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Mediator-Arbitrator-Discovery Referee
Settlement Advisor-Arbitration Consultant

Business Disputes Case Summaries

Ms. Callahan's specialty is resolving business / money disputes. She has had a rich career handling primarily business / financial / real property disputes in state and federal courts around the country. This experience has covered a broad spectrum of industries and subject matters – including business/commercial contracts, commercial lending, commercial leasing, equipment leasing, intellectual property, purchase and sale of businesses, partnership dissolution, financial elder abuse, employer / employee relations, franchisor-franchisee relations, real property development, and wills and trusts. The following are a sampling of some of the more notable cases Ms. Callahan has handled as an arbitrator, mediator, or attorney advocate.

Mediator/Arbitrator

As a neutral, Ms. Callahan has mediated hundreds and arbitrated dozens of business/commercial disputes. The following are a few of the more interesting cases she has been involved with:

Ownership of Class Action Recovery (Mediator). 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.

Aeronautical Component Parts Case (Arbitrator). 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.

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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?

Reversion Rights in Patented Formula (Mediator). 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.

Auto Industry Dealership Reinstatement Cases (Arbitrator). 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.

Law Partnership Dissolution (Mediator). 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).

Breach of Contract (Arbitrator). 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.

Professional Fees Dispute (Mediator). Mediator in early mediation effort between accounting firm that provided security assessment services regarding a proposed government contractor's compliance with the government's contracting requirements. Accounting firm complained that all services were performed and the client received the benefit of clearance for purposes of performing a lucrative, one-year government contract. Client complained that the accounting firm did not fully perform and should offset / reduce various items of its bills.

Lender Liability Dispute (Mediator). 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.

Breach of Warranty / Breach of Contract (Arbitrator). 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.

Partnership Dispute (Arbitrator). 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.

Advocate

For her entire litigation career, Ms. Callahan represented clients in "business" disputes, meaning disputes based on contract relations, disputes between or among owners and/or managers, disputes regarding competitive conduct, disputes regarding defalcation in duties owed, disputes about ownership of real, personal, and intellectual property, disputes about money owed or to be accounted for, etc. The following are a few of the more noteworthy:

Misappropriation of Corporate Assets. Ms. Callahan represented the owners of a closely-held company that designed and manufactured aisle displays and signage for a "big box" store. The orders, designs, invoices and payments were all conducted through an internet portal sponsored by the store. The owners hired a "friend" to act as President of the company and to manage is day-to-day affairs while they focused their attention on other businesses, some of which were located in a shared commercial complex. One day, the owners came to work and discovered that everything – computers, files, laptops, etc. for the signage business were all gone and no one, including their "friend" showed up to work. The "friend" was the only one who knew the passcode information to log into the "big store's" internet portal. It turns out that the "friend" set up shop in a separate location using a similar business name and continued the business with the "big box" store to the tune of almost $1 million. Ms. Callahan successfully represented the business in prosecuting a misappropriation / unfair business practice case against the former President and his new company, obtaining a judgment of approximately $900,000. The key to the case were the emails between the President and the "big box" store, concerning the company's relocation and his purported purchase of the business.

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.

Healthcare Payor-Provider Accounting 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.

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.

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.