

TABLE OF CONTENTS

Introduction

Goodwill: Where Are We? How Did We Get Here? What Do We Do About It?

Intro-1

*By David Wood, CPA/ABV, CVA**

Chapter 1—Where Are We? Definitions and Background

Personal Goodwill vs. Enterprise Goodwill

1-1

By Jay Fishman FASA, CBA

Overview of Enterprise and Personal Goodwill

1-10

By Dr. Shannon Pratt, CFA, FASA, MCBA, CM&AA, MCBC

Marital Property Law in the United States

1-12

*By Jay Fishman, FASA, CBA, Dr. Shannon Pratt, CFA, FASA,
MCBA, CM&AA, MCBC, and William Morrison, CPA/ABV*

The Illusionary Reality of Business Valuations in Marital Dissolutions

1-19

By Jerome W. Karsh, CPA, MSBA

An Unwilling Seller—Is There Such a Thing? Fair Market Value, Goodwill, and an Unwilling Seller: Is a Covenant-not-to-Compete Required?

1-28

By David Wood, CPA/ABV, CVA

Goodwill Attributes: Assessing Utility

1-38

By David Wood, CPA/ABV, CVA

How to Distinguish Personal Goodwill from Enterprise Goodwill, the Key Person Discount, and Noncompete Agreements

1-49

By Alina Niculita, CFA, MBA, Angelina Mckedy, and Kimberly Linebarger

Chapter 2—How Did We Get Here? Case Law

Goodwill Valuation in the Courts

2-1

By Noah J. Gordon, Esq.

Present Positions on Professional Goodwill: More Focus or Simply More Hocus Pocus?

2-34

By Christopher A. Tiso

Goodwill Hunting in Divorce

2-47

Chapter 3—What Do We Do About It? Methodology

Professional Practice Valuation

3-1

By Mark Shirley CPA/ABV, CVA, CFFA, CFE

Goodwill: Making Measuring a Little Easier in Divorce Cases	3-21
<i>By R. James Alerding, CPA/ABV, ASA, CVA</i>	
Separating Personal and Business Goodwill of Operating Companies in Divorce Valuations	3-27
<i>By Rod Burkert, CPA/ABV, CVA</i>	
An Allocation Model for Distinguishing Enterprise from Personal Goodwill	3-36
<i>By David Wood, CPA/ABV, CVA</i>	
'MUM's the Word'™: A Formal Method to Allocate Blue Sky Value in Divorce	3-47
<i>By David Wood, CPA/ABV, CVA</i>	
The Goodwill Value of Medical and Dental Practices	3-55
<i>By Mark E. Kropiewnicki, JD, LLM</i>	
Reasonable Compensation and the Productivity Adjustment: Tips & Techniques for Owner/Employee Compensation Determinations and Adjustments	3-64
<i>By Kevin R. Yeanoplos, CPA/ABV/CFF, ASA and Ronald L. Seigneur, MBA, CPA/ABV/CFF, CVA</i>	
A Reasonable Compensation Case Study	3-80
<i>By Kevin R. Yeanoplos, CPA/ABV/CFF, ASA</i>	
The Interplay of Reasonable Compensation, Personal Goodwill and Enterprise Intangibles	3-83
<i>By Mark Dietrich, CPA/ABV</i>	
Identifying and Measuring Personal Goodwill in a Professional Practice	3-87
<i>By Mark O. Dietrich, CPA/ABV</i>	
Identifying and Measuring Personal Goodwill in a Professional Practice—Part II: Using the Single Period Capitalization Model	3-99
<i>By Mark O. Dietrich, CPA/ABV</i>	
Separating Personal and Business Goodwill	3-104
<i>By Darrell Arne, CPA, ASA, and James Hamill Ph.D., CPA</i>	
Personal Goodwill Should be Considered in all Business Valuations	3-117
<i>By Alan S. Zipp, Esq., CPA/ABV, CBA</i>	
Chapter 4—Celebrity Goodwill and Personal Goodwill Teleconference Transcripts	
The Business of Celebrity	4-1
<i>By Jay Fishman FASA, CBA</i>	
Concepts of Valuation of Celebrity Goodwill as Property	4-27
<i>By Honorable R. William Riggs, Associate Justice, Oregon Supreme Court, Salem, Oregon</i>	
The New Dynamic for Celebrity Businesses	4-43
<i>By Jay E. Fishman, FASA, CBA and Jeremy Smith</i>	

Calculating Goodwill: What is Personal and What is Enterprise? 4-52

Speakers/Moderator: Ron Seigneur, Jim Alerding, Mark Dietrich, and Kevin Yeanoplos

Entity vs. Personal Goodwill: Taxes, Divorces, Stockholder Disputes & More 4-79

*Speakers/Moderator: Jim Alerding, Michael Berger, Jay Fishman, and
Dr. Shannon Pratt as the Moderator*

Entity vs. Personal Goodwill Revisited 4-106

*Speakers/Moderator: Jay Fishman, Mark Luttrell, Don Schiller, and
Dr. Shannon Pratt as the Moderator*

Valuing Professional Practices 4-131

Speakers/Moderator: Ron Seigneur, Mark Dietrich, and Kevin Yeanoplos

Chapter 5—Court Case Abstracts

BVR'S Guide to Personal v. Enterprise Goodwill

New and updated materials list

Chapter 1:

"Personal Goodwill vs. Enterprise Goodwill," by Jay Fishman FASA, CBA

Jay Fishman's most recent paper on personal vs. enterprise goodwill, which was distributed at the 2008 AICPA/ASA National Business Valuation Conference in Las Vegas, Nevada.

