Rebecca Callahan, Esq.

Mediator–Arbitrator–Court Referee

Case Summaries

Alphabetical by Subject Matter

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Rebecca Callahan, Esq. has been in the ADR trenches for 15+ years and knows how to put theory into practice. As a mediator, arbitrator and discovery referee, Ms. Callahan draws upon her 30+ years of legal experience as an AV-rated attorney to help parties resolve their disputes in a way that is efficient, economical and effective. The following are a few of the more notable, complex disputes Ms. Callahan has handled as an arbitrator, attorney advocate, mediator or court referee.

ARBITRATOR

Aeronautical Component Parts Case. Sole arbitrator in a commercial dispute between a customer and supplier / manufacturer of component parts used in the production of aeronautical equipment the customer supplied to the government per government contracts. By submission of the parties, Ms. Callahan was asked to conduct an evidentiary hearing on the "threshold" issue of whether the pre-dispute arbitration clause included in the "Terms and Conditions for Purchase Orders" posted on Claimant's website was part of the agreement governing the commercial transactions whereby Claimant purchased and Respondent sold certain custom made goods – i.e., whether the dispute was subject to arbitration. This matter involved a very technical, developing area of the law concerning what will qualify as the manifestation of agreement between parties to a sales contract in the digital age where parties frequently exchange offers and acceptances via electronic means (e.g., email, website browsing, internet shopping). Basically, when will a click qualify as assent to the terms offered or posted on an internet site?

Auto Industry Dealership Reinstatement Cases. In connection with the General Motors and Chrysler bankruptcies (a repercussion of the 2008 financial sector meltdown), the manufacturers terminated thousands of dealer franchise agreements. This caused quite an uproar across America. In response, the U.S. Congress passed emergency legislation – Section 747 of the Consolidated Appropriations Act of 2010 – which created the Automobile Industry Special Binding Arbitration Program. Under this program, terminated dealers could petition for reinstatement by filing such a petition with the American Arbitration Association by a set deadline. If such a petition was filed, then it was required that the evidentiary hearing be conducted and an award be issued no later than July 2010. The legislation specified that factors to be considered and allocated burdens or proof between the two sides concerning those matters. Ms. Callahan was the sole arbitrator appointed to three such cases and conducted three separate, multi-day proceedings followed by three reasoned awards within the specified time frames. These matters involved the presentation and management of hundreds of exhibits provided in both electronic and hard-copy format, as well as expert witness testimony and reports in such areas as forensic accounting, demographics and auto dealerships.

Breach of Contract. Sole arbitrator in a dispute between technology company and customer re consulting services. Customer complained that technology company did not provide the services promised and thus sustained damages in the mid six-figures. Technology company counterclaimed for nonpayment of its invoices.

Breach of Warranty / Breach of Contract. Sole arbitrator in a dispute between a machine manufacturer and its customer. Customer complained that the machine supplied by the manufacturer did not conform to the customer's specifications and needs, and did not work. The manufacturer defended that the customer received exactly the equipment it had ordered and expressly chose not to include the component features and capabilities it was complaining about.

E-Discovery. As arbitrator, Ms. Callahan is routinely called upon to manage e-discovery as part of the preliminary hearing scheduling process, including preservation, legal holds, collection, processing, review, production and presentation. From time-to-time, she is also called upon to decide e-discovery disputes as part of the pre-hearing process.

Partnership Dispute. Sole arbitrator in a dispute between a withdrawing partner and the partnership concerning the alleged "buyout" payment due him, and the partnership's counterclaims that the withdrawing partner allegedly mismanaged the partnership's affairs and wrongfully interfered with the partnership's contracts with others resulting in millions of dollars of lost revenue.

Wills and Trust Dispute. Co-Arbitrator in a wills and trust dispute requiring the interpretation of the trust instrument and a later-executed will, and accounting for and disposition of a diverse portfolio of assets worth several million dollars, consisting of commercial real estate, residential real property, trust deed investments, traditional stock investments, and private venture investments. This matter involved a dispute between the successor trustee of a revocable inter-vivos will and the executor and beneficiaries under a later-executed last will and testament. Due to the immediate dissipation and transfer of the settlor's assets after his death, it also involved tracing and accounting for proceeds from the sale of stocks and real estate holdings.

