

# Star of the Legal Wars

Dan Callahan has won more than \$1 billion for his injured clients.

By Gary Goldhammer

Truth is a language spoken by the eyes. In a courtroom, a blink can mean the difference between success and failure if not read properly. And failure can mean millions of dollars lost or justice undone. The best lawyers are expert interpreters, Rosetta Stones in suits. While some read legal briefs and torts, these lawyers read people. It's a skill that requires nuance, patience and more than a little luck. It takes preparation, professionalism and effort. And when it works, it can mean millions of dollars won and even, sometimes, justice served.

More often than not, it works for Dan Callahan, a Santa Ana attorney with Galileo's ingenuity and more drive than a NASCAR racer. Last month, Callahan was named Litigation Attorney of the Year by California Lawyer Magazine for the record \$934 million jury verdict he earned on behalf of Fullerton-based Beckman Coulter, Inc. in a breach of contract suit against circuit board maker Flextronics International Ltd. of Singapore.

Flextronics, whose products were essential components of a complex blood chemistry analyzer, was found guilty of fraud and extortion. It was the largest jury award ever in Orange County, the largest in California in 2003 and the second-largest award in the nation last year.

For Callahan and his firm, Callahan & Blaine, the state accolade was a nice 20th anniversary present - he opened his doors on St. Patrick's Day in 1984 - and a reminder to corporations that juries in the post-Enron world have a low tolerance for lies.

"The average juror has fundamental values," says Callahan, a 54-year-old statesman of the courtroom who lights up when talking about his cases. "They believe a handshake is a deal. They believe your word is your bond, and they believe that if you lie, you're bad."

"The business community today is not Mayberry. Today there is arrogance, and people will lie if they think they will get away with it."

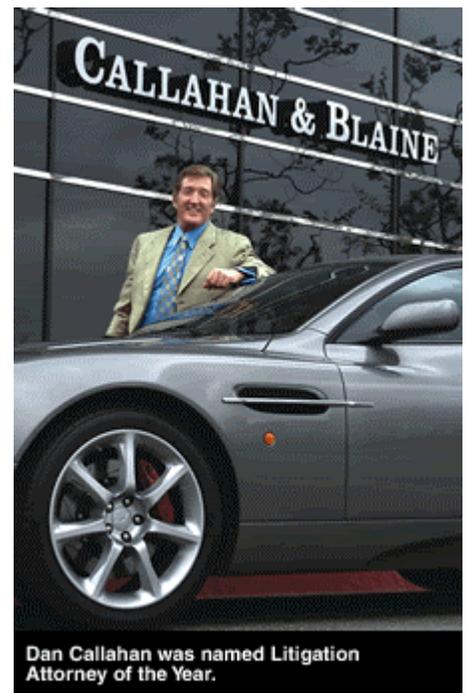
Success is Callahan's constant companion. He has received numerous honors, he runs a nationally recognized practice and he has garnered more than \$1.1 billion in verdicts and settlements in the last 5 years.

But just as there is Daniel J. Callahan, High-Powered Trial Attorney, there is also Just Dan - the former construction worker, the middle-class Irish Catholic son of a Chicago cop, the teenager who was thrown 125 feet by a speeding train. He is a father (daughter Caitlin, 16, and son Michael, 14), a volunteer who works with the severely injured and developmentally disabled and an educator and facilitator for the cause of improving and furthering the legal profession.

Not everyone is a fan of big money trial attorneys - there are those who believe these litigators bend the law just enough to form a dollar sign. But it's hard to find anyone, from judges to fellow lawyers, without a high level of respect for Callahan

"Dan pushes the edge on evidence and argument maybe a little bit closer to a professional or an appropriate edge than I feel comfortable getting," says Gary Waldron (of Waldron & Olson), an attorney who represented Flextronics (Scott Ferrell of Call, Jensen and Ferrell also worked on the case). "But Dan works as hard as any attorney I have opposed. He is conscientious and maintains his professionalism before the court and the jury. He and I have different styles, but Dan has been nothing but professional in his dealings with me."

Adds Judge C. Robert Jameson, who has worked with Callahan both behind the bench and on legal education programs: "The feedback from people is that Dan is the most affable person to work with. But when the bell rings, look out - because he will be ready."