"Marital Property Law in the United States," by Jay Fishman, FASA, CBA, Dr. Shannon Pratt, CFA, FASA, MCBA, CM&AA, MCBC, and William Morrison, CPA/ABV

A new addition to this year's Guide, this article pulls from their Standards of Value publication and sheds light on relevant martial property law cases and methodology.

"How to Distinguish Personal Goodwill from Enterprise Goodwill, the Key Person Discount, and Non-compete Agreements," by Alina Niculita, CFA, MBA, Angelina Mckedy, and Kimberly Linebarger

A new addition to this year's Guide, this article from Shannon Pratt Valuations, Inc. discusses the relationship between personal goodwill and noncompete agreements, as well as the relationship between personal goodwill and the key person discount.

Chapter 2:

"Goodwill Valuation in the Courts," by Noah J. Gordon, Esq.

This comprehensive article by author Noah Gordon has been updated to reflect pertinent cases occurring since last year's Guide.

Goodwill Hunting in Divorce Chart

This chart has been updated to reflect new cases deciding the treatment of personal and enterprise goodwill in divorce, such as Ahern v. Ahern in the state of Maine.

Chapter 3:

"Goodwill: Making Measuring a Little Easier in Divorce Cases," by R. James Alerding, CPA/ABV, ASA, CVA

Author James Alerding has updated this article and expanded on its previous version.

"The Goodwill Value of Medical and Dental Practices," by Mark E. Kropiewnicki, JD, LLM

Author Mark Kropiewnicki has updated this article with new data from the Goodwill Registry and analyzed current trends.

“Reasonable Compensation and the Productivity Adjustment: Tips & Techniques for Owner/Employee Compensation Determinations and Adjustments,” by Kevin R. Yeanoplos, CPA/ABV/CFF, ASA and Ronald L. Seigneur, MBA, CPA/ABV/CFF, CVA

Authors Kevin Yeanoplos and Ronald Seigneur have expanded on Kevin’s previous contribution last year. This year’s article delves deeper into reasonable compensation and assists with when and how to make productivity adjustments.

“A Reasonable Compensation Case Study,” by Kevin R. Yeanoplos, CPA/ABV/CFF, ASA

Authors Kevin Yeanoplos and Ronald Seigneur have expanded on Kevin’s previous contribution last year. This year’s article delves deeper into reasonable compensation and assists with when and how to make productivity adjustments.

“Personal Goodwill Should be Considered in all Business Valuations,” by Alan S. Zipp, Esq., CPA/ABV, CBA

A new addition to this year’s Guide, author Alan Zipp provides an excellent article which analyzes personal goodwill in ordinary business situations, outside the divorce context, which may be of significant benefit to business appraisers for consideration in future valuation engagements.

Chapter 5—New Court Case Abstracts **(full text cases included on the enclosed CD):**

- *Ahern v. Ahern*
- *BAA v. Acacia Mutual Life Insurance Co.*
- *Baker, In re Marriage of*
- *Haefele, In re Marriage of*
- *Helfer v. Helfer*
- *Porter, In re Marriage of*
- *Quick Pick Express, LLC v. Quick Pick Express, Inc.*
- *Schiro v. Schiro*
- *Statham v. Statham*
- *Universal Marketing Inc. v. CIR*
- *Vitamin Village, Inc. v. CIR*
- *Von Hohn v. Von Hohn*
- *Wechsler & Co. v. CIR*
- *Wold v. Wold*
- *Zells, In re Marriage of*

INTRODUCTION

Goodwill: Where Are We? How Did We Get Here? What Do We Do About It?

By David Wood, CPA/ABV, CVA*

Introduction

For the past ten or more years, a storm has been forming. Conditions have developed that have caused clouds to form in some jurisdictions of the country, while in others there is still “blue sky,” if you will pardon the pun. The storm has been shifting from place to place, sometimes gathering strength, and sometimes dissipating. Now the issue of goodwill’s divisibility into personal and enterprise components has spread to over half of the states.¹ [See contributor Gordon’s article, “Goodwill Valuation in the Courts,” in Chapter 2 for an excellent discussion of many of the lead and representative cases.]

In some jurisdictions, we, as testifying experts, are being charged with the responsibility of offering our opinion as to the valuation of an intangible asset (namely, personal goodwill) that may have significant consequences resulting in one party having a greatly different and detrimental financial outcome in this zero sum game. When we define this task in human terms, it is a gravely serious task.

Finding the answer is not easy. The courts have tried sorting out the issues, but without guidance from the valuation profession, each case seems to take us further into the difficult task of making sense of it all.

One *Guide* contributor, Gordon, discusses an Idaho court declining to enter the “morass” of distinguishing between values attributable to the professional or to the enterprise.² Rejecting this approach, the concurring judges said, “Quite frankly, such an approach does not make a good deal of sense.” A dissenting judge felt just as strongly that just such an approach was appropriate.

