Rebecca Callahan, Esq.

Mediator – Arbitrator - Discovery Referee

American Arbitration Association, Mediator / Arbitrator
Large Complex Case Panel / Master Mediator Panel
International Centre for Dispute Resolution, Mediator / Arbitrator
College of Commercial Arbitrators, Fellow
National Academy of Distinguished Neutrals
Arbitration and Mediation Panels
Pepperdine University School of Law, Adjunct Professor

Case Summaries

Subject Areas

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Banking-Advocate

When Ms. Callahan started practicing law, she was assigned to a case where the client was a bank seeking to recover over $10 million from a “con” artist who had created “straw borrowers” to purchase numerous residential properties in Southern California using the bank’s money. The “straw borrowers” did not service the loans, and that resulted in foreclosures on the collateral properties and litigation, including fraud litigation against the people who participated in the “straw borrower” borrowing scheme.

While she was an associate at Buchalter Nemer, Ms. Callahan represented large institutional banks in large-dollar / mixed collateral loan default matters. These representations included prosecuting actions to recover against the borrowers (on the loan agreement) and guarantors (on their guarantees), and initiating proceedings to foreclose and/or take possession of real and personal property collateral through both judicial and nonjudicial means. It also included prosecuting nondischargeability and objection to discharge claims against the bank’s borrowers and guarantors.

From 1986 through the mid-2000’s, Ms. Callahan’s practice was focused on Chapter 11 reorganizations and out-of-court workouts, and related litigation. Ms. Callahan represented debtors, creditors and purchasers of assets. While Ms. Callahan never represented “the bank,” there almost always was at least one bank and/or bonding company to be dealt with and included in the restructuring plan and negotiations. The following is a notable case example:

Ms. Callahan represented a Japan-based manufacturer of Lasik 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.

As a follow-on to the above case, one of the "recoveries" Ms. Callahan's client received in the settlement with Rabobank were the 5 or 6 defaulted equipment leases of a laser eye clinic in Los Angeles that was a debtor in a Chapter 11 bankruptcy proceeding. 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 and, with Ms. Callahan in the lead, 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.

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 jurisdictions around the country. This experience covered a broad spectrum of industries and subject matters. Since 2007, Ms. Callahan has worked in a co-counsel capacity on several matters involving litigation with a Chapter 11 estate or debtor. The following are some of the more interesting cases she handled in both capacities:

In *In re Finton Construction, Inc. (Ch. 11)* and *In re John Finton (Ch. 11)* (U.S. Bankruptcy Court, Southern District, Florida). Ms. Callahan was co-counsel in prosecuting a nondischargeability action against the individual debt with respect to a state court fraud judgment in excess of $3.9 million. The bankruptcy was filed after the jury verdict, but before completion of the punitive damages phase or the entry of judgment. Ms. Callahan assisted the plaintiff/creditor in obtaining ex parte relief from stay to complete the state court action. Ms. Callahan also represented the plaintiff/creditor in defendant an avoidance action filed by the corporate debtor seeking to recover an alleged fraudulent transfer and insider preference. Ultimately, this matter was resolved with a stipulated nondischargeability judgment, subject to forbearance while the corporate debtor paid the amount agreed upon.

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, which had been converted by his former employer when his employment was terminated. His damages claim for conversion and breach of fiduciary duty against the company 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 representing "Lloyds of London" appeared during the proceedings to observe. Ms. Callahan entered the case post-award 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, and that ruling was upheld on appeal. *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), Ms. Callahan represented the debtor and his wife in what began as an involuntary Chapter 7 bankruptcy filed to freeze and take control of the debtor's considerable assets. 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 shepherded the debtor through the successful implementation of his plan over a 6-year period.

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. 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 bank that had financed the acquisition and building of the center concerning entitlement to the $3 million in insurance proceeds. The insurer inter-pleaded the earthquake insurance funds. Ms. Callahan's client sought relief under Chapter 11 of the Bankruptcy Code. 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 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 manufacturing 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 the new partners 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 and Ms. Callahan's clients received their debt discharge.

