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Bankruptcy Case Summaries

Bankruptcy / Chapter 11 Insolvency - Mediator

Ms. Callahan was on the original mediation panel created in 1995 by the U.S. Bankruptcy Court for the Central District of California, and served on that panel until 2012. As part of her service to the court, Ms. Callahan mediated over 200 cases. Most of those cases fell into one of two categories: 1. nondischargeability claims being asserted by a creditor against a debtor under 11 U.S.C. § 523, and 2. preference avoidance claims being asserted by a bankruptcy trustee against a creditor under 11 U.S.C. § 547. The vast majority of these cases were settled at mediation. Additionally, from time-to-time, Ms. Callahan was called upon to mediate Chapter 11 plan design disputes. She was successful in all of those cases, helping the debtor and its primary creditor(s) develop a plan framework and terms for a consensual plan. The following are some of the more interesting cases she has been involved with:

Vendor Recoupment Rights. The Chapter 7 debtor was in the business of selling aluminum billet/logs. Pre-bankruptcy, the debtor had a contract relationship with a third-party to convert clean aluminum scrap delivered to the third-party by the debtor. When scrap was received by the third party, the weight would be added to the debtor's scrap bank account. When the third party sold billet to the debtor, the weight of that billet would be deducted from the debtor's scrap bank account. Substantially all of the debtor's assets were sold through bankruptcy. A dispute then arose between the buyer and the third-party vendor over whether the vendor had a right of recoupment (versus offset) with regard to the scrap in the debtor's "bank account" because of language in the contract providing that the vendor "has the right to use the value of the scrap bank as an offset to monies owed." There was no dispute between the buyer and the third-party vendor that as of the petition date and the date of sale, there were 237,000 pounds of scrap in the debtor scrap bank account. The issue was whether the provision in the sale order providing for the sale of the debtor's assets free and clear of all liens, rights, encumbrances affected/released the vendor's recoupment rights. The buyer and the vendor had a business relationship independent of the one created by the debtor's contract, so there were a number of things to talk about in crafting a negotiated resolution.

Shareholder Ownership & Management Impasse Dispute. "TBC" was a closely-held corporation that was interested in raising capital to finance growth through plant improvements and acquisitions. Party A and B represented to TBC that they held significant assets, including real property worth $30 million, and could raise or directly invest $5 million into TBC. Party A and B then introduced TBC to Party C and D as prospective, "legitimate" investors who had a "good track record of investing in companies to promote long term growth and success." Party C and D became shareholders in TBC and assumed management positions in the company. Plans were then made to take TBC public and proposals were made by Party C and D that involved passing money through TBC. Party C and D then began demanding that additional cash and stock shares in advanced to them in anticipation of commissions they would be owed for the equity investment deals they had coming in. At some point, TBC learned that Party C and D were selling their stock in violation of their promises that the were long-term investors and would not do so, and that Party C had a criminal record involving fraud and money laundering. TBC filed a state court lawsuit against Parties A, B, C and D alleging civil conspiracy, unfair business practices, defamation, libel per se, fraudulent nondisclosure, breach of fiduciary duty, constructive fraud, etc. Party C filed an involuntary bankruptcy petition against TBC in an effort to gain control over the company. These are the disputes that came to mediation and was resolved through a complicated agreement that included converting the TBC bankruptcy to a Chapter 11 proceeding and proposing a plan of reorganization agreed to by and among the disputing parties.

Debt Discharge Dispute. Pre-petition, an individual debtor purchased a brand new Lamborghini for a total cost of about $270,000, financed over three years. The debtor's credit app stated that he was the President of a company that paid him a monthly gross salary of $75,000. The car was totaled, and the insurance proceeds were insufficient to cover the cost of the car. When the President and his company filed for Chapter 7 (debt discharge) relief in bankruptcy, the lender are the car purchase transaction sued to have the remaining balance due under the finance contract excepted from the individual debtor's discharge under Section 523, contending that the representation about the gross monthly salary was false and a misrepresentation of a material fact on which the lender had relied. The debtor defended on the grounds that the lender's loss was not caused by the alleged misrepresentation, but by the loss of value occasioned by the accident; that before the accident, the Lamborghini had a value in excess of what was owed.

Liquidation, Division and Restructuring of Marital/Community Property Estate. After 45 years of marriage, "Bob" and "Jane" decided to divorce. What came next was a "War of the Roses" set of disputes over how to divide the community estate and pay community debts. Along the way, Jane filed a Chapter 11 bankruptcy case, the result of which brought all community property into her bankruptcy estate to be used in proposing and consummating a plan of reorganization. Bob filed a motion to dismiss the bankruptcy as a bad faith filing because the value of the couple's assets far exceeded their debts. This is the dispute that came to mediation, at the end of which, the couple had agreed on how to divide and liquidate their estate and each go their separate ways.