And looking to the statutes for a goodwill solution has generally only resulted in frustrated efforts. Family law, by its nature, is an uncertain and unsettled area of the law, perhaps even more so by the legislature’s neglect of this area. Who can blame them really? Family law rules have been on the books a long time and are dealt with in case after case by court after court. It is easy enough for legislators to assert that they are “working” reasonably well. Thus, short of a protruding injustice, why would a legislature jump in and to try to propound a remedy? After all, one might argue that finding injustice in family law decisions is like finding a shell on the beach; they seem to be everywhere.

I am only aware of one state that has a statute on its books that mandates the treatment of personal goodwill. That state is Louisiana. The revised statute was only recently added to the state’s rules governing marital division. The section is 54 words long and removes from the value determined that portion of goodwill “attributable to any personal quality of the spouse awarded the business...”³ The statute leaves to the valuator the task of establishing the value of personal and enterprise goodwill.

BVR’s Guide to Personal v. Enterprise Goodwill addresses the whole gambit of goodwill issues, from defining it, to separating it, to calculating it, and even dealing with the thorny aspects of celebrity goodwill. This *Guide* is divided into three basic chapters – definitional issues, case law, and methodology. In addition to these three areas, the *Guide* offers tele-

Introduction

conference scripts from some of the leading experts, provides abstracts of over 140 cases ruling on some aspect of goodwill, and a CD with over 220 full-text of goodwill cases from nearly every state. While this is still a maturing and developing area of law, we must make sense of it. I hope that you will find, as I have, this *Guide* is a big step in that direction for your valuation practice.

Chapter 1—Where Are We?

First, let's talk about goodwill. The specific definitions of enterprise and personal goodwill will follow in various articles. Some of the contributors use a broad definition and some refer to returning business. My own definitions, which are somewhat more specific, are included in the "Goodwill Attributes: Measuring Utility" article which appears in Chapter 1. Before we get to the definitions of personal and enterprise goodwill, consider the impact of the standard of value. After all, this is the starting point for all valuation issues and a valuator would be ill-advised to overlook this important aspect. I believe that some valuers err in resolving goodwill issues due to a failure to fully consider goodwill from its most elemental level.

Standard of Value

Goodwill can exist under any standard of value. Of course, the goodwill value would most likely be different depending on the standard of value. Several contributors discuss this topic at length. Fishman's 2008 presentation at the AICPA/ASA National Business Valuation Conference in Las Vegas makes it clear that what one court treats as "fair market value" may not be the same in your jurisdiction. [See Fishman's article, "Personal Goodwill vs. Enterprise Goodwill," in Chapter 1 for a through discussion of this and other important issues.]

Contributor Karsh adds a very worthwhile discussion of fair market value and fair value, including numerous citations regarding the standard of values in various jurisdictions. [See Karsh's article, "The Illusionary Reality of Business Valuations in Marital Dissolutions," in Chapter 1.] Fair value is a more elusive concept, often having its foundation in other areas of valuation law, such as minority oppression and dissenters' rights actions. The divorce area also puts a spin on this definition as well. Sometimes a court will use the term "fair market value" even when it is more akin to the valuation profession's concept of "fair value."

The valuation industry may have a solid definition of fair market value, but the men and women in the black robes are not members of our profession. In Florida, seller's efforts after the date of valuation may not be considered in the valuation of the business and the seller may actually "go across the street" to compete. That is generally not the case in the real world and not the case in the valuation profession's definition of fair market value.

Throughout this *Guide*, readers are warned to be clear as to the applicable law in all aspects of the valuation. Even some basic terms, such as fair market value, may not have the same meaning that one is accustomed to using in other valuation areas.

Three Kinds of Goodwill

Regardless of the standard of value, or how a particular jurisdiction defines it, the valuator must establish a solid value of the subject company being valued before determining the value of goodwill as a separate component. I cannot stress this enough.

Introduction

Take transferability and its impact on the standard of value, for example. Time and again, I see valuers struggling with the question of the transferability of goodwill. To be sure, transferability of goodwill value is an important concept. Consider this: Goodwill that is not transferable has no value to a buying party, thus, should not be included in the fair market value of the subject company in the first place.

There are actually three kinds of goodwill - enterprise goodwill, personal goodwill, and nontransferable goodwill, which by its nature is primarily, but not necessarily exclusively, personal. The focus of valuing goodwill under the rules of family law is generally on transferable enterprise and personal goodwill. However, it is helpful to understand nontransferable goodwill. In some jurisdictions, as this *Guide* will show, even nontransferable goodwill is included in the value of the marital estate, such as when the standard of value is the fair value to the *owner*.⁴

Every small businessperson that “owns a job” has nontransferable goodwill. The business generates income for the individual, but little beyond the efforts of that person. A lot of hard work and skill may produce considerable income. But if the income and the goodwill it generates are not readily transferable, the goodwill is to the owner, hence, my description above of “owning a job.”

If a valuator has properly determined the fair market value of a business, then the value includes transferable goodwill only. Does this value include any personal goodwill? If the answer were no, then our job would be completed. Essentially this would mean that the only goodwill that was transferred was enterprise goodwill. But the answer is almost certainly that the goodwill transferred includes some personal goodwill. How much personal goodwill is included in the value is the question. Since the goodwill is personal, the efforts of the individual in the business are critical to our analysis, though just as important are the efforts of the individual after the hypothetical sale of the business. Now, as the mystery writers say, “The plot thickens.”