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 mediated:

Competing Lien Creditors in Entities Used to Perpetrate a "Ponzi" Real Estate Investment Scheme. One Chapter 11 debtor was one of several investments made by the other Chapter 11 debtor that appears to have been operated as a "ponzi" real estate investment scheme where new investor monies were used to make payments to old investors and not to purchase the represented / targeted real properties. The property owned by the first debtor was a significant asset that netted approximately ten million dollars after payment of the bank debt. The dispute in mediation was between competing investors who claimed to have liens against those net proceeds and other assets in the second debtor's estate. The object of the mediation was to negotiate a consensual plan for both estates and that was achieved through a mediated negotiation involving the two Chapter 11 debtors, the Committee and the competing creditors.

“Business Divorce” in Chapter 11. Two people were in business for a considerable length of time using various entities. For various reasons, they parties ways, but did not agree on an unwind / transition plan and then found themselves in a dispute where one sued to recover on “advances” and the other countersued to recover misappropriated property and diverted funds. In response to one party’s state court action, the other filed a petition under Chapter 11 and then an adversary action to recover property allegedly belonging to the debtor. Through mediation, the parties worked through various issued, including an accounting, and agreed on terms for a consensual dismissal of the bankruptcy case and all related litigation.

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 be 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 they 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.

Business/Commercial Disputes – Mediator/Arbitrator

As a neutral, Ms. Callahan has mediated hundreds and arbitrated dozens of business/commercial disputes, including several as a member of a three-arbitrator panel hearing Large Complex Cases. 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. 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?

Finder's Fee for Procuring Buyer for a Medical Marijuana Business (Arbitrator). This dispute arose out of the sale of a marijuana business in which Claimant claimed that it and been engaged by the seller to find a buyer, that the buyer was one Claimant had brought to the table, and that the seller owed it a percentage of the gross purchase price based on a written consulting agreement.

Intra-Member Dispute (Arbitrator). Sole arbitrator in a dispute between the minority members of a family limited partnership, on the one hand, and the managing member and majority members, on the other. The dispute concerned the propriety of numerous leasing and financing transactions, some of which involved affiliated entities, and required the determination of numerous claims, including claims for breach of fiduciary duty, misappropriation, conversion and breach of contract.

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 regarding consulting services. The customer complained that the technology company did not provide the services promised, and that customer had thus sustained damages in the mid six-figures. The technology company counterclaimed for nonpayment of invoices for services rendered.

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. The 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. The 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.

Business/Commercial Disputes – 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.

<u>Master Agreement for Equipment Lease Financing</u>. 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.

<u>Child Artist's Ownership and Intellectual Property Rights in Limited Edition Works of Art</u>. 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.

<u>Construction / Development / Land Use Disputes</u>

Early in her litigation career, Ms. Callahan spent about two years representing civil engineers and soils engineers in disputes concerning construction/design defects (completed projects) and scope of work (projects in progress) involving several residential development projects in Southern California. As a mediator, Ms. Callahan has been involved in cases where the project has failed and disputes then develop between the lender, on the one hand, and the guarantors and developer, on the other, concerning such things as proper utilization of sums drawn upon the construction line, the lender's obligation to fund, the guarantors' liability for any deficiency and the amount of that deficiency. A few of the more interesting cases Ms. Callahan has mediated are described below:

<u>Failed Hotel Project</u>. Corporate entity borrowed over $7 million from bank to construct a hotel property. The loan was secured by the subject property. Additionally, the principals of the developer entity personally guaranteed the loan. While the principals had extensive real estate holdings, their guarantees were unsecured. The developer was unable to complete the project and the loan went into default. Litigation then ensued to enforce the loan agreement and personal guarantees. An agreement was reached whereby the defendants agreed to entry of judgment in a state court action and agreed not to contest the bank's right to foreclose on the property. As part of the stipulated judgment, the guarantors agreed to waive their right to a "fair market value hearing" unless the amount bid at the foreclosure sale was less than $6 million. At the foreclosure sale, the bank purchased the property at the Trustee's sale by a credit bid in the amount of $5 million. A dispute then ensued in which the guarantor's initiated proceedings to determine the fair market value of the project at the time of sale and the bank initiated proceedings to enforce the remaining amounts due under the stipulated judgment against the guarantors.