Dan Callahan was named Litigation Attorney of the Year.

Callahan says, "I am able to produce good results because I prepare," he says. "One month from trial date I go into lock-down mode. I absorb, I read all the depositions, I write my opening statement - I don't delegate anything. A month out, I'm concerned. But by the time I walk in ready for trial, I'm like an 800-pound gorilla, I'm very confident. But you don't get there overnight - you have to work to get there."

## Sweet home Chicago

Callahan's road to Orange County and the courtroom began in the Midwest, a place where "real" work still means getting your hands dirty or breaking a sweat. His father was a district commander in the Chicago Police Department - not the modern version but the 1960s variety, the department of iron-fisted Mayor Daley.



Callahan says his father, who passed away 6 years ago, encouraged him to "just get a job" after high school. Callahan, who at the time didn't have much interest in furthering his education, went to work for the city of Elmhurst, Ill., climbing trees with a chain saw and breaking up sidewalks with a jackhammer.

"I wasn't interested in school, but after a few years working in construction, I realized this wasn't for me," Callahan says. "I wanted a job where you get paid to think, and my mother thought I would be a very good lawyer."

So under the up-rolled eyes of his father, Callahan enrolled at Western Illinois University and did something he had never done in school before - he worked hard and earned all As except for a lone "B" in bowling (the Midwest equivalent of college surfing classes in Southern California).

An inferiority complex fueled by the fear of not being able to compete at the college level led to a lifelong commitment to overachievement. At Western Illinois, Callahan was president of the Pre-Law Society and was named to the Who's Who of American Colleges and Universities. Later, Callahan became editor of the law review at UC Davis before graduating from law school with honors.

"I was trying to build a resume," Callahan says. "I felt everyone else was brighter than I was, so I just worked doubly hard. It worked for me in college and in law school, and it works for me today."

"My style is to prepare against the other guy as if it was David vs. Goliath. I have this image that whenever I go up against somebody, I put them on a pedestal, and then I fight to beat the guy on the pedestal."

While at Davis, Callahan did an internship at the Yolo County District Attorney's office (Judge Jameson was the DA who hired Callahan). He figured he would pursue criminal law, since that's what Perry Mason did.

"That's what you see on television - you don't see shows on copyright infringement," Callahan says with a laugh. But after some interviews with potential employers and a recruiting trip to Hawaii, Callahan decided to keep moving west and start his career in Honolulu.

"I worked for the oldest and largest firm in the state," Callahan says. "It was fun and I made a few court appearances, but after a couple years I decided to come back to California. Some friends told me to try Newport Beach, so I did."

As an undergrad in Illinois, he worked summers and holidays as a porter for Amtrak on the Chicago to Los Angeles run, so he was familiar with the area. He dove into his work with his new firm (Allen Matkins, Leck, Gamble and Mallory). He built a nice list of clients - and on March 17, 1984, again at the urging of his mother, opened his own practice.

"I talked to my mom about it, and she thought it was better to try than to look back and say I wish I had," says Callahan, whose mother, now 86, lives in Palm Desert. "I did the math and it made sense - and although that year March 17 fell on a Saturday, I was not going to be dissuaded from opening my doors on St. Patrick's Day."

The luck of the Irish has been with him since (Callahan's firm has grown to 58 employees). He continued to handle construction and real estate cases, and then, in 1988, Callahan won a patent infringement case that catapulted him onto the national stage and earned him the title "insurance litigator."

"I got very good at looking at company's insurance policies and getting coverage for my clients' legal expenses - this allowed them to pay what it took to win these cases," Callahan says. "By 1988, I thought I could get anything covered, and I did get a patent infringement case covered under Comprehensive General Liability - and that's what catapulted me up as an insurance lawyer."

After the Laguna Beach fires in 1993, Callahan volunteered to help victims navigate their policies. Most carriers, he says, stepped up at first but then wouldn't pay for legitimate expenses like hotel stays. "The purpose of an insurance company is to take care of you in your time of need, but their incentive is to pay as little as possible," Callahan says. "I liked insurance bad faith cases because I thought what was happening was terrible, and I felt really good about helping people."