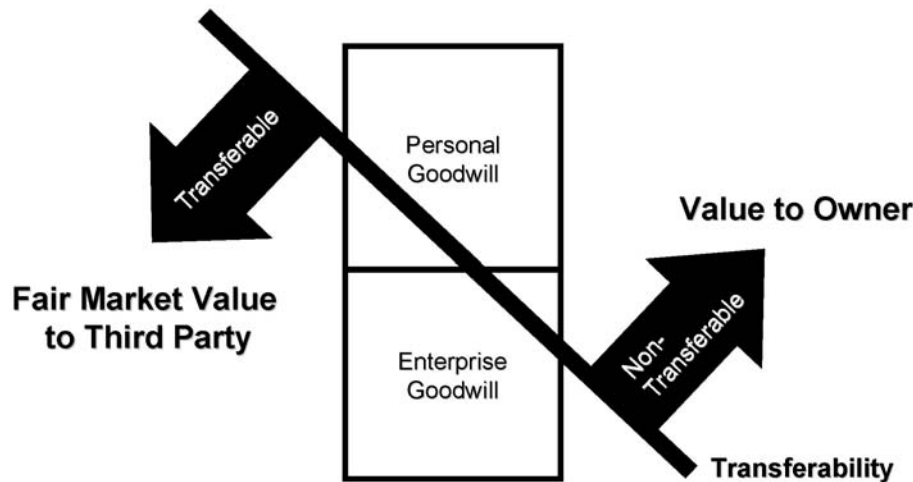
Competition After the ‘Sale’

To fully understand nontransferable goodwill in the context of the standard of value, it is critical to understand the role of the covenant-not-to-compete and for whom the value is being determined—an independent buyer or the owner.

First, if your methodology has determined a fair market value for the company as if sold to a third party, then it does not include any nontransferable goodwill. For example, if a market comparable method was used that was based on actual sales of companies, the goodwill in your value only includes transferable goodwill.

However, as Fishman and Cooper point out in their contribution, some jurisdictions deal with the value to the owner, which could include nontransferable goodwill. [See the “Standards of Value in Divorce” section of Fishman and Cooper’s article, “Personal Goodwill v. Enterprise Goodwill,” in Chapter 1 of this *Guide*.] The illustration below shows the difference between the value to the owner, which includes nontransferable goodwill, and the value to a third party who is unwilling to pay for goodwill value that cannot be transferred.

Introduction



In the illustration, the line represents transferability of goodwill value. The placement of that line is a function of many things, such as the attributes of the business and the individual, though an overriding element is the amount of competition after the hypothetical sale.

Thus, the second major point to consider is the rule in your state regarding a covenant-not-to-compete. I believe that the fair market value standard requires active consideration of a willing seller. [See my article, “Unwilling Seller—Is there Such a Thing?” in Chapter 1 of this *Guide*.] Since a willing seller in the real world nearly always includes a restrictive covenant, I believe that the standard of fair market value from the valuation profession’s point of view requires the valuator to do the same—value the business assuming an effective covenant-not-to-compete. What real-world willing seller would not offer an effective restriction to maximize the economic return? Moreover, what real-world willing buyer will pay the same price if the restriction were removed? However, as I pointed out earlier, we don’t value businesses for divorce in the real world, but in the hypothetical world in the courtroom. Your jurisdiction might impose an unwilling seller, as is the case in Florida.

Covenant-Not-To-Compete

Having a covenant-not-to-compete means that a greater percentage of the goodwill will be made up of transferable personal goodwill. But, be careful. When we practice in the realm of family law, we often leave behind the relatively well-defined concepts that we hold in the valuation profession. If the court in your jurisdiction does not permit consideration of active involvement and participation by the seller, then much less goodwill will be transferable. Regardless of whether the court calls it fair market value, such restrictions change the standard of value to a fair market value exchange between a willing buyer and an *unwilling seller*.

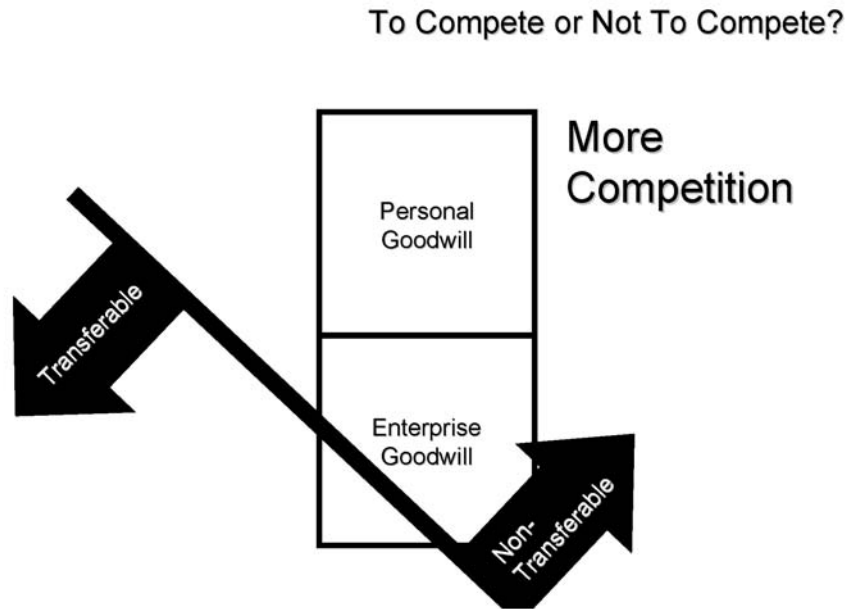
Further, the court-imposed exception on the fair market value standard can substantially affect enterprise goodwill as well. Client records and other items of enterprise goodwill