<u>Land Use / Zoning Dispute</u>. A not-for-profit hospital entity purchased land and operated an acute care hospital facility for many years under one set of zoning ordinances. As healthcare practices and the demographics of the community changed, the not-for-profit entity desired to build a new medical center facility that would focus on providing more general healthcare services. A dispute then arose with the city, and an action for inverse condemnation was commenced. Ms. Callahan assisted the parties in planning a multi-session, early mediation.

<u>Premises Liability / Catastrophic Injury Dispute</u>. The owner of a property being developed as a family-fun theme party hired an artist to make large-scale pieces for display in the park. Due to the size of the art work, the pieces were created on site. While working on one of the pieces of art work, the artist was seriously injured, requiring hospitalization and several surgeries. The artist's rehabilitation was only partial and she was unable to return to making large-scale pieces of art. When the artist's claims against the property owner's worker's compensation policy were denied, the artist sued the property / project owner for negligence.

Mechanic's Lien Dispute. Subcontractor on a large residential project brought suit against the general contractor, the former owner, the lender and the surety for payment of the amounts owed for goods and services supplied to the project. Subcontractor also sued the current owner for foreclosure on mechanic's lien, action on payment bond, quantum meruit and account stated. The current owner then sued for declaratory relief disputing the subcontractor's mechanic's lien because it had acquired title to the property through a judicial foreclosure.

Lien Dispute. Investor bought an incomplete residential construction project and then started investing monies to complete the project when it learned that the property was encumbered by a first priority bank lien as a result of the bank initiated nonjudicial foreclosure proceedings. The investor's title search showed the lien as having been reconveyed, but that turned out to be a "false reconveyence." The investor sued to enjoin the foreclosure sale, complaining that the bank was aware that a "false reconveyence" had been recorded, but had unjustly sat back while the investor purchased and improved the property.

Failed Residential Development Project. Bonding company brought suit against principal/indemnitor of developer for completion expenses associated with a failed residential development project. Before the lawsuit was filed, the bonding company and indemnitor had worked together to obtain refunds from various parties who had received deposits that would no longer be utilized because the final phase of the project was not going to be built. When the lawsuit was commenced, the indemnitor claimed that he had worked out an understanding with the lead representative from the bonding company that he would be excused from performance under the indemnification agreement in exchange for his assistance and cooperation in obtaining the deposit refunds and negotiating compromise agreements with vendors and contractors who had worked on the completed phases of the project, but had not been paid.

Discovery

As a private, commercial arbitrator, Ms. Callahan has presided over and decided numerous discovery disputes, including one matter where, as Chair, she was called upon to decide over a dozen discovery disputes during a four-month time frame. Additionally:

- In 2020, Ms. Callahan was appointed to act as a discovery referee in a complex, commercial arbitration matter. The discovery dispute concerning the *in camera* review of approximately 100 documents withheld on the claim of attorney client privilege.

- In 2018, Ms. Callahan was proposed as the discovery referee in a state court matter involving wrongful termination claims by an employee against her former employer. That matter was settled shortly thereafter.

- In 2015, Ms. Callahan was appointed to act as a discovery referee in a state court matter involving a wage-and-hour dispute between an employee and his former employer. The discovery disputes concerned hearing and making a report and recommendation with regard to defendants' motions for orders deeming the truth of matters specified in their respective requests for admissions and motions seeking to compel responses to their respective special interrogatories.

Finance

Throughout her career Ms. Callahan has been involved with cases requiring accountings, valuations, tracings and consideration of tax consequences. Some of these cases have involved fraud, conversion, misappropriation or fraudulent transfers. Some have been the result of a failed business or disagreement among owners – no tort – and a simple need to dissolve and windup a business. The following are a few interesting cases:

Partnership Dissolution and Final Accounting (Arbitrator). Ms. Callahan has presided over several arbitrations involving limited liability companies in which the disputes between members or the disputes between the Managing Member and other members has escalated to the point of dissolution, final accounting, windup of the business's affairs and, in some cases, the determination of surcharges against one or more members.