MEDIATOR

Commercial Lease Dispute / Change in Environmental Remediation Requirements After Lease Was Executed But Before Possession Was Taken. Plaintiff owns and operates commercial real estate in numerous states. It buys distressed properties, rehabilitates them and then leases them to strong anchor tenants. In this case, the "distress" was the fact that the shopping center was located in a Super Fund site (it had previously been home to a dry cleaning operation). While significantly remediated at the time of plaintiff's acquisition, the project still required monitoring by the EPA and local environmental agencies. The original owner of the property (plaintiff's seller) entered into a consent decree with the environmental agencies and, indisputably, was fully responsible for clean-up and monitoring. That was a matter of public record. What was not a matter of public record was that the environmental agencies were given a permanent easement to access the property and install whatever monitoring stations they deemed necessary or appropriate. The lease for one of the anchor tenants terminated by its own terms. Several months before the effective date of that lease termination, plaintiff entered into a 15-year lease with New Tenant. There was about ten months' worth of work for plaintiff to do to prepare the premises ("Landlord's Work"). Shortly before completion of that work and the "take-possession-date" called out on the lease contract, New Tenant gave notice that it would not be accepting the property due to what it claimed was a significant changed circumstance rising to the level of a mutual, material mistake or fraudulent concealment: namely, the fact that the governing environmental agencies had initiated plans to install numerous monitoring stations that would be located inside the store (up to this point in time, all monitoring stations were external to any structures

in the parking lot). Plaintiff relet the store properties, but sued New Tenant for breach of lease. New Tenant counter-sued for rescission. Both claimed their respective attorney's fees.

Ownership of Class Action Recovery. The dispute arose out of an assignment for benefit of creditors proceeding in which the assets of the assigning entity ("Old Co") were sold to "New Co." New Co had different ownership, but the same management team, as Old Co. Several years prior to the assignment, Old Co had filed a claim in a major class action. That claim / chose in action was not specified in the asset sale and was not valued for purposes of setting the sales price. After the sale of assets, New Co (still operating at Old Co's address) received notification that there was going to be a payout in the class action. A dispute then arose between the Assignee of Old Co and New Co over whether the class action recovery was included in the assets sold to New Co or whether it belonged to the Old Co "estate" to be used to pay Old Co's creditors. The potential class action recovery was potentially worth in excess of $10 million, but no one knew for sure because the pool of competing claimants was unknown.

Real Property / Lien Dispute. Lender made a $520,000 loan to Jane Doe in 2006. The loan fell into default shortly after the financial crisis of 2008 and the value of the property plummeted to less than half of what it was worth at the time the 2006 loan was made. Jane Doe proposed a short sale transaction for the property to be sold to Joe Smith in 2010. Before close of escrow, Jane Doe executed a grant deed in favor of Joe Smith and Joe Smith then executed a grant deed in favor of Sally Doe (purported mother of Jane Doe). The short sale transaction never closed and Sally Doe remained on title until 2014 when she sold the property to Bob Brown for $350,000. Nothing was aid to the Lender from that sale. All cash was pocketed by Sally Doe. The Lender was unaware of the Sally Doe / Bob Brown transaction until 2016 when it decided to pursue nonjudicial foreclosure since the property value had almost doubled since 2008. The title insurer for Bob Brown then brought suit to quiet title in Bob Brown's favor and to enjoin the foreclosure sale on the grounds that the Lender was bound by the 2010 short sale agreement even though it did not receive the funds. When contacted about the 2010 short sale, Jane Doe disclaimed ever having any type of interest in the subject property and disavowed any knowledge or involvement in the 2006 loan and 2010 short sale. Needless to say, there was a lot to talk about in this matter.

Reversion Rights in Patented Formula. Inventor patented a process that was licensed to Party A for commercialization in a very narrowly defined field of application. For consideration paid, Party A and Inventor entered into an agreement to terminate the license so that Inventor could enter into a license agreement with Party B. That agreement included an express provision that should Party B's license terminate, Party A would have the right to enter into a new license agreement with the Inventor on the same terms as its original license agreement. Over the years, Party B and Inventor entered into various amendments of their license agreement adding fields of application and changing the royalty formula. Party B went out of business and wound up its affairs through an assignment for benefit of creditors. The assigned assets included Party B's license agreement with the Inventor. The assignee then sold the license (with the Inventor's written consent), along with Party B's trade name and goodwill, to Party C. Party A then sued Party C, Party B, the assignee of Party B and several principals of Parties B and C, claiming that it – not Party C – had the right to the patented process pursuant to its reversion agreement with the Inventor. Party A also sought monetary damages for the profits Party C had earned through use of the patented process. A negotiated resolution was achieved in this case through the sharing of information that was possible within the confidential confines of the mediation concerning the gross revenue attributable to the original field of application as compared to the later fields licensed by Party B directly with the Inventor.

