Attorney’s Newspaper Niche

LAW: 3 cases follow win for carriers versus Register, Freedom

By JANE YU

Employment claims for newspaper carriers have become a niche practice for Dan Callahan.

The founding partner of Santa Ana-based law firm Callahan & Blaine recently wrapped up a nine-year saga of a class action lawsuit on behalf of some 5,000 newspaper carriers who took on the Orange County Register and its parent company, Freedom Communications Inc., in Irvine.

The case has brought about $15 million in fees for Callahan & Blaine. It began in 2003, when the firm alleged that the Register had violated labor laws by classifying the carriers as independent contractors rather than employees.

It ended with two separate settlements totaling nearly $30 million, enough to give each of the 3,000 drivers who remained plaintiffs in the case to the end more than $5,000. The first of two payments was made in September 2010; the other batch arrived in April and is waiting to be disbursed.

“An average class action settlement really doesn’t produce much of anything to the class members,” Callahan said. “$5,000 is a heck of a lot more than normally received. Sometimes, [it’s] a sum total of 15 bucks.”

Other Cases

The successful settlement at home—through all its twists and turns—has made Callahan the trial lawyer of choice for similar cases throughout California. He’s now representing newspaper carriers in lawsuits against The Sacramento Bee, The Fresno Bee and U-T San Diego, formerly known as the San Diego Union-Tribune.

Callahan contends that the amount of control those newspapers exercise in employing the carriers is similar to the circumstances that led to the win in the case against the Register.

“These drivers have to show up at a given time at a certain location, and they are instructed on how to fold [the papers], bag them, tie them … the route to follow, where to drop it … all of this is controlled,” he said. “If they’re independent contractors, you don’t train them.”

The cases in San Diego and Sacramento—representing 1,300 and 4,000 carriers, respectively—have been approved as class actions. The Fresno case is awaiting class certification.

Chicago-based Seyfarth Shaw LLP is the opposing counsel representing U-T San Diego.

The Register case reads like a book with several chapters.

The first opens in 2001, with an accident involving a Register delivery driver and a bicyclist.

The Register claimed it wasn’t liable in the incident because the driver was an independent contractor.

“But we did a lot of investigation and determined they actually exerted a lot of control over their carriers,” Callahan said.

Callahan represented the bicyclist, and the personal injury case was settled for $1.75 million.

“Then we moved on to the class action, a whole separate case,” Callahan said.

That chapter started in 2003, when Callahan & Blaine brought a class action suit against Freedom on behalf of the Register drivers, contending they were misclassified as contractors.

Wrigley Resumé

Callahan brought his years of courtroom experience and memories of days working as a driver himself, delivering beer to Wrigley Field in his native Chicago.

The Register hired Seyfarth Shaw to represent the company, and later switched to Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates and the Costa Mesa office of Theodora Oringher PC.

“When management brought [them] in, I welcomed the change,” Callahan said. “We hadn’t had a meaningful discussion with the previous firm, so we thought maybe now we’d have a better case.”

The case went to trial in late 2008 and lasted about seven weeks before reaching a settlement.

“The lawyers in this case were among the best I’ve ever seen,” said now-retired Judge David Velasquez, who oversaw the trial at the Orange County Superior Court. “I have to say that about both sides. The case was very difficult because the outcome was not clear at all [for either]. But when I sensed that there was a possibility for settlement, I suggested we take a recess. We then put all efforts into settling.”

The result was a $38 million settlement agreement made in early 2009.

The amount was adjusted to $29.5 million, including attorney’s fees, when only about 3,000 carriers ended up submitting necessary documentation for the claim.

Then came Sept. 1, when Freedom declared bankruptcy. Callahan went after Freedom and flew to Delaware, where the bankruptcy was filed.

“If nothing else, I was stubborn,” he said. “Defense lawyers often think they will just wear you out. I think they totally misjudged my persistence.”

“Double Down”

Freedom’s unsecured creditors—including the newspaper carriers—formed a committee to represent them in bankruptcy court. The committee voted Callahan as co-chair, and he decided to “double down, so to speak.”

Callahan & Blaine brought New York-based White & Case LLP to represent the carrier class in the bankruptcy. It also hired the Wilmington office of Philadelphia-based Fox Rothschild LLP, in line

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with the Delaware law that requires all parties to a bankruptcy proceeding in the state to hire local counsel.

Callahan & Blaine ended up with a tab of $577,000 with that line-up.

“Few plaintiff lawyers would advance that much money to prosecute a lawsuit,” said Edward Susolik, a partner at Callahan & Blaine and 18-year veteran of the firm. “That’s real money.”

Susolik said the firm was behind Callahan all the way through the Freedom case, even when it meant more expenses on the table as the case got increasingly complicated.

“I trusted Dan,” Susolik said. “I trusted his instincts and insight, his experience. He’d done such a great job at the trial to get this settlement, so now the issue was how to collect the settlement.”

A year of litigation led to a settlement in which Freedom agreed to pay the unsecured creditors $14.5 million, with most of that for the newspaper carriers.

Callahan didn’t stop there.

The last chapter of the story added to the payout for the carriers after Callahan learned that Freedom’s directors and officers had insurance policies totaling $25 million.

Callahan then formed a litigation trust and obtained an “assignment of rights” from Freedom—a status that allowed him to sue the company’s directors and officers in a separate case, contending that they took illegal dividends at the expense of Freedom’s unsecured creditors.

That’s when Susolik, who specializes in insurance law, got into the case. “I came in at the end,” Susolik said. “The lawsuit was against the directors and officers, but the money would be paid by the insurance.”

His argument, which was filed in the U.S. District Court in Santa Ana, contended that Freedom’s directors and officers had “breached their fiduciary duties to Freedom itself,” according to a Callahan & Blaine document.

“The insurance company was arguing that the directors and officers had no exposure for the claims,” Susolik said. “We were able to overcome that. I truly believe that 98% of lawyers would have given up at that point once the insurance declined coverage. I think they would’ve taken the small settlement offered. Dan did not accept it. We ultimately recovered [an additional] $15.5 million.”

None of the law firms that have represented Freedom or the other newspapers—all of which are much larger than Callahan & Blaine—responded to requests for comments for this story.

Susolik said Callahan & Blaine counts on seasoned litigators to hold its own in court.

“The reality is that only one lawyer can speak at a time in court,” he said. “Even if you have 1,000 lawyers in your firm worldwide, you can’t bring the thousand with you to the courthouse.”

Callahan & Blaine has 28 lawyers, many of whom have decades of experience.

San Diego Talks

It remains to be seen how much longer the firm will be working on cases against newspapers.

“We’ve had our first meaningful step to reaching a settlement” in the San Diego case, Callahan said. “Whether it goes to trial or settle, it’s up in the air.”

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