Auto Dealership Profitability and Supporting Demographics (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. Those factors included evaluating the profitability of the dealership and the demographics of the area where the dealership was located in terms of projected profitability. Ms. Callahan presided as sole arbitrator in three such matters through evidentiary hearing and award.

Sales of Business Assets / Post-Closing Disputes (Mediator). Ms. Callahan mediated a dispute between the business asset seller and the business asset purchaser regarding their post-closing obligations, including the even-up accounting related to the discrepancy between booked payables, receivables, inventory and finished goods versus the resulting actual.

Tracing 50 Year's Worth of Real Estate Acquisition and Sale Transactions to Show Equitable Ownership (Advocate). Ms. Callahan represented an elderly woman (93 years young) 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. It also involved working with an accountant to prepare a tax analysis of the ramifications of the alleged gifting in terms of gift tax liability that would be owed by the elder – who had literally no assets in her name - if in fact the transfers were deemed to be gifts.

<u>Valuation of Converted Partnership Interests</u> (Advocate). Ms. Callahan's client 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 Ms. Callahan's client held interests in three dozen such investment ventures that produced considerable annual income distributions. When the client was fired from his job, the company "took back" his limited partnership interests. Ms. Callahan's client 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. The "driver" in all of this was the tax impact of the "take-back" / transfer – a tax bill to the IRS of about $12 million.

<u>Partnership Interest Forfeiture Dispute</u> (Advocate). 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. This matter required a forensic accounting analysis of the partnership's records going back 20 years, tracing all partner monies in and distributions out. 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.

<u>Healthcare – Payor / Provider Disputes</u> Advocate). For a five-year period, Ms. Callahan represented several hospitals in payor-provider disputes. For example, in one engagement, Ms. Callahan represented a hospital provider in liquidating its multi-million dollar claim for unreimbursed "in network" and "out of network" services as part of the third-party administrator's Chapter 11 reorganization. For another example, 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. For a final example, Ms. Callahan represented a hospital provider in conducting an audit review of unreimbursed services provided under a capitated care arrangement with a major health insurer. She then handled the hospital's negotiations with the insurer.

Intellectual Property

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.

Merchandise Licensing Agreement Dispute (Panel Arbitrator). Claimant developed, produced and licensed a popular streamed video, and entered into a merchandise license agreement with Respondent which allowed Respondent to design, manufacture and sell toys, games and other products using the characters and other elements portrayed in the video. The dispute concerned the allegation by Claimant that Respondent did not use commercially reasonable efforts to develop, promote and sell the Licensed Products, and the counter-allegation by Respondent that there was no market or demand for toys, games or other products based upon the video.

Exclusive Supply Contract / Patent Infringement Dispute (Arbitrator). Claimant developed a custom product that included Claimant's patented technology and entered into an exclusive supply contract with Respondent. Disputes arose between the parties concerning their respective obligations under the supply contract. Additionally, Claimant asserted claims against Respondent for patent infringement based on the allegation that Respondent had used Claimant's product design, including the patented technology, to have the same produce made by others for a lesser price. In response, Respondent asserted counterclaims challenging the validity of Claimant's patents.

Landlord / Tenant

As a mediator, arbitrator and advocate, Ms. Callahan has dealt with landlord-tenant disputes – involving both commercial and residential properties – in a variety of contexts. Some of the more interesting cases are described below:

Restoration & Non-Monetary Default Dispute (Mediator). Landlord owned a large commercial property in which it occupied half of the property and rented out the other half to a beverage bottling business. Both the nature and growth of the business caused problems to the point that the landlord was unwilling to agree to terms for an extension of the lease and claimed that the tenant was in breach of numerous non-monetary provisions of the lease, including making changes to the leased premises that penetrated the roof without the landlord's permission, conducting operations in such a way as to create a mold problem, and using the parking lot as outside storage. The dispute that came to mediation was how to negotiate a termination of the lease that would 1. allow the tenant sufficient time to find and relocate to another facility, and 2. provide the landlord with sufficient assurance and security that the leased premises would be restored and the roof and mold damage remediated.