Law Partnership Dissolution. Party A and Party B were best friends when they began their law firm. Party A handled mostly contingent fee, personal injury work. Party B handled mostly hourly pay transactional and business litigation work. Initially, the revenues and expenses associated with their respective practices were about equal, and the two partners took equal draws. Over the years, Party A's contingent

fee work started producing several large fee awards. At first, the two partners shared equally in those fees because Party's B's hourly pay work had paid the firm's expenses and advanced the costs for Party A's matters. As the years rolled on, however, Party A started writing himself draw checks and paying personal bills with law firm checks without telling Party B. When Party B discovered what Party A had been doing with the law firm account, he told Party A he wanted to dissolve their partnership and divide their assets. A dispute then arose over entitlement to the fees generated by the unfinished contingent fee work that was in the office at the time, and over how to divide the parties' joint real estate investments (e.g., two commercial office buildings).

"Shared Employee / Joint Employer" Liability Dispute. Plaintiff was one of many employees of a building service, maintenance and supply company ("BSMSC"). BSMSC contracted with a large retail operation ("Big Co.") to provide both light housekeeping and heavy duty janitors, as well as cleaning supplies and building maintenance and repair for a monthly fee of $X." Plaintiff sued Big Co. alleging that one of Big Co.'s employees had sexually stalked and harassed her on a repeated basis, and that "everyone" – including management personnel – at both BSMSC and Big Co knew about it. Plaintiff sued for harassment, discrimination and retaliation on the theory that she was Big Co.'s employee on a "shared employee / joint employer" theory. This mediation centered around the issue of "shared employee" / "joint employer" liability on which there have been a number of recent decisions, and involved BSMSC and Big Co. and their respective EPL insurers.

Lender Liability Dispute. Bank provided a revolving credit line to Party A. Party A was a manufacturing business that was in its tenth year of operations and was growing in response to recent orders received from several "big box" stores. Party A suffered an unanticipated reversal of fortune when its largest "big box" customer pulled its business, went elsewhere, rejected the last set shipments and refused to pay the invoices for those shipments. The lending facility provided by the Bank was a "borrowing base" revolver where availability on the line of credit was a function of the value of equipment, inventory and accounts receivables on the books. When "big box" store refused to pay the invoices that the Bank had previously lent against and pulled its future business to boot, the borrowing base was diminished considerably and Party A found itself with no availability on the line of credit. Unbeknownst to Party A's key vendors, the goods and services they continued to provide were going to try to salvage a sinking ship. When Party A closed its doors a few weeks later, unpaid payables were in excess of $4 million. One of Party A's key vendors sued the Bank for lender liability, seeking to recover the value of the goods and services it had provided after the Bank and Party A knew that the "big box" customer had pulled its business and gone elsewhere.

Wrongful Foreclosure / Loan Reinstatement Workout. In the 1980's, Plaintiff purchased a unique residential property (for about $200,000) in what is currently the chic part of Los Feliz in Los Angeles. By 2006, the property was owned free and clear and was worth over $2 million. Plaintiff borrowed $500,000, using the home as collateral, to make needed repairs, improvements and upgrades to the home. Plaintiff then borrowed $350,000, using the home as collateral, to invest in a speculative real estate venture with one of his sons that eventually failed. Concurrent with the failure of that investment in 2009-2009, the country experienced a financial crisis of historical dimensions and Plaintiff's income-earning ability was affected because he was a consultant in the financial services business, and he defaulted on the $500,000 loan. Plaintiff applied for and was denied a loan modification. The bank then proceeded to initiate nonjudicial foreclosure proceedings. The issue in this case was whether the bank violated the pre-foreclosure "reach out" requirements of the Homeowner Bill of Rights Act ("HBOR") before commencing foreclosure proceedings. Due to the Plaintiff's significant equity in the property (almost $3 million at the time of the mediation), coupled with his income-to-expense ratio (largely pulled out of proportion by the debt service on the $350,000 loan), none of the loan modification scenarios were available to him. The resolution was facilitated by an old-fashioned "workout discussion" with the bank concerning payment terms for reinstatement of the original loan (about $80,000), with contributions to be made by Plaintiff's children (who were stakeholders that stood to benefit if the

home could be saved because they were going to be left the home at dad's death and would receive the stepped up basis).

