC has provided the two legal groups’ free access to its legal manuals, disaster-focused written materials, and legal expertise in particular cases. NCLC Of Counsel Tara Twomey “has been invaluable in helping our clients resolve complicated insurance and servicing issues,” says SLPR Foreclosure Project Manager Rafael A. Rodriguez Roselló.

NCLC’s Disaster Relief & Consumer Protection Project

With the support of the JPB Foundation and the creation of NCLC’s Disaster Relief and Consumer Protection Project after last year’s devastating hurricanes and wildfires, our attorneys are working to help survivors of recent disasters – especially in Puerto Rico, Texas, California, and Florida – by developing innovative policy solutions; training and supporting local advocates; and educating consumers about their financial options following a natural disaster. NCLC’s leadership is helping communities deal with the financial devastation of natural disasters while building a network of advocates in affected areas who can share information and learn from one another. Learn more about the project at nclc.org/issues/disaster-relief-consumer-protections.html.

To assist households in their recovery after a disaster strikes NCLC created a free Disaster Relief online toolkit including resources for families, advocates, and policymakers on:

- Obtaining mortgage relief;
- Getting short-term and longer-term federal student loan debt relief (English and Spanish);
- Avoiding home repair fraud (based on lessons learned after Hurricane Katrina);
- Identifying debt settlement scams (English and Spanish);
- Keeping households connected with utilities, including model utility consumer protections that states can adopt, an issue brief on helping low-income households with assistance in paying bills for heating and cooling, and an issue brief and fact sheet explaining how low-income households can remain connected with voice and broadband internet service; and
- Helping older consumers after a natural disaster (including tips on insurance benefits and obtaining assistance from FEMA).
Western Sky Financial was issuing predatory loans on a massive scale, and evading justice through its use of a sham arbitration system – but a class action case against them presented innumerable obstacles, including its location inside the borders of tribal lands. Many attorneys would have declined to pursue such a complex case, but Janet Varnell and Brian Warwick, along with attorneys from Wallace & Graham, took the case on – despite the incredibly poor odds – as a matter of principle, to try and return what was stolen to those who were wronged.

At issue were contracts for internet loans with effective interest rates between 80 percent and 300 percent. The predatory lender, CashCall (purchaser of all Western Sky loans) had a history of winning in court and used a scorched-earth defense, protecting its choice of tribal law and a fake arbitration scheme. Worse yet, the Supreme Court’s decision in AT&T Mobility v. Concepcion had turned the slanted playing field into a virtual cliff.

The trial team orchestrated a remarkable coalition of consumer lawyers, government agencies, and public-interest organizations, including NCLC, to cooperatively turn the tide in litigation throughout the nation, including the dismantling of an attempted reverse auction national settlement. The strategy for this ad-hoc cooperative was devised at NCLC’s 2015 Consumer Rights Litigation Conference.

The case led to a series of precedent-setting decisions and establishing a new roadmap for bringing down unfair arbitration clauses and predatory lenders. After five years of intense litigation, the legal team facilitated a coordinated private class action and state agency resolution valued at more than $27 million in monetary relief to Floridians alone. While some State Attorneys General had settled claims with the lender, settlements did not appear to get much restitution for borrowers. The pro-active and inclusive coalition helped pave the way for state-by-state settlements – totaling more than ten times the original relief.

Over its life, the case yielded multiple orders that have been widely cited in other consumer litigation and class actions involving arbitration clauses, class action bans, and usury lending schemes. The court approved cy pres awards to NCLC and three other organizations, and NCLC is extremely grateful to Varnell & Warwick for nominating NCLC to receive these funds to further the interests of class members. Janet Varnell, speaking of the function of cy pres awards in our legal system, said, “It is surely unjust to permit thieves to retain their ill-gotten gains….