A high-water mark for Callahan's insurance law practice came in 1994, when an unprecedented \$58 million judgment he won a year earlier against Farmer's Insurance in a bad-faith breach of contract suit became a lightning rod in the state capital. Insurance Commissioner John Garamendi, then running for governor, cited the case in his campaign and ordered an investigation into Farmers; an insurance industry initiative to slash contingency fees was quashed, thanks in large part to a California Trial Lawyers Association ad campaign highlighting Callahan's case against Farmers.

Life was good for Callahan being in front of a jury in a courtroom. He wanted to transition back to business law, but he couldn't erase the label on his forehead that read "insurance lawyer." Even after he became chair of the Orange County Bar Association's Business Litigation Section in 1996, the big business cases kept passing him by.

Then came Beckman vs. Flextronics - and out went the old perceptions, perhaps for good.

## The big one

First some background: Beckman Coulter, a biomedical testing company based in Fullerton, sued Flextronics in 2001. Beckman claimed the circuit board giant failed to fulfill a contract to make parts for its major product, a blood analyzer used by hospitals and medical labs to diagnose illnesses. Callahan was hired by Beckman to sue Flextronics for breach of contract - but little did Callahan or anyone else know, that claim was only the beginning.

For example, there was the additional \$300,000 that Flextronics demanded Beckman pay, above and beyond the contractual obligation, to continue production of the circuit boards. Beckman, having no other recourse, agreed to pay the surcharge, and the fee was spread in small increments across the production cost of each individual circuit board. Unbeknownst to Beckman Coulter, however, the payments continued far beyond the \$300,000 threshold.

"As we got into the discovery phase, we took a deposition of someone at Flextronics," Callahan says, recalling one of the key moments in the case. "And we found out that she was involved in a fraud perpetrated upon Beckman Coulter."

According to court records, the product manager, informed her boss that the surcharge level had been reached. Flextronics had gotten the \$300,000 it demanded. But her boss told her to continue assessing the surcharges anyway - and she did, to the tune of more than \$655,000. "I lied at the instruction of my boss," she testified, "and I would have taken this secret to my grave had it not been for the subpoenas served upon me."



Callahan and his team amended the breach of contract claim just before the trial began to add the fraud inducement element. For weeks, the case proceeded as expected - but as more evidence came to light during testimony, Callahan believed there was cause for another claim, one that would change the tenor of the suit and lead to the unprecedented verdict.

After the contract was terminated, Flextronics withheld parts Beckman Coulter needed to continue making the circuit boards, and therefore its blood analyzer. Not only did Flextronics withhold the parts, but it would not release the parts unless Beckman also purchased excess inventory sitting in a Flextronics warehouse - inventory that had no value or use to Beckman.

"Flextronics was basically engaging in extortion," Callahan says. "Had we not bought the inventory we could not make the boards - and had we not been able to make the boards, we would have suffered \$295 million in losses. That's extortion. I remember saying there has to be a civil counterpart to extortion," Callahan says, recalling one of many late-night work sessions with his team. "It was clear they had extorted money and then lied to cover it up. We came up with economic duress, and we amended the claim just before we rested our case."

That 11th-hour action - claiming economic duress for potential damages that Beckman would have suffered if it couldn't get the parts it needed - resulted in an additional judgment \$930 million. The total \$934 million verdict was a shock to all involved, including Callahan, and especially to Gary Waldron, the Flextronics attorney.

"It was an astounding verdict," Waldron says. "There is always hope the extraordinary won't happen, but there is always a possibility it will. This time it came to fruition."

According to Murphy Dupret, the jury foreman, the decision was a no-brainer. "There was a reason for that big verdict - with the evidence (Callahan) presented, there was just no disputing it," says Dupret, who as a veteran of 7 jury trials has seen her share of attorneys. In fact, she says, Callahan's actions in the courtroom spoke louder than his words or the witness testimony.

"His personality really came through, and you could just tell with the looks that he would give you that there was something coming - he had that Irish twinkle," Dupret says. "Everything he did was very professional. To be honest, I've never seen an attorney that courteous before."