Introduction

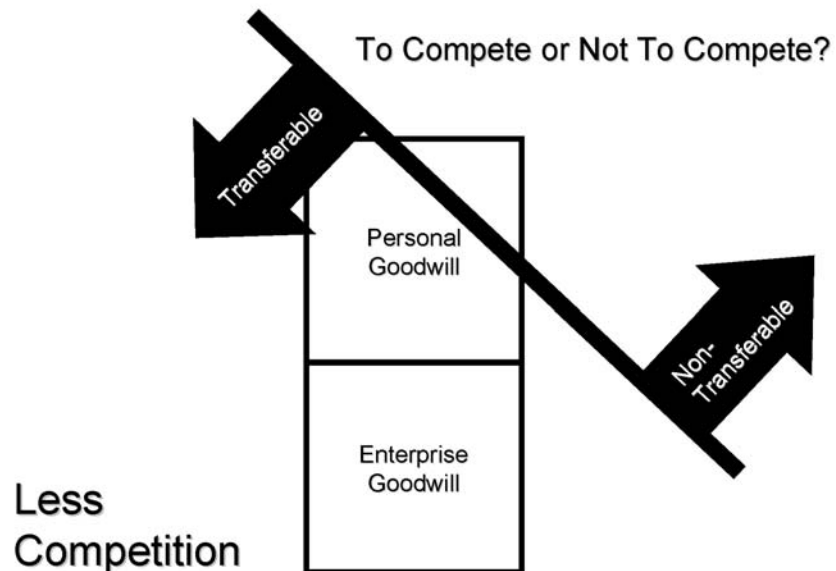
would likely have less value to the buyer if the seller was not going to assist in the transfer and certainly would diminish if the seller were going to actively compete.

The two illustrations below show value with and without a restrictive covenant.

Without a Covenant-Not-To-Compete In Place



With a Covenant-Not-To-Compete In Place



Introduction

Obviously, the covenant-not-to-compete will alter the value of the business, but also the value of the amount of goodwill, both personal and enterprise, that will transfer. It bears repeating that the valuator should know just how the court in the relevant jurisdiction would treat the issue of requiring a covenant-not-to-compete.

Alerding's contribution discusses some of the merits of valuing the covenant-not-to-compete, as well as the role of the covenant in valuing enterprise goodwill. He points out that use of the market approach to establish value should not necessarily lead to the conclusion that all of the goodwill is enterprise. This, of course, goes to the issue of transferability and the impact of a restrictive covenant on transferability. [See Alerding's article, "Goodwill: Making Measuring a Little Easier in Divorce Cases," in Chapter 3 of this *Guide* for a discussion of this point and an excellent overall discussion of the issues facing the valuator.]

Several of the contributors include discussions of the attributes of personal goodwill. The attributes of goodwill helps the valuator understand the nature of the goodwill, how goodwill might be more related to the individual as opposed to the business, and how cash flow or earnings generate goodwill value. As a part of my work developing the Multiattribute Utility Model (MUM), I attempted to define and classify all the attributes of goodwill into personal and enterprise, and further into groupings for personal, business, and industry characteristics. [See "Goodwill Attributes: Assessing Utility" in Chapter 1 for a comprehensive discussion of attributes.]

Before we move onto the next section, "How Did We Get Here," consider one other aspect. "Personal" goodwill started out as "professional" goodwill. In fact, I would argue that one of the problems is that in the early cases dealing with professionals, the judges, as well as many attorneys arguing before them, were quick to act on the premise that many professional practices would only have goodwill that was "attached" to the professional. This often left the impression that all goodwill in professional practices was personal, to the exclusion of enterprise goodwill. However, many of the things discussed above and throughout this *Guide* were not considered in these early cases.

As the goodwill issue has matured and expanded to other jurisdictions, some cases have pushed the concept beyond professional practices. One such case in Illinois, *Talty*,⁵ attempted to attribute some of the goodwill to the owner in an automobile dealership. The Illinois Supreme Court gave the green light, opening up the argument in all types of businesses. As a result, in every report I issue in a marital matter, I include an opinion of the value of goodwill, even if it is "obvious" that only enterprise goodwill could exist.

Failure to do so can have serious consequences, especially if counsel cannot get the testimony before the court as to your opinion regarding personal goodwill. Some courts play by the strict rule that if it is not in the report, you will not be talking about the subject on the stand. This can leave you and your client in a very difficult position. [See "The Importance of Evidence on Goodwill in Court Proceedings" section of Gordon's article, "Goodwill Valuation in the Courts," in Chapter 2 of this *Guide*.]