Cy Pres Awards Advance Justice for Consumers

Nominating NCLC for a cy pres award is one of the most effective ways to help promote and advance consumer rights and NCLC is generally seen by courts as a fair and viable recipient for residual monies. NCLC can help put together a submissions package to make the case and help provide guidance or advice on the process. If you would like to nominate NCLC for a cy pres award, please contact Paul Laurent at plaurant@nclc.org or call 617-542-8010. Thank you for your generous support!

Recent Cy Pres Nominators
Ronald L. Burdge
Steven Buttacavoli
Dennis R. Lansdowne
Seth Lehmman, Bret Lusskin,
Scott Owens
Robert W. Murphy
Michael Reese
Lester Rennard
Josh Ross, Anne Howell
Janet R. Varnell, Brian Warwick
Benjamin Wolf, Joseph Jones

NCLC Grateful for Cy Pres Award in Hard-fought Case from Varnell & Warwick, P.A.

Attorney Janet Varnell, Varnell & Warwick, P.A.  
Attorney Brian Warwick, Varnell & Warwick, P.A.  

“We select NCLC for Cy Pres awards whenever we can, because supporting NCLC represents the “next best” way to strengthen consumer protections for our class members. Cy Pres awards allow NCLC to continue to do its critically important work.”

– Brian Warwick, Varnell & Warwick
Consumer Champions Convene in Denver at NCLC’s
27th Annual Consumer Rights Litigation Conference!

National Consumer Law Center Thanks

Stacy Bardo
Nancy Barron
Elizabeth Cabraser
E. Michelle Drake
Mary Philipps
Stephanie Tatar
Beth Terrell
Janet Varnell

ALL PHOTOS: JULIE BUTCHER
The National Consumer Law Center (NCLC) and the Rappaport Center for Law and Public Policy at Boston College Law School held a day-long symposium on November 30th at Boston College Law School. Debt, Degrees, and Democracy: A Critical Look at the Value of College Completion addressed post-secondary education non-completion and student loan debt, including impact on communities of color, a key student loan issue for NCLC. Speakers included Darrick Hamilton, PhD, professor at the New School, whose work focuses on racial and ethnic inequality in economic and health outcomes, and Dr. Wil Del Pilar of the Education Trust. Participants of the day-long event included academics, researchers, borrower and consumer advocates, private attorneys, industry representatives, and government officials who shared insights and analysis and offered recommendations for policy changes.

NCLC’s Student Loan Borrower Assistance Project provides information about student loan rights and responsibilities for borrowers and advocates. The project also seeks to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens, and make loan repayment more manageable. Learn more at nclc.org/issues/student-loans.html

The National Hispanic Media Coalition (NHMC) honored Olivia Wein with an Impact Award for Outstanding Advocate, “in recognition of her tireless and selfless dedication to serving Latinos and other people of color through media and telecommunications policy advocacy” at their November 28th Reception.

The award is in recognition of Olivia’s advocacy to expand affordable internet access for low income populations and to advocate for the expansion of the Federal Communication Commission’s Lifeline program, which helps to make communications services more affordable for low-income consumers by providing subscribers with a discount on monthly telephone and broadband service.

Congratulations Olivia!
Deepak Gupta Joins NCLC Board of Directors

One of the nation’s most prominent consumer advocates, Deepak Gupta, joined the NCLC Board of Directors in August. Deepak is nationally recognized as “one of the emerging giants of the appellate and Supreme Court bar” and has partnered with NCLC in multiple arenas over the years to protect low-income consumers.

The founding principal of Gupta Wessler, PLLC, his practice focuses on Supreme Court, appellate, and complex litigation on a wide range of issues including constitutional law, class actions, and consumers’ and workers’ rights. He regularly appears in the U.S. Supreme Court and appellate courts and his clients have included classes of consumers and workers harmed by corporate wrongdoing, sitting federal judges, members of Congress, technology companies, professional athletes, individual lawyers, and national nonprofit organizations.

