



FROM THE FAMILY BUSINESS TO THE ANTIQUE TEACUP COLLECTION: MAKING THE MOST OF EXPERT VALUATIONS IN DISTRIBUTING MARITAL PROPERTY

BY AMY B. FOLBE
HONIGMAN MILLER SCHWARTZ AND COHN LLP

Introduction

One of the most difficult aspects of divorce is debating with your spouse over the value of your assets – from your personal business, to the time share in Bermuda, to the mint condition AMC Pacer that, for some reason, is still parked in the garage. A married couple's wealth is likely to be contained in an array of investments, business ventures, professional degrees, goodwill, future earning potential, real and personal property and, yes, even that AMC Pacer. In today's high stakes legal environment, more and more spouses take advantage of expert witnesses in a effort to value and divide their property.

So how can you make sure that the value of your property distribution award is fair and equitable? It is up to the divorcing parties to bring forth evidence of the value of property. This is where expert witnesses assist. Expert opinions are not only crucial in the courtroom, but are persuasive bargaining tools as well. They also can be used jointly by spouses to come up with a fair price for both parties. The judicious and creative use of experts in divorce cases can help an individual collect his or her due in terms of property division without wasting unnecessary money. This article explores various types of marital assets that may well call for expert valuations. It also discusses the costs associated with employing such experts, and some creative strategies for the savvy spouse in order to save on experts while still enjoying the benefits of qualified assessments.

Making a List, Checking it Twice

From your home or car, to patents or your spouse's collection of antique pirate memorabilia, each asset that a couple acquires during a marriage is divisible upon divorce. While there may be real monetary value contained in a dusty stack of comic books, such items are often overlooked by divorcing spouses. When approaching an impending divorce, it is important to identify each potentially divisible asset, taking a comprehensive inventory of an property obtained throughout the course of the marriage. Beginning with real estate, don't forget that this includes time shares, rental property, easements, shared property, or future

interests. In terms of personal property, assets include art, antiques, and collections. But don't leave the list to that which is locked up behind a glass case. Assets in heavy rotation, such as a riding mower or an Oriental rug, may have a substantial economic value in the marketplace.

Once such property is identified, the next step is valuation – and now the experts come into play. A party can employ an expert to value every asset imaginable. A forensic accountant can evaluate the opposing parties finances to locate hidden assets. An actuary can value 401K, pension, or insurance benefits. An accountant can value a closely held corporation, limited liability company, family business, stock options, whether vested or unvested, and other business interests. Though employing such experts can be costly, especially to a spouse controlling fewer of the marital assets, hope is not lost. An individual can make the most of his or her resources by researching, assisting, and creatively choosing proper experts.

Doing Your Homework

Before hiring an expensive expert to value your property, consider getting your own hands a little dirty first. Preliminary research can help you determine when and whether an expert will actually be worth the investment. Some marital property may not be as valuable as believed or the value may not be disputable. In order to determine which property merits an expert valuation, preliminary research is an important first step.

In terms of real estate or other personal property, the internet is an excellent resource for valuing such property. For example, Zillow (www.zillow.com) offers the estimated value of homes and real estate. All a user must provide is the address and Zillow offers the estimated value of that address and surrounding properties. Other real estate sites such as www.realtor.com and www.century21.com supply selling prices for similar real estate in the area. The same is true for cars, collections, and antiques. The Kelley Blue Book (www.kbb.com) lists the estimated value of each make and model of car. For only ten dollars per item, Instantappraisal.com (www.instantappraisal.com) will appraise antiques



or collections. By obtaining estimated values of marital property, a spouse can categorize which assets merit an expert valuation and those that the couple can divide on their own. It also keeps you informed and in control of your own case.

Many experts charge by the hour. So, providing an expert with the initial documents up front can save your expert time thereby mitigating your final bill. Some of the most important documents include deeds, titles, certificates of authenticity, 401K and pension plans, tax returns, and bank statements. If a business or professional practice comprises part of the marital property, balance sheets, income statements, partnership agreements, loan applications, appointment books, by-laws and articles of incorporation are also used by experts. By gathering, copying, and organizing these vital documents, you will be one step ahead when you finally retain an expert.

