

Taylor's Perspective . . .

When Your Client Launches a Lawsuit, Call in a Callahan

Sound Repugnant?

Let's say that you're a senior partner at a midsize law firm and you get a call from the general counsel of Acme Widgets, Inc., a Fortune 100 company, your biggest client, in fact, your firm's biggest client. Displaying more emotion than you can remember him ever exhibiting, the GC says that he needs your help and probably a lot more.

It seems that Acme's fierce, hated competitor, The Do-Hickey Corp., also a Fortune 100 company, just rolled out a new product that more than resembles one of Acme's best-selling widgets. In fact, the GC and his staff think that Do-Hickey infringed Acme's patent, which outside counsel had helped Acme obtain two years ago. They think they have a good infringement case, and they want to sue, or as the GC puts it, "We want to draw blood."

You immediately know that a brawl between these two heavyweights will be big. Real big. It likely will be the most important litigation your firm has been involved in, and while you know that your firm will be lead counsel, you also suspect that you'll need to bring in another firm to help with the case.

So you pick up the phone and call your counterpart at a firm across town who has lots of corporate litigation experience. He has successfully defended his clients numerous times, and you've worked well together before. You just want to see what his workload is like in case you do want to bring him in.

Stop right there. You may want to take a different approach.

You may want to—are you sitting down?—call a plaintiff attorney, even the one that beat you last year, forcing your client to pay a multimillion-dollar verdict. Yeah that's right, that guy.

"As repugnant as that might sound to your typical corporate counsel who's always battling plaintiffs' lawyers," says Daniel Callahan, founding partner of Santa Ana, CA-based Callahan & Blaine, "they would be well served to retain an experienced plaintiff trial lawyer because his or her vision is often very different from the vision you get from your typical large-firm corporate trial lawyer."

Callahan speaks from experience, as he's worked both sides of corporate cases, first defending corporate clients at Los Angeles's Allen Matkins Leck Gamble & Mallory and now at his own 21-attorney firm, where he is counsel for both defendants and plaintiffs.

In the past decade or so, Callahan has gained a lot of attention, not to mention honors and awards, for his plaintiff work. Most recently, he was on the winning side of a high-profile case and received a \$934 million verdict, the most in the United States this year and the most in Orange County, CA, history. (At the time of this writing, the defendant is appealing the verdict. It's expected that the verdict will be lowered in mid-November but probably not all that much.)

In *Beckman Coulter Inc. v. Flextronics International Ltd.*, Callahan was able to take a relatively routine contract dispute and inject a dose of aggressive trial tactics and add a splash of sex appeal to win the case, obviously wooing the jury to award Beckman such a remarkable verdict.

The case evolved from a 1997 contract under which Dovatron International, Inc., agreed to manufacture circuit boards for one of Beckman's medical devices. Flextronics acquired Dovatron and closed one of the factories that was making the circuit boards. It then terminated the five-year contract with

Beckman. Flextronics also refused to release inventory parts owned by Beckman unless the company bought additional parts that were superfluous to the medical device maker's operations, according to Callahan.

Beckman retained Callahan to file suit in 2001 for a simple breach of contract. But after uncovering all the facts, he decided to frame his case around fraud, economic duress, and malicious corporate conduct, something many corporate lawyers might not have had the moxie to do.

Callahan says that plaintiff lawyers tend to focus more on the emotions, whereas corporate lawyers concentrate on the gritty, legal nuts and bolts. "You need to step out of the norm and think more creative," he says.

He understands why corporate attorneys stick with the sort of strategy that they use in defending their clients. "When on a day-to-day basis you're fighting plaintiffs that are coming hard against your corporation, you form a mind-set and certainly things become rigid in your thinking," he adds.

Hit 'em Early, Hit 'em Often

Like many plaintiff attorneys, Callahan attempts to plant the seed early in jurists' minds that it's perfectly all right to hand down a financially hefty verdict. He says that he first determines the themes of the case, often along the lines of vulnerability vs. greed or David vs. Goliath, something the average jurist can get his or her arms around.

"Then you need to weave your themes into the case during jury selection," he says. "You inoculate them with the concept that you're going to be going for punitive damages; you're going for millions of dollars." Here's where he tries to weed out any jurists who may not have the stomach for huge awards. "I ask them if they have any religious or philosophical reason that they can't grant millions of dollars," he says. "You hit them with your theme, the health threat of the American people, for example, if the case is about a dangerous pharmaceutical or whatever the case may be about. You keep doing it during the opening statement and through all the examinations. By time you get to the close, they know this is a huge case."

Callahan's girlfriend is a corporate attorney, and sometimes she can't believe the way he plays on the jury's collective emotions, calling it "syrupy." But his track record, and certainly the *Beckman* case, proves that this approach works. "You have to take the case and narrow it down to some essential theme that the man on the street can identify with," he says. "You have to take what would otherwise be a complicated business case and not get lost in the details, not sacrifice the emotion."

We agree and feel that law firms should consider seeking out plaintiff attorneys when their clients need a multi-law firm litigation team.

So, if you really want to draw blood from The Do-Hickey Corp., don't add Goliath's attorney to your team. Bring in David's counsel. Pick up the phone and call a Callahan.

—Steven T. Taylor

OF COUNSEL

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