Lease Validity & Enforceability Dispute (Mediator). Landlord owned a shopping center located on what had been designated as a Super Fund Clean-Up site because a portion of the property had once housed dry cleaning operations. By the time the landlord acquired the center, it had been fully remediated, but was still subject to monitoring by the local environmental quality control agency. The tenant in this case refused to take possession and claimed that no contract had been formed due to lack of consent or, in the alternative, claimed that rescission was in order based upon alleged negligent misrepresentation, constructive fraud or intentional misrepresentation concerning the nature and scope of the environmental quality control agency's continued monitoring, its right to access of the leased premises and its right to install monitoring stations inside the leased premises, all of which was discovered when the tenant submitted its proposed plans of improvement to the landlord and was told that they would need to be approved by the environmental control agency who, in turn, informed the tenant of its plans to install monitoring stations in various locations of the tenant's whole foods grocery store. A number of issues were raised for discussion in this arbitration, including the legal effect of the landlord's reletting of the subject premises for a term less than that provided in the tenant's lease (if the lease survived the tenant's attacks on validity and enforceability).

Restoration, Repair & Replacement Dispute (Mediator). Landlord was an international business man who owned a second, luxury home in a gate guarded community in Southern California, which he intended to one day make his primary residence after he retired. Due to projects that would require the business man's attention in other parts of the world for at least two years, he decided to lease the second home. The lease required an advance security deposit of $25,000, plus advance funding of half of the rent due under the lease, which amounted to $180,000, for a total up-front deposit of $205,000. The lease then required that the other half of the rent due under the lease be paid in monthly installments of $7,500. The financial aspects of the lease were fully performed, with two exceptions: 1. the tenant did not pay the last month's rent, and 2. during the course of the lease, the tenant had deducted approximately $10,000 from her rent for repairs. The dispute at mediation concerned the tenant's demand for return of her deposit, less the last month's rent, on the one hand, and the landlord's demand for damages in excess of the deposit for repair, restoration and replacement of lost personal property items that were in the house. In this regard, it was undisputed that the tenant had replaced all of the carpeting in the house, made structural changes to the house, and thrown away several built-in cabinets.

<u>COVID Lease Dispute</u> (Arbitrator). Commercial lease dispute where (a) the landlord sought to collect rents due, and (b) the tenant sought to be excused from its rent obligation based on *force majeure* and other defenses due to government closure orders.

<u>Sale & Assignment of Restaurant Lease and Liquor License</u> (Advocate). In a Chapter 11 bankruptcy proceeding, 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.

<u>Deposit Refund Dispute</u> (Mediator). Landlord owned several duplexes, which she operated as rentals. Tenant was a good tenant for several years. However, problems arose when he moved out and demanded the return of his deposit. The landlord denied that request and claimed that the tenant owed her money for water-damage repairs due to a leak in the plumbing in the master bathroom. The landlord claimed that the damage was so extensive, the leak had obviously been present for quite some time and that the tenant had a duty to report same to the landlord.

<u>Probate / Wills & Trusts</u>

Much of Ms. Callahan's experience as a mediator, arbitrator, and attorney advocate has involved the resolution of 1. competing interests in real and personal property as a matter of law or contract, 2. accounting for how assets have been administered, utilized or disposed of, and 3. valuing assets for purposes of division and distribution. Some of those disputes have involved probate estates and trusts, disputes concerning the validity or interpretation of wills and trusts instruments, inheritance rights and alleged financial elder abuse. The following are a few examples:

Family Partnership Dissolution / Accounting / Managing Partner Misconduct Claims (Arbitrator). Ms. Callahan was a panel arbitrator in a dispute involving an estate plan where numerous commercial real properties were put into separate limited liability companies owned and managed by a limited partnership in which the family trust owned 99% of the general and limited partnership interests and 1% was owned by a family member / contingent heir who was then the person responsible for overseeing management of the real properties. When a dispute arose between the trustees of the family trust and the family member charged with management responsibility, a lawsuit was filed seeking dissolution and accounting. Pursuant to the terms of the parties' partnership agreement, the matters was ordered to arbitration and involved such matters as oversight of a court-appointed receiver and the orderly disposition of the properties, with an even-up accounting relating to the parties' various claims and counterclaims for surcharge.

