

Navigating Complex Asset Cases in Divorce with Practical Forensic Accounting Solutions

**Robert Vance,
CPA, ABV, CFF, CFP, CVA**



Forensic & Valuation Services, PLC

Memphis, Tennessee

www.forensicval.com



Why Are You Here?

To Learn.....

1. New forensic services and procedures to enhance your divorce practice
2. Practice Tips
3. The basics of a Marital Balance Sheet
4. How to value complex and unusual assets
5. How interesting and humorous your job can be with a few situations I have encountered

My Practice

- Business Valuation
- Divorce Analysis
- Forensic Economics
 - PI, WD, Business Disputes
- Fraud Investigation
- Creative Thinking

Selling Yourself as a Forensic CPA*

Forensic CPAs can....

- Save the client money
- Testify
- Rely on hearsay as expert witnesses
- Be presented as an unbiased witness
- Smell problems
- Shift the balance of perceived relative negotiating power (beauty contest)

* Mason, Miles, *The Forensic Accounting Deskbook* , American Bar Assoc.

Services Provided in Divorce

- Identifying and Valuing Marital & Separate Assets and Debts
- Proposing a Division to Minimize Alimony
- Analyzing Alimony Need & Ability to pay
- Comingling & Asset Tracing
- Business Valuation
- Present Cash Value of a Pension Interest
- Forensic Investigations

Practice Tips

- Have these ready to go:
 - New Client Memo routing/intake sheet
 - Standard document request in Word format
 - Business Valuation & Divorce Engagements
 - Fill in the blank PDF data sheet
 - Business Valuation, Divorce & PI/WD Engagements
 - Standard Engagement Letter template
 - Engagement Letter service insert language
- Have a great website as your “brochure” with downloadable and up-to-date PDF CV

Practice Tips

- Know your state's case law
- BE AVAILABLE!
 - Flexible on dates, answer your phone and emails
- Have laptop computer and spreadsheets at mediations and trial (hidden)
- Be sure to issue all docs in PDF format and password protect them so no one can copy segments or signatures
(Tools/Protection/Encrypt)

Quantifying the Marital Estate

- Alimony Need & Ability to Pay Analysis
 - A dependent spouse's need and the "money" spouse's ability to pay is the primary consideration in a majority of states
 - TCA 36-5-121(b)
...In making any order under this subsection (b), the court shall consider the financial **needs** of each spouse and the financial **ability** of each spouse to meet those needs and to prosecute or defend the suit.

Quantifying the Marital Estate

- Alimony Need & Ability to Pay Analysis
 - TCA 36-5-121(i) [the 12 alimony factors]
 - (1) **The relative earning capacity**, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and **all other sources**;
 - (9) The **standard of living** of the parties established during the marriage;

Quantifying the Marital Estate

- Not talking about Alimony today
- See TBA article: “Breakin’ Up is Hard to Do”

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Marital Balance Sheet

- Quantifies all marital assets & debts
 - Lists the entire marital estate in 1-2 pages
 - Proposes a division of assets
 - Shows “offset” in an easy-to-understand format with division %s of each asset and debt
 - Groups FMV of asset with corresponding debt
 - Displays, then deducts separate & child assets
 - Quantifies the overall % division

Marital Balance Sheet								Proposed Division				
								Husband		Wife		
No.	Description	Date	Title	FMV	Debt	Equity	Child or Separate Account	Marital	%	\$	%	\$
<u>REAL ESTATE</u>												
1	Marital Residence	5/31/14	J	500,000	0							
2	Mortgage	5/31/14	J		(405,000)							
3	Selling Expenses-7%	5/31/14	J		(35,000)	60,000		60,000	0.0%	0	100.0%	60,000
<u>CASH & INVESTMENTS</u>												
4	529 Account 1234	5/31/14	W	25,000	0	25,000	(25,000)	0	50.0%	0	50.0%	0
5	Bank Checking 2345	5/31/14	H	10,000	0	10,000		10,000	0.0%	0	100.0%	10,000
6	Brokerage Account 9876	5/31/14	J	285,000	0	285,000		285,000	40.0%	114,000	60.0%	171,000
7	Bank Checking 6543	5/31/14	H	55,000	0	55,000	(15,000)	40,000	100.0%	40,000	0.0%	0
8	Stock Options-Vested	5/31/14	H	94,222	0	94,222		94,222	100.0%	94,222	0.0%	0
9	Stock Options-Unvested	5/31/14	H	188,444	0	188,444		188,444	50.0%	94,222	50.0%	94,222
10	ABC Company-18% C/S	5/31/14	H	100,000	0	100,000		100,000	100.0%	100,000	0.0%	0
<u>RETIREMENT</u>												
11	Current Employer 401(k) 1122	3/31/14	H	390,000		390,000		390,000	45.0%	175,500	55.0%	214,500
12	Previous Employer 401(k) 2233	3/31/14	H	208,500		208,500	(59,768)	148,732	0.0%	0	100.0%	148,732
13	Previous Employer Def Ben Plan	5/31/14	W	98,172		98,172	(15,684)	82,487	0.0%	0	100.0%	82,487
14	Deferred Compensation-ABC Co	5/31/14	H	48,080		48,080		48,080	0.0%	0	100.0%	48,080
<u>PERSONAL PROPERTY</u>												
15	Vehicles	5/31/14	J	50,000	(38,000)	12,000		12,000	50.0%	6,000	50.0%	6,000
16	Stuff	5/31/14	J	50,000		50,000		50,000	50.0%	25,000	50.0%	25,000
<u>INTANGIBLES</u>												
17	PV of NOL Carryover	5/31/14	J	236,268		236,268		236,268	50.0%	118,134	50.0%	118,134
18	Dissipation by H	5/31/14	H	64,407		64,407		64,407	100.0%	64,407	0.0%	0
<u>OTHER DEBTS</u>												
19	Visa	5/31/14	J		(5,000)	(5,000)		(5,000)	100.0%	(5,000)	0.0%	0
20	Amex	5/31/14	J		(15,000)	(15,000)		(15,000)	100.0%	(15,000)	0.0%	0
TOTALS				2,403,093	(498,000)	1,905,093	(115,452)	1,789,641		811,485		978,156
										45.3%		54.7%