Before founding his firm in 2012, Deepak served as Senior Counsel for Litigation and Senior Counsel for Enforcement Strategy at the CPFB. Previously, he was an attorney at: Public Citizen Litigation Group, where he founded and directed the Consumer Justice Project; the U.S. Department of Justice; Americans United for Separation of Church and State; and the American Civil Liberties Union. He is an Adjunct Professor of Law at Georgetown and American universities and a 2018-2019 Wasserstein Public Interest Fellow at Harvard Law School. He received his law degree from Georgetown and his undergraduate degree in philosophy from Fordham.

“I’m delighted to have the opportunity to support NCLC’s high-impact litigation and commitment to access to justice for all.”

– Deepak Gupta

NCLC is proud to have received a coveted 4-star rating from Charity Navigator, the leading charity evaluator in America. Approximately only a quarter of rated charities have achieved the distinction of their highest possible rating, which indicates that NCLC “adheres to sector best practices and executes its mission in a financially efficient way.” Attaining a 4-star rating verifies that NCLC “exceeds industry standards and outperforms most charities in our area of work”... and “sets National Consumer Law Center apart from its peers and demonstrates to the public its trustworthiness.”

High-Cost Loans in the Spotlight

NCLC Releases New 50-State Installment Loan Report

Everything that is wrong with a high-cost payday loan is only made worse when the loan is larger and longer. Even when the interest rate is lower than for a short-term payday loan, a larger, longer term high-cost loan can be a much deeper, much longer debt trap. NCLC’s recently released report, A Larger and Longer Debt Trap? analyzes state APR Caps for a $10,000 five-year installment loan, and the impact of these types of loans on borrowers.

Consider the case of New Jersey resident John MacDonald. He took out a $5,000 seven-year installment loan in 2012 from a high-cost lender. At the astronomical interest rate charged by the lender – 116.73% – he would end up paying $40,994.28 in the unlikely event that he was able to pay the loan in full. As of April 2016, he had paid over $15,000 on this $5,000 loan, but only $38.50 was applied to reduce the underlying debt – all the rest went to interest and fees.

NCLC’s report finds that, for a $10,000 five-year loan, 39 states have APR limits in place, at a median rate of 25% APR, protecting 236 million people. However, some of those caps are excessively high. And twelve states place no numerical cap on the APR, leaving 90 million people unprotected. The report includes a series of recommendations for the states, including an APR cap, strict limitations against junk fees for credit insurance and other add-on products, and protections against loan flipping and making loans without regard to the borrower’s ability to repay. This report builds on previous NCLC reports issued in 2015 and 2017 that analyzed state regulation of smaller, shorter-term loans.

Find the report at nclc.org/issues/a-larger-and-longer-debt-trap-installment-loan.html.
Special Edition of *Surviving Debt* Marks NCLC’s 50th Anniversary

Just in time for the kick-off of the National Consumer Law Center’s 50th anniversary in 2019 comes a new edition of *Surviving Debt*, NCLC’s consumer guide for managing financial difficulties.

The eleventh edition contains practical advice from the nation’s consumer law experts, updating the 2016 edition with several new chapters on reverse mortgages, medical debt, credit card debt, criminal justice debt, and property taxes and tax takings. Important updates were also made to student loan repayment options, mortgage servicing rights, IRS debt, and the revamped mortgage loan modification programs.

This edition of *Surviving Debt* has a new cover and a lower price, and is a concisely written, highly accessible volume geared for consumers, counselors, paralegals, and attorneys new to consumer law. For the first time, *Surviving Debt* will be available not only in print and as an e-book, but also on the website at nclc.org/library, free to anyone subscribing to the full set of NCLC consumer law treatises.

Staff attorney Jon Sheldon returns as author of this edition after penning the very first edition in 1992. Other NCLC attorneys contributing to this edition include: Jen Bosco, Carolyn Carter, Joanna Darcus, Charlie Harak, Brian Highsmith, April Kuehnhoff, Sarah Mancini, Andrew Pizor, John Rao, Geoff Walsh, Olivia Wein, and Chi Chi Wu. Also contributing are Ron Abrams of the National Veterans Legal Services Program, Pat Baker of Massachusetts Law Reform, Eric Dunn of the National Housing Law Project, Elizabeth Maresca of Fordham Law School, Cathy Schoen, and Claudia Wilner of the National Center for Law and Economic Justice.