Chapter 2—How Did We Get Here?

The goodwill issue generally has developed out of the courts' sense of equity. We would all do well to remember that we practice family law in courts of equity. Equitable decisions don't always make for good law. Sometimes the principles established in forcing the law to an equitable decision in a particular case leave everybody else struggling.

Introduction

Also, there are additional reasons why the goodwill issue has developed in so many different directions. Attorneys advocating for their client's best interest without consideration for our valuation principles, for which they have no obligation, create problems. Too many experts willing to accommodate the attorneys and clients in such matters can add to our problem. Cases developing in different jurisdictions at different times, and with a differing understanding and point of view as to what the law should be certainly compounds the problem. Justice is not always neat.

So how we got here is not an easy story to tell. Many of the contributors throughout the *Guide* discuss cases to illustrate a particular point or problem - definitions, standards of value, covenant-not-to-compete, etc. This section of the *Guide*, Chapter 2, deals primarily with what the courts are telling us.

I have done considerable research over the past ten years. It seems that at one time or another I must have read and reread most of the significant works on the subject of goodwill. What I found missing was a comprehensive look at the subject of goodwill through the eyes of the courts. Missing, that is, until now.

Without a doubt, the two contributions to this *Guide* by Gordon and Tiso are two of the best and most comprehensive case analyses I have found (see Chapter 2). The contributors hit nearly every major case that represents most of the different opinions that we face in this daunting task.

The court decisions generally fall into just a few categories.

- Both personal and enterprise goodwill are marital – about one-third.
- Enterprise goodwill is marital; personal goodwill is nonmarital – just over half.
- Neither personal nor enterprise goodwill are marital – less than one in ten.
- No decision or no clear decision – about the same as the neither personal or enterprise goodwill category above.

The trend seems to be developing that personal goodwill should be excluded. There are a few states that the appellate courts have not yet accepted the question, or that have declined to rule for one reason or another. As these jurisdictions move forward, it would seem likely that they will reach the same conclusion as the justices in *May v. May*⁶ in West Virginia.

The above is based on BVR's "Goodwill Hunting in Divorce" chart. A copy is included in Chapter 2 of this *Guide*, as well as a free PDF format download at www.BVRresources.com. When using BVR's state-by-state analysis be aware of a couple of things. First, it is only a starting point in your research about the law in a particular state and only one case is cited. The case may or may not be the lead case, though the case cited will be an important case. For example, in Illinois, the lead case is the Supreme Court's ruling in the *Zells*⁷ case, a 1991 case, while the case listed is the *Head*⁸ case, a 1995 case. However, the *Head* case cites other important cases, including *Zells*. Be sure to take your research beyond this helpful starting point, and most certainly to the attorney with which you are working.

It is essential to reach agreement with counsel in your case. Of course, many attorneys will rely on you, so you must be very careful about reaching a conclusion. For example,

Introduction

the conclusion reached from the “Goodwill Hunting in Divorce” analysis indicating that Florida treats personal goodwill in the same manner as Illinois should be tempered with the understanding of the court’s meaning of standard of value, specifically on the Florida court’s insistence that the “willing seller” may not assist in the transfer of goodwill. Such nuances are common. A prudent valuator will not accept the above classification as black and white. There is plenty of gray to pursue when looking for a comprehensive answer for a particular state.

As you read the *Guide*’s case law section, keep in mind this one central theme. You must look to what the court conveys, more than how the court expresses its opinion. Time and again, we see the courts using terms like fair market value to describe the jurisdiction’s standard of value, but when we contrast the court’s opinion with what we understand terms to mean, we often find significant differences. Thus, to truly understand the issue of goodwill and how to allocate it means that we must always keep in mind that the judges are using terms as they understand them, not necessarily as you and the valuation profession understand them. No matter how uncomfortable it may make you feel, the one with the black robe has the final say.

Chapter 3—What Do We Do About It?

If you are still reading then you are likely performing a valuation in one of those jurisdictions that requires a breakout of personal goodwill. Confident now in your jurisdiction’s standard of value and the role of the willing seller in potential future competition, you must find the answer.

While we are accustomed to dealing with subjective matters in the valuation profession, valuing goodwill is one of the more subjective areas. I would argue that most of what we as valuers do is narrow the amount of subjectivity as much as possible. There are solutions that are theoretically accurate, but for which there is little data, and thus little in the way of a real solution to be found.

For example, some of the courts seem to say that they would like good comparable market data for businesses that have sold with only enterprise goodwill. Of course, there is no such data available. The problem with all the databases is that they report the value of a transaction or in some cases the appraised value. The transaction data is not necessarily appropriate for the jurisdiction’s choice of standard of value. In fact, by definition, if a jurisdiction removes transferable personal goodwill from the value, then the market data will not be appropriate.

What is the status of our ‘tool box?’

A number of decisions over the years have attempted to outline acceptable methods for valuing goodwill, dating as far back as 1984 in the *Hall*⁹ case. *May*, a more recent case in West Virginia, discussed five acceptable valuation methods for valuing goodwill that were discussed in *Hall*. Each method listed in *Hall*, and later in *May*, has issues and may be troubling for valuers in general and for specific jurisdictions where definitions may make one or more methods difficult or inappropriate to use.