Bankruptcy / Chapter 11 Insolvency - Advocate

For a 20-year period (1986-2007), the emphasis of Ms. Callahan's practice was representing debtors and creditors in Chapter 11 bankruptcy reorganization proceedings and related litigation in numerous federal court jurisdiction around the country. This experience covered a broad spectrum of industries and subject matters. The following are some of the more interesting cases she handled:

In *In re Antoine L. Garabet, M.D., Inc. (Ch. 11)* (U.S. Bankruptcy Court, Central District, Los Angeles), Ms. Callahan represented the single largest creditors, a Japanese-based manufacturer of Lasik eye surgery equipment and its U.S.-based distributor subsidiary. 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 less stringent 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 given by the U.S. subsidiary and Japanese parent. 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.

The above-referenced bankruptcy involved one such collection effort. As part of the settlement described above, Ms. Callahan's client received 5 or 6 defaulted equipment leases entered into by the debtor, a laser eye clinic in Los Angeles. At the time Ms. Callahan's client received the assignment of the leases, the bankruptcy case had been pending for over a year. The owners of the laser eye clinic were from the Middle East and were believed by the attorney for the Creditor's Committee to have transferred millions of dollars into off-shore accounts. Ms. Callahan's client was the single largest creditor in the estate and she successfully petitioned to have her client appointed to the committee based on that status. Once on the Creditor's Committee, Ms. Callahan persuaded the attorneys representing the other committee members

– two of whom were banks - that before pursuing expensive cross-border litigation, an examiner should be appointed to do an evaluation of the operating business. The examiner's report showed that the company was making money and was generating sufficient revenues to fund a plan that, over a 5 year period, could pay creditors 50 to 60 percent of the allowed amount of their claims, depending upon how many filed claims were eliminated through the claims review and objection process. All committee members preferred that result. Ms. Callahan then worked with the debtor's attorney to draft a joint debtor / creditor's committee plan. That plan was confirmed, and ended up paying creditors about 60% of the allowed amount of their claims.

In *In re MedPartners Provider Network, Inc. (Ch.11)* (U.S. Bankruptcy Court, Central District, Los Angeles), Ms. Callahan represented a hospital provider in liquidating its multi-million dollar damages claim against the debtor and debtor's parent (Caremark Rx), defending against the debtor's offsetting multi-million dollar risk pool liability counterclaim, and spearheading the negotiations which led to a business-solution compromise to the parties' disputes. Ms. Callahan handled all aspects of the settlement, which included take-out financing on a parcel of real property to fund the settlement and orchestrating the concurrent closings of the financing and settlement transactions.

In *International Art Galleries, Inc. (Ch. 11)* (U.S. Bankruptcy Court, Central District, Santa Ana), Ms. Callahan represented the largest creditor, a child prodigy artist, in collecting unpaid royalties totaling over $2.0 Million and in preserving and asserting the child artist's ownership and intellectual property rights in the limited edition works of art, which the debtor claimed was property of its estate. The parties' disputes were resolved after less than 4 months of litigation, helped along by Ms. Callahan filing a "first strike" motion for partial summary judgment challenging the debtor's asserted rights in the artwork based upon a written publishing agreement which was never signed by the artist or approved by a guardianship court. At the conclusion of a mediation effort, the debtor and its principals relinquished and disavowed all rights, title and interest in the artist's artwork and returned possession of all artwork to the artist.

In *In re High Net Worth Individual Debtor (Ch. 11)* (U.S. Bankruptcy Court, Central District, Santa Ana), Ms. Callahan entered the case as counsel to the debtor-in-possession's family trust two years after debtor's case was filed and on the verge of conversion to Chapter 7. Within three months, Ms. Callahan obtained abandonment of the bankruptcy estate's interest in the debtor's residence and formulated a plan of reorganization proposed on behalf of the debtor and the debtor's family trust. The primary asset of the debtor was his limited partnership interests in several real estate limited partnerships with a major California real estate developer. His damages claim for conversion and breach of fiduciary duty against that company and others was estimated to be worth in excess of $20 Million. Ms. Callahan worked with the debtor's state court counsel in drafting the amended complaint to state these causes of action, in filing parallel litigation in the Bankruptcy Court, in promulgating discovery and in preparing the state court case for trial which ultimately returned a nine-figure multi-million dollar verdict in favor of the debtor. Ms. Callahan succeeded in having the debtor's plan of reorganization confirmed before the state court litigation was concluded, thereby assuring the debtor of his discharge as to his former employer's asserted seven-figure breach of contract claim should the debtor not be the prevailing party in the state court litigation. Ultimately, the debtor prevailed in the litigation and the bankruptcy case was dismissed.