The 2019 50th NCLC Anniversary Edition of *Surviving Debt* is available for sale at nclc.org/bookstore, and makes a great gift for clients, friends, paralegals, and staff. Bulk discounts are also available. For 27 years, *Surviving Debt* has made NCLC’s expertise available to families who need it most. NCLC is excited to share this special anniversary edition with the community.

“*A wealth of expert legal advice on dealing with an overwhelming debt burden.*”

– Senator Elizabeth Warren,
U.S. Senator and Founder,
Consumer Financial Protection Bureau

“*Outstanding manual. Seldom is such useful, authoritative information available for so small a price.*”

– Booklist

“*The best book available for consumers in financial trouble.*”

– Stephen Brobeck,
Executive Director (Retired),
Consumer Federation of America

NCLC Welcomes Attorney Michael Best

Attorney Michael Best joined NCLC’s staff this summer working in the financial services area with a focus on credit reporting and high cost lending issues. He is also actively engaged with NCLC’s Property Assessed Clean Energy (PACE) loans campaign to protect low-income homeowners, coordinating coalition work at the state level. Michael has a strong history of partnership with NCLC as both a contributor to NCLC publications and collaborating with NCLC staff on state campaigns and organizing the national Consumer Lobby Day in his previous role as the Director of Advocacy Outreach at the Consumer Federation of America.

Michael is also a contributor to NCLC’s treatises *Fair Credit Reporting and Consumer Credit Regulation*. Before joining the consumer movement, he worked in the labor movement at Change to Win. Michael is a graduate of Northeastern University School of Law and Northeastern University in Boston.
General’s Consumer Protection Division; Katherine Hanson of Jacksonville Area Legal Aid; and Steve Sharpe of the Legal Aid of Southwest Ohio.

Executive Director Rich Dubois announced that next year’s Consumer Rights Litigation Conference will be held in Boston, Massachusetts from November 14-17, 2019, and will include a Gala Celebration to commemorate NCLC’s 50th anniversary.

Can Stop Them.” In her testimony, Saunders discussed the scope of the skyrocketing problem of abusive and unwanted robocalls, and the critical importance of consumer enforcement of the TCPA’s restrictions.

It Takes a Village

NCLC then filed extensive comments to the FCC on behalf of our low-income clients and 42 national and state public interest groups and legal services organizations. And with advocates in the 25 states in which Senators hold seats on the Senate Commerce Committee (which oversees technology legislation and can influence the FCC), NCLC worked to place op-eds and letters to the editor in local media. This press, designed to both raise awareness and pressure lawmakers to urge the FCC to uphold critical protections from unwanted robocalls, has amplified the importance of the issues before the FCC.

Add Your Voice

Awareness of the proposed FCC rule changes and the impact on consumers is essential in moving the needle at the FCC. Allies are encouraged to take action by submitting op-eds and letters to the editor to local media outlets calling on Congress and the FCC to defend and extend consumer protections from unwanted robocalls. Follow NCLC for updates and future opportunities to submit comments in defense of the TCPA. More information, including key points, at nclc.org/issues/robocalls-and-telemarketing.html

“We are at serious risk of seeing the existing robocall problem, which is already serious, get far, far worse.”
– Margot Saunders, Washington Post July 12, 2018

Read more about unwanted robocalls in a recent op-ed by Margot Saunders: Rules against robocalls shouldn’t be loosened (opinion) – CNN
Don’t miss these 2019 conferences!

FDCPA 2019
March 11-12
Las Vegas, Nevada

Consumer Rights Litigation Conference 2019
November 14-17
Boston, Massachusetts

The nonprofit National Consumer Law Center® (NCLC®) works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training.

Join us for NCLC’s 2019 Consumer Rights Litigation Conference and 50th Anniversary Celebration: November 14-17, 2019 in Boston!