Judge Davis, in the *May* case, listed the five methods for valuing goodwill as follows:

- Straight Capitalization
- Capitalization of Excess Earnings

Introduction

- IRS Variation of the Excess Earnings Method
- Market Method
- Buy-Sell Agreement Method

The discussion of these methods is not particularly helpful in valuing enterprise or personal goodwill, except for the understanding of what the courts have been saying. None of these methods value personal goodwill. They value total goodwill. Thus, some of the tools that the courts seem to be focusing on are mismatched to the job we must perform.

Unfortunately, the court did not focus on the narrower question of what is the appropriate method for valuing personal goodwill. It is not clear from the facts in this case whether enterprise goodwill existed. The court did allow for the possibility, but then seemed to become confused with the methods to break out enterprise from personal. Unfortunately, the expert's testimony, which the court included in its opinion, did not assist the court in its finding.

While Judge Davis may have missed the mark in discussing the methods of valuing goodwill, he did a very thorough job of researching the jurisdictions throughout the country. He categorized the various states in a manner similar to the "Goodwill Hunting in Divorce" analysis. His analysis is worth a read.

Sole Practitioner Enterprise Goodwill

May dealt with a sole proprietor and denied any enterprise goodwill, even though acknowledging the possibility. Let me make this statement as clearly as possible. Sole practitioners can, and often do, have enterprise goodwill. If they did not, then they would only be able to sell the practice for its net asset value, which is often counter to what we see in actual transactions. In some jurisdictions, this may be the law; but in the real world, it is not what we see. I believe this to be a common misconception, and one that is clearly wrong in many professional valuations. However, be careful, incorrect or not, it is the opinion of the court that will determine the value.

This goes back to the point I made earlier. Before you start your valuation of personal goodwill, be sure to know the standard of value. And recognize that the terms used by the court may not have the same meaning as the one used by valuation professionals.

So if the five methods discussed in *Hall* and *May* and earlier cases are not the right tools, what is left?

Up or Down? With and Without?

Generally, all approaches for breaking out personal goodwill can be classified as a "bottom-up," a "top-down," or a "with and without" approach.

"Bottom-up." The "bottom-up" approach values the intangible elements, like workforce in place, systems, patents, etc., and of course, the value of the business goodwill. It attempts to identify everything else with the remaining being attributable to personal goodwill.

This approach has many practical limitations, especially in litigation. First, it is very time-consuming, and, therefore, an expensive attempt to value each individual component. And of course, with each valuation of an individual component, another method must be used with its particular set of problems and subjective elements. Time and budget limitations

Introduction

often impact this approach as valuing each intangible item is time consuming. Further, there is the problem of cross-examination. Opposing counsel, with the help of an advising expert, can usually come up with another intangible asset that might have some value, thus impacting the residual personal goodwill value. For these and other reasons, I have never performed nor even seen this approach used in litigation, no matter how appealing it may be theoretically.

“Top-down.” The “top-down” approach values the total enterprise and then attempts to break out the personal goodwill. All methods that allocate the personal and enterprise goodwill out of the total goodwill fall into this category. The Multiattribute Utility Model (MUM) and any “point-scoring” methods are considered top-down approaches. [See Wood’s article, “An Allocation Model for Distinguishing Enterprise Goodwill from Personal Goodwill,” and Burket’s article, “Separating Personal and Business Goodwill of Operating Companies in Divorce Valuations,” in Chapter 3 of this *Guide*.]

This approach has the advantage of using familiar tools (see the five listed above from the *Hall and May* case) to value total goodwill. The breakout of personal goodwill is a function of the jurisdiction’s definition of value and the valuator’s knowledge and opinion of the various attributes that aligned goodwill between the business and the individual.

This method enables the valuator to explain the reasoning and to offer support for the conclusion. Obviously, communicating the results is an important element of the valuation, especially in litigation. The “point-scoring” method does run the risk of the cross-examination technique that is often used in attacking the expert’s opinion on the selection of a company-specific risk. “Mr. Expert, could that point-score be just one point higher?” The use of MUM nearly eliminates this cross-examining technique.

“With and Without.” The “with and without” approach focuses on compensation as the key to valuing personal goodwill. In the simplest form, the enterprise is valued twice – once with the efforts of the goodwill subject and once without. The difference is the personal goodwill.

The focus of this approach is on reasonable compensation and competition. Kevin Yeano-plos has two contributions in Chapter 3 of this *Guide*—“Reasonable Compensation and the Productivity Adjustment,” which is co-authored with Ron Seigneur, and an accompanying case study. Mark Dietrich has three contributions in Chapter 3 of this *Guide*, which discuss the role of reasonable compensation and show his methodology for determining personal goodwill using a discounted cash flow and a single period capitalization.

A clear understanding of the jurisdiction’s treatment of the level of cooperation by the goodwill subject with the buyer is critical in this approach. While the approach is appealing for many valuers, as we are often accustomed to reasonable compensation issues, it is still a difficult computation. In Dietrich’s primary area of valuation, medical and dental, there is considerable data available. This is not always the case in other areas. Assigning compensation in itself is a subjective matter.