Breach of Fiduciary Duty / Wrongful Distribution / Trustee Misconduct Claims (Arbitrator). Ms. Callahan was the sole arbitrator in a trust dispute in which the surviving spouse asserted claims against the decedent's children from a prior marriage, serving as successor co-trustees of the decedent's trust, alleging breach of fiduciary duty, wrongful distribution and trustee misconduct with regard to the administration and distribution of trust assets.

Trustee Accounting & Competing Instruments (Arbitrator). Ms. Callahan was a co-Arbitrator in a wills and trust dispute requiring the interpretation of the trust instrument and the legal effect and validity of a later will executed by the decedent on the eve of his death. The trust instrument (a living will and trust) had been put in place 20 years prior by decedent and Wife No. 2, and provided for the half of the estate to go to Wife No. 2 upon Husband's death, with the other half going into an irrevocable decedent's trust. While the assets in the decedent's trust would pass to his children (from marriage to Wife No. 1), the trust required that the assets remain in trust until the death of Wife No. 2 and provided that she would receive all of the income during her lifetime. The later will was drafted by decedent's children and executed by decedent shortly before his death. It provided for specific gifts to decedent's children upon his death. In addition to the competing instruments dispute, this case also required the resolution of numerous disputes in which the parties had engaged in various means of "self-help." For example, exercising her powers as successor trustee, Wife No. 2 liquidated a number of trust assets worth several million dollars and transferred them into a new trust in which she and her daughter were co-trustees.

Undue Influence / Enforceability of Amended Will & Trust (Mediator). "Mom" had two children. Her original estate plan of many years treated her 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 a high-value residential property located in Orange County (valued about $2 million with a basis of about $250,000) and inheritance from a Family Trust that paid an annual distribution based upon stocks and other investment holdings. The new will provided that what was left (a small rental property worth about $200,000 and Mom's personal possessions) was to be divided equally between brother and sister. Sister sued, challenging the validity of the new will, which she alleged was the product of undue influence by her brother.

<u>Breach of Trust / Undue Influence / Enforceability of Will & Trust Amended Numerous Times</u> (Mediator). "Dad" had two children with "Wife No. 1." Early on in their marriage, Dad and Wife No. 1 executed standard "living trust" documents that provided for community assets to be divided into an A (Survivor's) and B (Decedent's) trust upon death of the first spouse. The surviving spouse was free to do what he/she wanted with his/her share of the community estate, but was only entitled to income from the assets held in the decedent's trust, unless invasion of principal was necessary to maintain his/her accustomed standard of living. Wife No. 1 died of a sudden illness when she was in her mid-40's. The community assets in existence at the time of Wife No. 1's death consisted of a mixture of assets worth about $2 million. After Wife No. 1 died, Dad did not divide the community assets into an A and B trust, and continued to treat them as his own. He did this for 35 years. His "treatment" of community assets included liquidating various assets – including the "family home." Ten years after the death of Wife No. 1, Dad met and married Wife No. 2. She was a working professional and had her own income, savings and retirement. Five years into the marriage, they bought a new home together, which they titled as joint tenants. Twenty years later, Dad was diagnosed with cancer and given less than a year to live. After his diagnosis, at the request of his children, Dad executed a series of estate planning documents that made specific gifts of real and personal property, as well as bank accounts, that theretofore had been held jointly in the name of Dad and Wife No. 2 or in the name of Wife No. 2 alone. After Dad died, the children demanded that Wife No. 2 relinquish assets per the new will and trust. A dispute then arose between Wife No. 2 and Dad's children concerning disposition of Dad's estate, as well as various "tort" claims asserted between the two sides for elder abuse and undue influence.