Undue Influence / Challenge to Subsequent Will and Trust. "Mom" had two children. Her original estate plan of many, many years treated her two children equally. About 3 years before her death, Mom changed her estate plan so that her son was preferred over her daughter by making a specific gift to her son of the Newport Beach home (valued at about $1.6 million) and inheritance from a Family Trust that paid an annual distribution based upon stocks and other investment holdings. The will provided for what was left to then be divided equally between brother and sister – basically real and personal property worth less than $500,000. Sister sued, challenging the validity of amendments made to Mom's will and trust alleging undue influence by her brother and lack of capacity on the part of her mother who was in progressive decline due to Parkinson's.

Undue Influence / Elder Abuse / Claim for Constructive Trust and Damages Against Surviving Second Wife. "Dad" had four children with first wife, who predeceased him when she was in her late 40's / early 50's. At the time of first wife's death, she and Dad had a will and living trust that provided for half the community to go to Dad (the "A" Trust) and half the community to go into a Decedent's Trust (the "B" Trust) for the benefit of the four children, with the proviso that during Dad's lifetime, he would receive all of the income generated by the B Trust and could invade principle if necessary to maintain his accustomed style of living. The estate at that time was worth about $2 million and consisted of Blue Chip stocks, a residence, and several real property investments. Ten years later, Dad married wife two. They were married for almost 25 years when Dad died suddenly from cancer. Between the time of marriage and the time of Dad's death, virtually all of the "B" Trust assets had been sold and used to pay living expenses, including the condo Dad lived in with second wife. Title to the condo was taken in the name of Dad and second wife and joint tenants. Dad knew his cancer was terminal and that he had only a few months to live. After telling his children, they became interested in what was left of the community estate Dad had with their mother and were disappointed to learn that he had effectively spent it or acquired new assets with second wife. The children took Dad to an estate planning attorney and had him sign a number of amended wills and trusts over the course of the next few months, including a quitclaim deed that had the legal effect of revoking his joint tenancy in the condo he owned with second wife. Concurrent with that deed, Dad executed a will and trust providing for second wife to have a life estate in his one-half share of the condo. However, by the time he passed away, Dad was prompted by his children to execute several additional instruments, which left everything to them, including his 50% share of the condo. After Dad's death, a dispute arose between Dad's children and second wife on numerous fronts, including title to the condo.

COURT-APPOINTED REFEREE

Discovery Disputes. In an investment / business fraud case, Ms. Callahan was appointed to hear and make recommendations on all discovery disputes. At the time of appointment, there were ten motions pending relating to party depositions and questions not answered, special interrogatories not answered, objections posed to requests for admission, documents withheld from production on claims of privilege, and document requests not responded to.

ATTORNEY ADVOCATE

Bankruptcy Used as a Sword to Recover Converted Real Estate Partnership Assets. The debtor was a wealthy business man who, as part of his compensation, was given small limited partnership interests in projects that his employer developed. Over time, the debtor held interests in three dozen such investment ventures that produced considerable annual income distributions. When the debtor was fired from his job, the company "took back" his limited partnership interests. The debtor filed for relief in bankruptcy to protect his home from foreclosure while he looked for another job. The debtor's

former employer then filed a claim in his bankruptcy claiming to be owed millions of dollars under various theories. Ms. Callahan initiated claim objection proceedings and was co-counsel in a separate state court lawsuit that sought over $100 million in damages for the converted partnership interests. That lawsuit was the "working asset" that Ms. Callahan then used to confirm a plan of reorganization that allowed the debtor to exit bankruptcy and obtain a discharge. The debtor ultimately won the conversion lawsuit after a three-week jury trial, and that victory then led to a settlement where the partnership interests were returned to Ms. Callahan's client.