Other Contributions

There are other contributions to Chapter 3 of this *Guide* that offer valuable information. For instance, this chapter begins with a comprehensive article, entitled “Professional Practice Valuation,” which describes how to value a professional practice. This article, authored by Mark Shirley, provides a step-by-step approach to valuing a professional practice.

Introduction

For valuers performing medical valuations, the *Goodwill Registry* may offer another way of valuing goodwill. This method would fall under the market method. Mark Kropiewnicki's contribution, "The Goodwill Value of Medical and Dental Practices," explains the *Goodwill Registry's* database as well as goodwill in medical and dental valuations. This database is most often used with "top-down" approaches, since the *Goodwill Registry* offers data about total transferable goodwill.

In addition to articles that discuss the methodology for the treatment of personal goodwill in family law cases, Chapter 3 contains an insightful article by Alan Zipp that details personal goodwill in other business situations outside the divorce context. [See Zipp's article, "Personal Goodwill Should be Considered in all Business Valuations," in Chapter 3 of this *Guide*.] Also in Chapter 3, Darrell Arne and James Hamill present a detailed article entitled "Separating Personal and Business Goodwill," which discusses a five-step allocation method for handling personal goodwill in tax cases.

Chapter 4—Other Materials

Celebrity Goodwill. Celebrity goodwill has its own set of special issues. There are three excellent contributions by Fishman, Smith, and Justice Riggs that lay out the special issues of celebrity goodwill. This chapter covers celebrity goodwill in the same general format as the *Guide's* coverage of noncelebrity goodwill.

Definitional matters, such as rights of privacy and publicity, are covered. The court's role in celebrity goodwill is thoroughly analyzed. Techniques for valuing celebrity goodwill are provided, which offer some insight to the concepts you may be using in your valuations.

Teleconference Transcripts. The *Guide* also includes a section of teleconferences that have been held in the past few years. The transcripts show the thoughts and comments from some of the leading experts on this subject. I participated in two of the four teleconferences and can attest to their value to me in forming my understanding of goodwill and how to approach this problem.

Court Cases—Abstract and Full Text

The last portion of this *Guide* includes hardcopy of abstracts of over 140 court cases with a quick reference table for easy use. The CD that accompanies this *Guide* provides over 220 full-text goodwill cases, most of which have been abstracted. There are few instances where the law in a particular jurisdiction is as important as it is in the determination of the appropriate treatment of goodwill. In many areas of valuation, the court will accept the valuation profession's definitions, methodologies, and conclusions.

In the area of goodwill, the courts are telling us how the matter will be handled. Unfortunately, in so doing, the court is often assigning new and different meanings to old and comfortable terms, such as fair market value. Having the cases in your jurisdiction available for a careful reading will be very important in reaching an appropriate opinion of goodwill value. To aid in this process, the summary table which accompanies the abstracts is first sorted by state/jurisdiction, and next by case name.

Conclusion

This *Guide* will provide you with many ideas about how to proceed, as well as what some of the leading experts in the field think about the definitions, cases, and methodologies. Like

Introduction

most of what holds true in valuation, this *Guide* is not a recipe book. It does not provide you with a single answer or method, but it will give you the knowledge necessary to begin tackling this difficult task. Remember, practicing in family law means practicing in multiple jurisdictions; what is right in one jurisdiction may be rejected in another.

Sometimes I have simply held my head in frustration when trying to sort out all of the issues and nuances involved in identifying personal goodwill. We continue to read, study, and think through the problem. It is a process and it has evolved (and continues to evolve) over time, much in the same way that all case law develops – one step at a time, one case at a time, building on that which has gone before us.

The process reminds me of this anonymous definition of expert witnesses, lawyers, and judges:

Experts are people who know a great deal about very little, and who go along learning more and more about less and less until they know practically everything about nothing.

Lawyers, on the other hand, are people who know very little about many things, and who keep learning less and less about more and more until they know practically nothing about everything.

Judges are people who start out knowing everything about everything, but end up knowing nothing about anything, due to their constant association with experts and lawyers.

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1. “Goodwill Hunting in Divorce,” Business Valuation Resources, LLC. This chart is available in Chapter 2 of this *Guide*, and as a free download at www.BVResources.com
2. *Stewart v. Stewart*, 2007 Ida. LEXIS 17 (January 26, 2007).
3. Louisiana Revised Statutes 9:2801.2, added by Act 2003, No. 837, §1; and amended by Act 2004, No. 177, §1.
4. For a good source on fair value, see *BVR’s Guide to Fair Value in Shareholder Dissent, Oppression, and Marital Dissolution*, available at www.BVStore.com.
5. *Marriage of Talty*, 652 N.E. 2d 330, 209 Ill. Dec. 790, 166 Ill. 2d 232, (1995). The full-text Court opinion in *Talty* is available on the enclosed CD.
6. *May v. May*, 2003 W. Va. LEXIS 118 (W. Va. 2003).
7. *Marriage of Zells*, 143 Ill. 2d 251, 255-56, 572 N.E.2d 944, 946 (1991). The full-text Court opinion in *Zells* is available on the enclosed CD.
8. *Marriage of Head*, 652 N.E. 2d 1246 (Ill. App. 1995). The full-text Court opinion in *Head* is available on the enclosed CD.
9. *In re Hall*, 103 Wn.2d 236, 692 P.2d 175 (Wash. 1984).