<u>Petition for Recovery of Tax Liabilities Attributable to the QTIP</u> (Mediator). Decedent was the surviving spouse under a QTIP. While her estate was quite small, the QTIP had a value well in excess of the estate tax exemption. There were delays in having an administrator appointed for the decedent's estate such that there was no one in place to timely file the estate tax return or request an extension. As a result, the IRS assessed taxes and penalties. The QTIP paid the tax liabilities, but balked at paying the interest and penalties, resulting in a dispute between the survivor's estate and the QTIP trust. The survivor's estate petitioned to recover the taxes and penalties from the QTIP under 26 U.S.C. § 2207A(a), which provides that when any part of the gross estate consists of the value of QTIP property, the decedent's estate is entitled to recover from the persons receiving the QTIP property the amount by which the total tax due exceeds that tax that would have been due if the QTIP property had not been included, and 26 U.S.C. §2207(d), which provides that in the case of penalties and interest attributable to taxes due with respect to the value of QTIP property, penalties and interest due on those "additional taxes" follow the same rule of allocation as the taxes. The Executor for the survivor's estate argued that almost 90% of the taxable estate was comprised of assets under the QTIP's control and those assets were what triggered the tax liabilities owed by the estate, so the Trustee of the QTIP was the responsible party who should have filed for extension and filed the 706 return. The QTIP, of

course, saw things differently, and contended that Probate Code § 20112(c) applied and allowed for equitable proration of the interest and penalties. Based upon its view of events, the QTIP took the position that the entire amount of the interest and penalties should be charged to the surviving spouse's estate due to actions available to but not taken by the Executor and her attorney. Otherwise, it would be the settlor's children, as beneficiaries of the Trust, who would suffer financial harm, but they did nothing wrong and had no authority to act with respect to the filing of the estate tax return for the surviving spouse's estate.

Disputes Among Siblings Once Mom and Dad Pass (Mediator). Ms. Callahan has mediated a number of cases in which the saga is the same. After both parents pass, the children are left to share in and divide the estate their parents have left them. Whether one sibling is appointed to act as the trustee, all siblings are appointed as co-trustees or some combination of the siblings (but less than all) are appointed as co-trustees, disagreements arise over what they're entitled to as beneficiaries, whether the trustees have conducted themselves properly, whether someone unjustly or unduly received something from mom or dad that should be returned to the estate or charged as an early distribution, etc. These matters frequently involve multiple parties and counsel and need special consideration in terms of logistics and scheduling. The key to resolution in these cases is getting enough information on the table about "the estate" so that they can put a dollar figure – rather than attributions and adjectives – on what they're fighting over, what they stand to gain through resolution and what they stand to lose through litigation. While these are family disputes in the sense that they involve people who are related by blood, all too often there is no family to put back together again – e.g., the children are from different marriages and grew up in completely different households, the children are adults and due to geography or other things have not been close with their siblings for decades, the children as adults have never really liked each other.

Financial Elder Abuse (Advocate). Ms. Callahan represented an elderly woman in a financial elder abuse action filed against her eldest son. The object of the lawsuit was to recover title to a $20 million real estate portfolio the elder had amassed over a 50-year period of time. When the elder was in her 70's, the elder gradually fell off title to her portfolio of properties and put title in the name of her two sons. She did this as an estate planning strategy directed at avoiding estate taxes. The elder did this pursuant to an oral agreement with her two sons that the properties still belonged to her in terms of any rents or sale proceeds and her ability to improve, sell, encumber, or trade any of the properties in her sole discretion. Over time, the elder traded out of rental properties into raw land and other non-income producing properties (e.g., a ranch and a vacation home that the family used). In order to keep the portfolio in place, the two sons contributed to their mother's support. When a dispute later arose between the eldest son and his mother, he stopped contributing to her support and would not allow her to sell one of the properties so that she could have a "nest egg" to live on. The other son did not dispute his mother's ownership of the portfolio and advanced her the monies needed to file a lawsuit to return title of the portfolio to the elder. The lawsuit included a claim for financial elder abuse. The lawsuit was settled on terms favorable to the elder on the first day of a two-week jury trial.

