



# Maine Considers Characterization of Professional Goodwill

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# **Maine Considers Characterization of Professional Goodwill**

**Hess v. Hess, 2007 Me. LEXIS 83 (July 5, 2007)**

Currently, Maine is one of a handful of states that has yet to decide whether the goodwill of a professional practice constitutes marital property; and if so, whether there should be a further distinction between enterprise goodwill (marital) and personal or professional goodwill (non-marital). The majority of U.S. jurisdictions (twenty-eight states) now make that distinction, while fifteen hold that both enterprise and personal goodwill are marital property. Four states preclude characterizing goodwill as property—and two, Alabama and Georgia, also have yet to decide. (*Note:* For a summary of holdings in all fifty states, with citations to the lead case in each, go to the “Free Downloads” link at [BVResources.com](http://BVResources.com) for “Goodwill Hunting in Divorce.”)

## **Did Maine go with the rest of the nation?**

During the *Hess* divorce, the trial court reviewed valuations of the husband’s investment business submitted by both parties’ experts. After considering the different opinions, the court expressly found the approach, methodology, and factors used by the wife’s expert more reliable in establishing the fair market value of the investment firm at \$328,000.

On appeal, the husband contended the court erred by classifying the goodwill derived from the business as divisible marital property, because nearly all of that intangible value was personal, inextricably linked to his individual efforts, talents, etc. The husband urged the appellate court to adopt the distinction between enterprise and personal goodwill pursuant to *May v. May* (a 2003 case from West Virginia, oft-cited for its summary of national holdings and the majority rule).

The Supreme Judicial Court of Maine declined rule on that discrete issue. Although the parties’ experts disagreed on the ultimate value of the business, they both considered that a large portion of its value stemmed from goodwill, which could be quantified and transferred. (Presumably, neither expert made or attempted to make a distinction between enterprise/personal goodwill, although the appellate decision does not clearly state this point.) The trial court had concluded that the goodwill value of the business was an asset, transferable and divisible—and the Court confirmed its ruling, without citation to any case, in Maine or elsewhere.