In *In re Whistleblower Individual Debtor (Ch. 11)* (U.S. Bankruptcy Court, Central District, Santa Ana), Post-Arbitration, Ms. Callahan was engaged to represent an individual debtor who blew the whistle on her partners and later found herself defending her former partners claims of conversion, breach of fiduciary duty, fraud, unjust enrichment and breach of contract. Those claims were referred to arbitration where an interim, million dollar award was issued against the debtor, with a motion for over $800,000 in fees and costs pending at the time Ms. Callahan entered the case. The debtor had real property and other assets that were available to satisfy the award, but through her investigation, Ms. Callahan discovered that the arbitrator had not made a required disclosure: namely, that he and his law firm were correspondent counsel for maritime entities who procured reinsurance from the Lloyds of London insurance market association that the claimants' insurer belonged to. That disclosure obligation was triggered when an attorney represented "Lloyds of London" appeared during the proceedings to observe. Ms. Callahan entered the case for the purpose of making the case to the arbitrator that he should recuse himself. When he did not and indicated that he intended to proceed to decide the attorney's fees motion and issue a final award, Ms. Callahan initiated proceedings in the state court to have the arbitrator disqualified. The Chapter 11 bankruptcy case was filed to stay the arbitration proceedings and set the stage for a debt restructuring plan should the disqualification motion not be successful. Ultimately, the arbitrator was disqualified, that ruling was upheld on appeal, and the dispute was then settled privately. See, *Advantage Medical Services, LLC v. Hoffman* (2008) 160 Cal. App. 4th 806.

In *In re Hiuka America Corporation (Ch.11)* (U. S. Bankruptcy Court, Central District, San Bernardino), Ms. Callahan represented the buyer in acquiring stock and equipment from a bankruptcy estate, which included the negotiation and documentation of a $1.0 Million+ purchase and sale agreement, an environmental indemnity agreement, bills of sale, inter-company debt releases, and appropriate corporate certifications and resolutions.

In *In re High Net Worth Individual Debtor (Ch. 11)* (U.S. Bankruptcy Court, Central District, Santa Ana), a complex case that began as an involuntary Chapter 7 bankruptcy filing against an individual. Ms. Callahan represented the debtor and his wife. Ms. Callahan succeeded in having the involuntary petition filed against the debtor's spouse dismissed and also succeeded in opposing the appointment of an interim trustee in the involuntary proceedings initiated against the debtor. Ms. Callahan thereafter devised a strategy for the debtor to file a voluntary Chapter 11 bankruptcy and assisted the Chapter 11 debtor in negotiating and confirming a consensual plan of reorganization in which approximately $4 million in claims were compromised 4 months after the petition was filed. After confirmation, Ms. Callahan has shepherded the debtor through the successful implementation of his plan over a 6-year period.

In *In re Mom & Pop Individual Chapter 7 Bankruptcy / Defense of Nondischargeability Action* (U.S. Bankruptcy Court, Central District, Santa Ana), Ms. Callahan became involved in the case after the debtors' right to discharge was challenged by their former partners who claimed that the debtors had fraudulent concealed material information (the loss of their largest customer) so as to induce them to close escrow on their purchase of a 50% interest in a kiosk making business. Coincidentally, the notice letter from the customer was faxed the same day as the close of escrow. The debtors claimed that they did not become aware of the fax until the day after the close of escrow, that they immediately shared the information with their new partners and that their new partners were not concerned. To the contrary, the evidence showed that they took over the lead in discussions with the customer aimed at salvaging the relationship and actively participated in the day-to-day operation of the business. This was a close-call case, but ultimately the 523 nondischargeability against Ms. Callahan's clients was denied.

In *In re L.J.C. Restaurants, Inc.* (U. S. Bankruptcy Court, Central District, Santa Ana), Ms. Callahan represented the original lessor of a leasehold involving prime, waterfront property located in Newport Beach with respect to the preservation of its rights against the debtor and the debtor's bankruptcy estate under a pre-petition sublease which had been assumed by the Chapter 11 debtor-in-possession prior to the case being converted to a proceeding under Chapter 7. Through Ms. Callahan's efforts the leasehold was secured and the locks were changed immediately after the conversion so as to protect the leasehold and its contents from vandalism and looting. A buyer was located and a purchase/sale/assumption agreement was negotiated under the terms of which the original lessor was made financially whole and the value of the leasehold as an established restaurant location preserved.