A Time to Save, a Time to Splurge

During the course of a divorce, expert valuations are beneficial in two ways: during negotiations and as testimony before the judge. As a tool in negotiations, expert witnesses need not meet any particular criteria. However, if an expert testifies before the judge presiding over the divorce, he or she must conform with the Michigan Rules of Evidence (MRE) regarding expert testimony. MRE 702 requires that an expert witness be qualified to testify on a particular subject by his or her knowledge, skill, experience, training, or education. The expert witness testimony must be based on sufficient facts or data and arrived at using reliable principles and methods.¹ This rule is fairly broad and allows the clever litigant to employ unconventional expert witnesses so long as such an expert has knowledge or experience in valuing the asset and arrives at his or her valuation using established principles. The key question now for any party to a high-stakes divorce is when to spend a substantial amount on an expert and when to use a lower cost, yet equally as effective means of achieving an expert valuation.

In marriages in which a business or professional practice is at stake, a pricey business valuation expert may be worth the cost. Business valuation experts are generally well-trained certified public accountants, and an average valuation can run between \$6,000 and \$8,000.² The nuances of business operations require an in-depth look at the financial statements and tax records as well as the personal finances of the controlling spouse. A business valuation expert can flush out thousands of dollars in hidden assets. For example, one such expert located \$94,000 in unreported income hidden in the opposing party's gas station that otherwise would have been kept out of the property division.³ In another case, one expert valued a husband's medical practice at \$654,000, rather than the other expert's estimate of \$140,000, based on the intrinsic value of goodwill of the

practice. The presiding judge accepted the higher valuation and awarded the wife one half.⁴ With such high stakes and complicated analyses, a duly qualified business valuation expert may be worth the cost.

A Penny Saved

Opinion letters are another valuable tool in ascertaining value without spending a small fortune. If you or your spouse own a business or professional practice, an opinion letter from a valuation expert is the first step. It will not offer a value of the business, but rather indicates whether an extensive valuation endeavor is worthwhile after a review of the business's tax records and financial statements. The opinion can cost approximately \$750, while a full valuation can be between \$6,000 and \$8,000. So, if a business has questionable value, or you need a starting point for negotiations, an opinion letter can save considerable money.

Also, if one spouse suspects another of hiding marital assets, a forensic accountant may be useful, especially in marriages wherein the distribution of income is inequitable or even entirely one sided. Employing a forensic accountant, however, is costly. A Colorado firm, specializing in forensic accounting, recommends a "Personal Lifestyle Investigation" as an initial step in determining whether one spouse should be suspicious of the other's representations regarding his or her assets.⁵ In essence, this strategy is an abbreviated assignment for a forensic accountant that asks whether or not the spouse in suspicion could practicably maintain his or her lifestyle based on the income that he or she is reporting. Would Larry really be looking at a fourth home in Vienna if his annual take-home from his closely held business was \$80,000? Probably not, and you may not even need a Personal Lifestyle Investigation for that one. But in many cases, this step could either quell your fears at a cost much lower than a full blown investigation or set off the alarms before a dishonest spouse can take you for a ride.



Your cunning need not end here; unique cases call for unique remedies. In one case, a family carwash needed to be valued, the expert required an estimate the average daily number of cars passing through. Instead of paying a highly trained expert to practice his counting skills, an appraiser hired students to count the cars as they went through the carwash. A little bit of ingenuity, a lot of money saved, and a business valuation expert narrowly averts eight hours of sunburn and monotony.⁶

Finally, who says that all divorces are cut-throat and contentious? With many assets, the value will not be debated or spouses can work together in hiring an expert. While some property, such as closely held businesses or fringe benefits, lend themselves to asset hiding, thus calling for your own expert assessment, marital property including real estate, automobiles, or other common personal possessions may not have highly debated value. You and your spouse can share costs by hiring an expert to do one valuation.

Stepping Outside of the Box

Beyond mere strategies to save money with traditional expert lies the open road of experts uniquely qualified to aid you in your specific circumstances. Certain items clearly have a pecuniary value, but don't necessarily require high-cost valuation experts to get a reputable opinion on their worth. Moreover, there are intangible aspects of property, or intangible property itself, that may be forgotten or undervalued during a divorce settlement. So, to get the most bang for your buck, it's important to both keep your mind open to uncommon experts, and your eye out for uncommon assets.

Many valuable assets do not require a run of the mill expert in order to accurately ascertain their value. For example, where a family is in the fanning industry, such farm equipment may be valued by an auctioneer instead of a CPA or other typical professional expert. Not only is an auctioneer almost certain to charge less per hour, he or she is also almost certain to have expertise that will render a prompt and persuasive expert opinion. As for collections, from stamps to fine art, restaurant matchboxes to foreign beer bottles, there may well be qualified recreational collectors or small businessmen that can act as expert valuers in divorce cases. If a spouse is involved in an obscure or highly-specialized business venture, it is better to go to a direct source of information, such as a trade association or business network, instead of paying a costly generalized expert to reinvent the wheel.