Earthquake Insurance Case / Shopping Center Owner Dispute with Bank Lender. Ms. Callahan's client was a real estate syndicate that developed a shopping center with two anchor tenants. Half of the center was destroyed and the anchor tenant's building was lost in an earthquake. The secured debt against the property was in excess of $18 million, and after the earthquake, it was worth less than $10 million. A dispute soon arose between the debtor and the secured creditor concerning entitlement to the $3 million in proceeds inter-pleaded by the earthquake insurance carrier, and Ms. Callahan's client sought relief under Chapter 11 of the Bankruptcy Code. Through the negotiation of a consensual plan with the secured creditor, a plan was confirmed that provided for the utilization and disbursement of the earthquake insurance proceeds to rebuild the damaged portion of the shopping center, as well as an agreed upon plan to pursue design / construction defect claims against those involved with the design and construction of the center.

Employment – Terminated Key Man / Non-Payment of Severance Benefits and Commissions Due. Ms. Callahan acted as co-counsel in a lawsuit against former employer for non-payment of severance benefits and commissions due key man / senior sales representative. The key issues here were whether the company had established a custom and practice with regard to severance packages for senior level executive management and whether the company properly stopped paying a commission on customer sales after the customer was acquired in a merger transaction, but the course of dealing and business never changed.

Financial Elder Abuse / Title to $20 Million Real Estate Portfolio. Ms. Callahan represented an elderly woman in litigation against her eldest son to recover title to a $20 million real estate portfolio she had amassed over a 50-year period of time and, at the son's advice, request and urging, had gradually transferred into the son's name between her 70's and 90's so that she would have no estate to be taxed upon her death. The son paid the elder nothing for the property and, once the entire portfolio was in his name, reneged on his agreement to provide for her support and allow her to sell property as she desired to pay her living expenses. Preparation for trial involved conducting a 50-year tracing with a forensic accountant to show that the source of the current portfolio properties were historical properties that the elder had acquired and improved. On the eve of a two-week jury trial, the trial judge brokered a settlement in which the portfolio was divided so that the elder received sole title to her home and several other properties so that she could live out her days with the financial independence she had earned and deserved.

Accounting Dispute / "Success Fee" for Entitlement Work in Developing Raw Land Projects. As a tag-along to the financial elder abuse case described above, Ms. Callahan represented the younger son in subsequent litigation between the two brothers concerning an "even-up" accounting they agreed to as part of the settlement so as to assure that the portfolio properties they received and divided evenly was fair in terms of their respective monetary and non-monetary contributions as between the two of them. That matter involved a CCP 639 reference proceeding that spanned over 12 months and required more than 12 days of evidentiary hearing. The key issue in this dispute was placing a value on Ms. Callahan's client's sweat contributions to the development of the portfolio properties. Over his brother's objection to him receiving anything for his sweat contributions, Ms. Callahan's client prevailed and was awarded a "success fee" equal to 20% of the value of the properties in question – about $2 million that was then

offset against the brother's monetary contributions so that no one owed anybody anything (exactly what the mother contended at the time the settlement described above was brokered).

Master Agreement for Equipment Lease Financing. Ms. Callahan represented a Japanese manufacturer of Lasik equipment and its U.S. subsidiary that acted as its distributor in North America. The U.S. subsidiary entered into a master agreement with a Japanese bank pursuant to which the bank would provide lease financing to eye surgeons and physician groups who purchased Lasik equipment. The U.S. subsidiary and its Japanese parent were obligated to guaranty all lease financing transactions funded by the Japanese bank, for which the bank handled all of the credit review and underwriting pursuant to a general power of attorney provision in the master agreement. Shortly after the lease financing program was put into place, the bank was sold to Rabobank, which used a different set of criteria to evaluate credit worthiness than what had been used by the Japanese bank. Over the course of two years, the bank underwrote over 100 equipment lease financing transactions, many of them involving sales of multiple machines to the same buyer / borrower. Over 60 percent of the portfolio of loans failed and the bank filed suit in numerous jurisdictions to enforce the guaranty. The U.S. subsidiary and Japanese parent counter-sued for breach of fiduciary duty concerning the minimal level of credit-worthiness required by the bank in making the loans. Rather than spend millions of dollars litigating the guaranty dispute around the country, Ms. Callahan persuaded the bank to participate in a three-day mediation with representatives of the U.S. subsidiary and Japanese parent. A negotiated resolution was reached due in part to the reality that any U.S. judgments the bank might obtain would be difficult to enforce in Japan. Ms. Callahan's client paid $2 million and received an assignment of the defaulted lease portfolio in return. Ms. Callahan's client then pursued enforcement actions against some of the equipment lessees and recovered between $5 and $6 million.