In *In re Yeriko Nitta / dba The Seacliff Motel (Ch. 11)* (U.S. Bankruptcy Court, Central District, Santa Ana), Ms. Callahan represented a group of secured creditors holding perfected liens against the debtor's primary asset - a motel located in Laguna Beach. Through the bankruptcy the debtor hoped to strip the secured creditors of their liens and to pay them $.05 on the dollar in satisfaction/discharge of the allegedly "undersecured" portion of their claims. Ms. Callahan defeated these efforts by filing appropriate objections to the debtor's proposed plan of reorganization and, concurrently, prosecuting a relief from stay motion aimed at obtaining an order which would allow the secured creditors to proceed with nonjudicial foreclosure proceedings against the property. The matter was ultimately resolved through a settlement with the debtor in which the debtor acknowledged and affirmed the secured status of the secured creditors' claims in full and agreed to a payout plan which allowed the secured creditors to maximize their return from the operation and sale/refinancing of the motel property (including recovery of their attorney's fees in full).

In *In re California Valley Associates (Ch. 11)* (U.S. Bankruptcy Court, Central District, San Bernardino), Ms. Callahan represented the Chapter 11 debtor-in-possession and confirmed and consummated a plan of reorganization 11 months after the petition was filed. In this case, Ms. Callahan facilitated the restructuring of over $18,000,000 in secured debt held by a Savings & Loan Association; coordinated the abatement of the earthquake damage which had been sustained by the Shopping Center in 1992 (the debtor's primary asset); negotiated a resolution of the litigation between the debtor and its primary secured creditor; concerning the utilization and disbursement of approximately $3,000,000 in earthquake insurance proceeds; and created and implemented a plan for pursuing the design/construction defect claims associated with some of the structures located at the shopping center and for allocating the potential recovery among the various parties claiming to be interested in that recovery.

In ***In re Mark Industries, Inc. (Ch. 11)*** (U.S. Court of Appeals, Ninth Circuit, and U.S. Bankruptcy Court, Central District, Santa Ana), Ms. Callahan represented a former director of a corporate Chapter 11 debtor. Through the use of a strategic, first-strike 12(b)(6) motion, Ms. Callahan succeeded in obtaining dismissal of the Chapter 11 Bankruptcy Trustee's complaint with prejudice. That complaint challenged the propriety of a $2.2 million stock redemption that was consummated within a year of the corporation's filing for bankruptcy protection. The Trustee's complaint was based upon California Corporations Code Section 316 and sought to hold directors who voted to approve the repurchase strictly liable for the amount paid out to the minority shareholders. The first-strike motion to dismiss was sustained by the Bankruptcy Court on both standing and statute of limitations grounds and was later affirmed by the District Court and the Ninth Circuit on appeal by the Chapter 11 Bankruptcy Trustee.

In ***In re KaWES And Associates, Inc. (Ch. 11)*** (U.S. Bankruptcy Court, Central District, Los Angeles), Ms. Callahan represented the largest unsecured creditor in connection with its role as a member of the Creditor's Committee and its positions taken in response to various matters put before the Bankruptcy Court for decision. Ms. Callahan also represented this creditor in state court litigation against the debtor's officers and directors seeking compensatory damages on alter ego and breach of corporate fiduciary duty grounds. As a result of aggressive discovery directed to the defendants and third parties, evidence was developed which encouraged the defendants to settle with the creditor / plaintiff within 6 months of the filing of the state court action, with a recovery of approximately $250,000 on a principal obligation of approximately $350,000.

In ***In re Rivermeadows Associates, Ltd. (Ch. 11)*** (U. S. Bankruptcy Court, District of Wyoming), Ms. Callahan represented the general partner of the partnership debtor in objecting to confirmation of a plan of reorganization proposed by the Chapter 11 Trustee. In formulating the objection to the Trustee's plan, Ms. Callahan worked with tax consultants in analyzing the myriad tax issues created by the Trustee's sale of all partnership assets in evaluating the financial feasibility of the Trustee's proposed plan. Ms. Callahan also developed arguments in favor of the dissenting general partner related to releases proposed to be given to non-debtor parties under the plan which, if allowed to occur, would prevent the general partner from later seeking damages from the Trustee for breach of fiduciary duty and disgorgement for failure to disclose business relationships with creditors and interested parties in the case pre-dating and continuing after his appointment as Trustee.