Callahan says his courtroom demeanor is not an act - he never attacks opposing counsel, lest he feel the wrath of juries and judges. Moreover, he says, it's just not right.

"It's not my style to get into personal attacks," he says. "If you err on the side of being professional and courteous, you will be respected by the judge and jury, and they will give you what you are looking for."

Superior Court Judge Gregory H. Lewis, who presided over the case, bestowed praise on both attorneys, saying "any judge that has them in court will have a good trial." Nevertheless, he says Callahan's connection with the jury and trademark preparation sealed Flextronics' fate.

"Dan Callahan can think on his feet," Lewis says. "He prevailed because he was on top of his game."

Callahan says there is something else, too - simply put, he hates to lose.

"Waldron told me afterward that he was amazed at our tireless effort," Callahan says. "If he thought he was able to get away from one punch in the afternoon, we were back in the morning with a knockout blow."

"I believe when it's going good, don't let up. We're not spiking the ball at the 5-yard line. If we had spiked the ball a week or 2 early, there may have been a totally different result."

## Being Dan Callahan

Beckman Coulter and Flextronics later reached a \$23 million settlement in the case. Because the jury award was so high, Callahan and his client decided against taking their chances at the appellate level.

"As we know, punitive damages awards are under attack," wrote William H. May, vice president, general counsel and secretary for Beckman Coulter, in a letter to Callahan. "Not only the trial judge but also the appellate court never would have agreed to anything close to what the jury awarded."

Even so, the settlement is still the highest punitive damage award ever paid in California, according to Callahan. "Given that we were initially seeking \$2 million, we were getting \$21 million more than that," Callahan says. "Flextronics paid it by wire transfer within 24 hours. And that was the deal."

Callahan's record victory now leaves him with a conundrum once faced by the likes of Sir Edmund Hillary, Chuck Yeager and Neil Armstrong - once you've climbed Mount Everest, broken the sound barrier or walked on the moon, what do you do for an encore?

Callahan has shaken the insurance lawyer tag and put himself back in the forefront of business law; he is a California state Lawyer of the Year; he has earned the right to relax, do more teaching and watch his 16-year-old daughter play varsity tennis or practice martial arts or watch his son play lacrosse and surf.

He has arrived at the summit of his profession - but he is not ready to rest. For Callahan, there are still more mountains to climb.

"I'm transitioning now, working on serious personal injury and traumatic brain injury cases," Callahan says. "It makes me feel good, because I can help people who really need it."

Callahan's shift began in 2002. That year, a construction worker and volunteer fireman was driving his truck down an open highway and was struck by a tire that came off an 18-wheeler on the other side of the road. The tire bounced over the center divider, slammed onto the roof of the truck and crushed the driver's skull, causing serious brain injuries and limiting his range of motion.

Callahan settled the case and netted his client \$28 million; he could have left it there and moved on. Instead, he began volunteering with Winways, an assisted-living facility in Orange that helps individuals with brain injuries and strokes achieve independence. He also volunteers time and resources to Good Shepherd Communities, a Fountain Valley-based charity serving the developmentally disabled.

It would be easy for skeptics to write this off as nothing more than marketing, if not for Callahan's own experience.

You see, he came close to being injured himself - not just catastrophically, but fatally.

He was 19, driving with friends in Chicago. A wrong turn led him to a surprise meeting with the Chicago Northwestern passenger train, barreling down on him at 65 miles per hour. Callahan was tossed 125 feet and landed spread eagle on the tracks before passing out.

He awoke for only a few seconds - just enough time to roll over out of the way of a freight train chugging down another unguarded section of the track.

Call it fate, divine intervention or dumb luck. No matter how you look at it, that kind of experience leaves an impression, one that can't be falsified.

### **The verdict is clear**

"I don't know Dan as a high-profile attorney," says Pam McCrea, CEO and president of Good Shepherd. "I know him as a humble servant whose heart goes out to people. He donates his time and resources. He looks beyond people's weaknesses.

"He's not on our Board, he holds no position of power," she says. "What he does, he does out of the kindness of his heart. He doesn't expect anything in return. That's just Dan Callahan." **OCM**

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