After saving time and money by retaining a career auctioneer and veteran stamp collector, it is time to take stock of the less obvious assets that ought to be divided. Michigan is an ideal jurisdiction to get creative with theories on intangible assets as it is one of few jurisdictions to recognize both professional degrees and professional

goodwill as divisible properties.⁷ A professional degree is generally valued using two different methods: value based on the cost associated with attaining the degree, and value based on the enhanced earning potential such degree affords. Michigan bases professional degree valuation on the latter, leaving room for much negotiation.⁸ The question becomes, then, who may be an expert on future earning potential? Along with generalist valuation experts, it may be worthwhile to consider individuals uniquely qualified to the specific career at issue. For example, a dean of career services at a prestigious professional school situated in or around your geographic area is certain to have a wealth of knowledge as to the near future earning potential of an individual in the field.

While Michigan also accepts that professional goodwill is a divisible asset, thus far it has only dealt with goodwill in the context of a business. Courts in New York and New Jersey, on the other hand, have recognized celebrity goodwill as a marital asset, divisible at dissolution.⁹ Michigan's inclination to value goodwill and future earning potential leaves the possibility that Michigan courts will also eventually value celebrity goodwill. Celebrity status doesn't only apply to those walking the red carpets of Hollywood; it may include local newscasters, athletes, radio personalities, corporate executives, or community activists. Valuing celebrity goodwill is relatively uncharted territory in Michigan. Accordingly, a clever spouse may employ an expert to value such goodwill based on enhanced earning potential as is done with professional degrees.

Finally, a lucrative career inevitably comes with its share of perks and fringe benefits, all which may be divisible upon divorce. Many of these aren't necessarily tricky to value, but they may be forgotten, or evaded, when all is out on the bargaining table. One perk that may be overlooked when determining a spouse's income is compensation for unused vacation or sick days. Yet another is the value of employer subsidized child care or legal services. While these assets might not be contentious ones to value, the important thing is to remember to do so at all.

Other fringe benefits, however, may require greater efforts to accurately define the value at stake. For example, an asset like a country club membership is likely to have more value than merely the corresponding yearly dues. Social cachet and the impracticability of both individuals existing as members after the fact of divorce both add considerable value to the membership. An expert can place a value on such social goodwill, and in turn, maximize the significance of such membership in property division.

Conclusion

New recognition of various types of divisible marital property coupled with the creative use of experts to value any type of marital asset means that you can truly get out what you put in



to the marriage. Reaching an equitable settlement not only includes identifying every possible asset, but also consists of knowing when to press for a full valuation and when an estimated or agreed upon value is sufficient. Although the expert business valuation of the medical practice may be worth shelling out thousands of dollars on, appraising the paint-on-velvet portrait of Elvis may not be. The key is knowing the difference between property that merits the investment made on an expert witness and that which will cost more than it is worth. Educating yourself about the value of your property will lead to wise decisions with regard to its division. Using unconventional experts when possible will save money, and investing in traditional, albeit costly, experts under some circumstances will result in the greatest bang for your buck. In the end, preparation, ingenuity, and commonsense will lead to the greatest payout and least amount of headache when dividing marital property.

Endnotes

1. MRE 702.

2. Anita Dennis, *Practicing Management: Determining a Fair Share*, 11-92 JA 81 (1992).
3. *Id.*
4. 19 Am J Fam Law 56 (2005).
5. David Melton & Associates, *Forensic Accounting in a Divorce* <<http://www.divorcesource.com/co/articles/melton6.html>> (accessed August 16, 2006).
6. Dennis, *supra* at 82.
7. See Jack A. Rounick & Hon. R. William Riggs, *What's Perk-Olating? How Courts are Handling Perks, Fringe, and Other Employment Benefits*, 23 Farm Adv 12 (2001).
8. See *Woodworth v Woodworth*, 126 Mich App 258; 337 NW2d 332 (1983).
9. Laurence J. Cutler & Robin C. Bogan, *Celebrity Goodwill: The Nature of the Beast From Horses to Hedge Funds Tips On Valuing Businesses*, GP/ Solo Law Trends & News: Family Law (February 2005) <<http://www.abanet.org/genpractice/newsletter/lawtrends/0501/family/celebritygoodwill.html>> (accessed July 19, 2006).