In *In re Murray Trenchless, Inc. (Ch. 11)* (U.S. Bankruptcy Court, Central District, Santa Ana), Ms. Callahan represented a publicly traded fiber optics company in liquidating its breach of contract and charge-off claims against the debtor. At the outset of the case, Ms. Callahan's client was not scheduled as a creditor or recognized by the debtor as its largest single creditor. Through Ms. Callahan's efforts and communications with the Office of the United States Trustee, the "insiders" who had been placed on the Creditor's Committee were removed and Ms. Callahan's client was appointed to the Creditor's Committee. Additionally, through Ms. Callahan's efforts, the debtor's attempt to remove pre-existing state court litigation concerning the aforementioned breach of contract and charge-off claims was foiled and the matter was returned to the Texas State Court for adjudication.

In *In re Cheri Bay (Ch. 7)* (U. S. Bankruptcy Court, Central District, Los Angeles), Ms. Callahan represented a creditor in related civil, criminal and bankruptcy proceedings aimed at obtaining a recovery from the debtor who embezzled over $1.3 Million from Ms. Callahan's client. These efforts included the successful prosecution of a nondischargeability action against the debtor under 11 U.S.C. § 523(a)(2) and (a)(6).

In *In re Burbank Hill Properties, Inc. (Ch. 11)* (U. S. Bankruptcy Court, Central District, Los Angeles), Ms. Callahan represented the FDIC in its capacity as a secured creditor holding a $1,000,000 note secured by a first trust deed against 119 acres of raw land which the debtor proposed to develop into a custom-home residential subdivision. Ms. Callahan coordinated the development of appraisal and feasibility evidence to show that the debtor had no equity in the property and that the proposed project was not feasible. Through the use of strategic depositions taken in connection with preparation for the final hearing on the FDIC's relief from stay motion, Ms. Callahan was able to create an opportunity to negotiate a stipulation for relief from stay with the debtor, thereby allowing the FDIC to obtain relief from stay without incurring the attorney's fees, costs and expert witness fees that would have been necessary if a contested evidentiary hearing on the relief from stay motion had been held.

In *In re South Bay Medical Center, Inc. (Ch. 11)* (U.S. Bankruptcy Court, Central District, Santa Ana), Ms. Callahan represented a medical partnership in the successful defense of a preference action involving over $2.2 million in alleged preferential payments made within one year of the filing of the debtor's bankruptcy petition. The issues in this case involved the "new value" defense under 11 U.S.C. § 547(c), who qualifies as an "insider" of the debtor outside the specific definitions contained in 11 U.S.C. § 101(31)(C), and the solvency of the debtor for purposes of testing the prima facie basis for the preference claim under 11 U.S.C. § 547(b)(3). Ultimately, the avoidance complaint was voluntarily dismissed by the bankruptcy trustee without payment of even a "nuisance" settlement by the avoidance defendants as a result of expert testimony developed on behalf of the defendant showing that the bankruptcy trustee's methodology for establishing the debtor's insolvency was flawed.

In *In re Custom Decor Center, L.P.* (U.S. Bankruptcy Court, Central District, San Bernardino), Ms. Callahan represented the FDIC as Receiver in negotiations with the debtor and the debtor's principles who were guarantors on the debtor's loan, which resulted in a successful sale of the underlying real property collateral and maximized the cash recovery to the FDIC in less than 12 months from the date of the bankruptcy filing.

In *In re Wong (Ch. 7)* (U.S. Bankruptcy Court, Central District, Los Angeles), Ms. Callahan successfully represented a creditor in challenging the debtor's homestead and pension plan exemptions, resulting in a recovery to the estate of over $90,000. Ms. Callahan also prosecuted and successfully mediated a resolution of the creditor's claims against the debtor, resulting in the creditor being paid in full on its secured contract debt of $125,000.

In *In re Maxicare, Inc. (Ch.11)* (U.S. Bankruptcy Court, Central District, Los Angeles), Ms. Callahan represented several hospital providers under common management in asserting their pre-petition claims, working with the Creditors Committee and Examiner to implement processes and procedures for payment of post-petition claims, monitoring the debtor's liquidating reorganization, and evaluating sources of reimbursement for pre- and post-petition emergency room claims outside the debtor's bankruptcy estate.

In *In re KPC Medical Management (Ch.7)* (U.S. Bankruptcy Court, Central District, Los Angeles), Ms. Callahan represented several hospital providers under common management in asserting their pre- and post-petition claims against the debtor's estate, monitoring the debtor's bankruptcy case, and evaluating sources of reimbursement outside the debtor's bankruptcy estate.

In *In re Pomona Valley Medical Group, Inc., dba Promed Health Network (Ch.11)* (U.S. Bankruptcy Court, Central District, Los Angeles), Ms. Callahan represented a hospital provider in asserting its pre- and post-petition claims and in negotiating a settlement and payment plan with respect to those claims.