Agreement to Make a Will / Challenge to Enforceability of Will & Trust (Advocate). As a follow-on to the Case Example No. 5, Ms. Callahan represented the elder's youngest son who was the sole beneficiary under a will and trust the elder created after the disputes arose between her and her eldest son (but before the lawsuit or the settlement). The disinherited son filed a lawsuit challenging the will and trust on numerous grounds, including capacity, undue influence and an alleged agreement to make a will. He was unsuccessful on all counts.

Real Property / Land Use / Partition / Equitable Ownership

As both an advocate and mediator, Ms. Callahan has been involved in cases where title and/or disposition of real property is involved. The following are a few of the more interesting cases:

Mixed Use Project / Dispute Among Homeowners, HOA, and Commercial Landlord and Tenants (Mediator). This was a very complex dispute involving multiple parties and their respective insurers concerning the issues of: (1) whether a landlord was responsible for the actions / damages caused by a rogue tenant, (2) whether an HOA had an affirmative duty to its homeowners to police the commercial owner's compliance with a "master building agreement" and, if so, in what fashion in terms of affirmative action, (3) whether an aggrieved homeowner had an affirmative duty to initiate action against a commercial rogue tenant and, if so, in what fashion in terms of affirmative action.

Partition / Accounting Among Co-Owners of Rental Properties (Mediator). Several individuals joined their respective financial resources to purchase several residential duplex and four-plex properties. Things went well for the first few years, but then disputes arose over how the "partner" charged with managing was handling the investments. Allegations were made that he improperly borrowed against the properties and pocketed the loan proceeds for himself and that he was keeping the rents for himself rather than paying the expenses associated with the properties and sharing profits with the other co-owners. By the time the dispute made it to mediation, two properties had been lost to foreclosure, a receiver had been appointed to administer the remaining two properties, and the non-managing owners were seeking partition by sale through the court.

Tracing Title to Establish Equitable Ownership (Advocate). Ms. Callahan represented an elderly woman in a financial elder abuse action filed against her eldest son. The object of the lawsuit was to recover title to a $20 million real estate portfolio the elder had amassed over a 50-year period of time. When the elder was in her 70's, the elder gradually fell off title to her portfolio of properties and put title in the name of her two sons. She did this as an estate planning strategy directed at avoiding estate taxes. The elder did this pursuant to an oral agreement with her two sons that the properties still belonged to her in terms of any rents or sale proceeds and her ability to improve, sell, encumber, or trade any of the properties in her sole discretion. Over time, the elder traded out of rental properties into raw land and other non-income producing properties (e.g., a ranch and a vacation home that the family used). In order to keep the portfolio in place, the two sons contributed to their mother's support. When a dispute later arose between the eldest son and his mother, he stopped contributing to her support and would not allow her to sell one of the properties so that she could have a “nest egg” to live on. The other son did not dispute his mother’s ownership of the portfolio and advanced her the monies needed to file a lawsuit to return title of the portfolio to the elder. The lawsuit included a claim for financial elder abuse and involved tracing the source of monies and/or the disposition of “historical” properties to the current portfolio to show that it was the elder’s money that had been used to acquire the properties. The lawsuit was settled on terms favorable to the elder on the first day of a two-week jury trial.

<u>Disposition of Co-Owned Property Through Partition</u> (Advocate). As a follow-on to the above case, further disputes and lawsuits arose between the elder’s two sons concerning the division and disposition of properties they received under the terms of the aforementioned settlement. One such dispute concerned the division of a ranch which was owned with a third party, which was resolved through an action for partition by sale. For the properties co-owned by just the two brothers, division was accomplished through an action for partition in which some of the properties were divided in kind and others were partitioned by court-supervised sale.

<u>Real Property / Lien Dispute</u> (Mediator). 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.