Partnership Interest Forfeiture Dispute. Ms Callahan represented the syndicator and general partner in a partnership that owned and operated a horse racing track. The limited partners filed suit in an attempt to declare of forfeiture of the general partner's interest based upon the allegation that he had not funded his capital contribution. After a three-week bench trial, Ms. Callahan's client prevailed on all counts and was awarded all of his attorney's fees and costs. Preparation for trial involved dozens of depositions of all of the partners and working with a forensic accountant to do as 20-year tracing to show that the capital contributions over the years matched the partners' respective partnership interests – in particular, the 33% interest held by Ms. Callahan's client.

Child Artist's Ownership and Intellectual Property Rights in Limited Edition Works of Art. Ms. Callahan represented a child prodigy artist in preserving and asserting the child artist's ownership and intellectual property rights in the limited edition works of art which her publisher claimed belonged to it. The contract the publisher relied upon for its ownership claim was signed by the child when she was 7 years old, and was legally unenforceable. Ms. Callahan took the steps necessary to have the child's mother appointed as her guardian ad litem and then filed suit to declare the publishing contract void and to recover the warehouse of limited edition works of art estimated to be worth in excess of $10 million. Both objectives were accomplished via summary judgment motion.

Healthcare Payor-Provider Dispute. For about five years Ms. Callahan represented several hospitals in payor-provider disputes. The most notable was that involving *MedPartners* after it sought relief under Chapter 11 of the Bankruptcy Code. MedPartners claimed that the hospital had been overpaid by $10 million. The hospital provider claimed that it had been underpaid by $8 million for unreimbursed "in network" and "outside of network" services. Ms. Callahan hired an economist who was an expert in medical billing and contracting. With his aid and analysis, Ms. Callahan was able to achieve a negotiated resolution with MedPartners in the $2 million range – which was delta Ms. Callahan's client believed was the true discrepancy between payments and services provided.

Intentional Misappropriation of Trade Secrets and Interference with Existing Contracts. "ABC Company" was a family-owned business. When "Dad" died, "Mom" sold the stock to "Son" and "Daughter" pursuant to a note to be paid off over a 20-year period. Son then became the president and Daughter became the vice president. Mom remained active in the business and was a member of the Board. A falling out occurred between Mom and Son, which resulted in Son storming out of the business and taking his personal laptop which was fully loaded with the company's customer, pricing and financial information. Son then started a competing company and went directly after ABC Company's long-standing customers. ABC Company sued for intentional misappropriation of trade secrets and interference with existing contract relations and won. Judgment included a punitive damages award of attorney's fees under the California Trade Secrets Act. Son filed bankruptcy. Ms. Callahan then prosecuted an action in the U.S. Bankruptcy Court and succeeded in having the judgment debt excepted from discharged under Bankruptcy Code Section 523(a)(6) – meaning that the son's liability on the judgment was excepted from bankruptcy, would never be eligible for debt discharge for so long as the judgment remained valid (10 years, plus one 10-year renewal), and would accrue interest at the judgment rate until paid in full.

Personal Injury / Insured's Exposure Due to Under Insurance of Serious Personal Injuries Caused by Driving While Drunk. Ms. Callahan represented the defendant who, after drinking several beers during a golf tournament, got in his car and T-boned the father of two young children. The father sustained very serious injuries that required hospitalization and several surgeries. While he was not paralyzed, he sustained permanent disabilities that would forever limit him and never allow him to return to his "normal" activities. Plaintiff sued to recover millions of dollars. Defendant only had a $100,000 policy and no significant assets or earning capacity. Bankruptcy offered him no relief because DUI-related liabilities are excepted from discharge. Over the course of several months, Ms. Callahan assisted the defendant in negotiating a settlement with the plaintiff whereby, over the course of a ten-year period, defendant committed to fund an agreed upon amount in quarterly installments which the defendant demonstrated to the plaintiff could create a sizeable return if invested in an annuity. This was the best defendant could do under the circumstances. Plaintiff accepted the deal and defendant fully performed his end of the bargain.