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Growth of Pre-Marital Separate 401(k) Balance

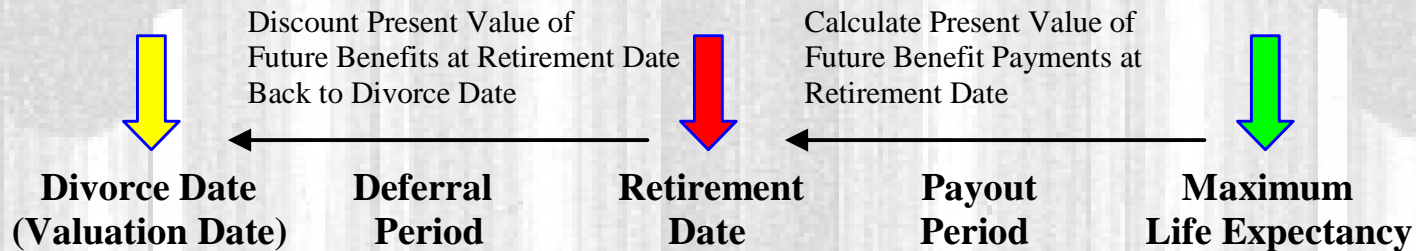
Previous Employer 401(k) 2233

Date of Valuation	5/31/2014	Balance 1/1/86	25,000
Date of Preparation	5/31/2014	Balance 5/31/14	208,500
Date of Marriage	1/1/1986	Total Growth	<u>183,500</u>
Years of Marriage	28.4		

Years		Beginning Balance	Contrib.	Return on Invest.	Ending Balance	% Return on Sep. Bal. + Contrib.	Return on Sep. Bal. + Sep. Bal.
1	1986	25,000	1,000	2,000	28,000	7.7%	26,923
2	1987	28,000	1,000	2,000	31,000	6.9%	28,780
3	1988	31,000	2,000	2,000	35,000	6.1%	30,524
4	1989	35,000	2,000	2,000	39,000	5.4%	32,174
5	1990	39,000	2,000	2,000	43,000	4.9%	33,743
6	1991	43,000	2,000	2,000	47,000	4.4%	35,243
7	1992	47,000	2,000	2,000	51,000	4.1%	36,682
8	1993	51,000	2,000	2,000	55,000	3.8%	38,066
19	2004	110,000	5,000	6,000	121,000	5.2%	48,692
20	2005	121,000	5,000	7,000	133,000	5.6%	51,397
21	2006	133,000	5,000	9,000	147,000	6.5%	54,749
22	2007	147,000	5,000	(5,000)	147,000	-3.3%	52,948
23	2008	147,000	5,000	(25,000)	127,000	-16.4%	44,240
24	2009	127,000	5,000	2,000	134,000	1.5%	44,910
25	2010	134,000	5,000	3,000	142,000	2.2%	45,879
26	2011	142,000	5,000	8,000	155,000	5.4%	48,376
27	2012	155,000	5,000	15,000	175,000	9.4%	52,911
28	2013	175,000	5,000	20,000	200,000	11.1%	58,790
28.4	5/31/2014	200,000	500	8,000	208,500	1.7%	59,768
			<u>105,500</u>	<u>78,000</u>		3.2%	

Who Doesn't Love The Time Value of Money?

$$PV = \sum_{k=1}^n C(1+i)^{-k}$$



Defined Benefit Pension Interest Valuation

Case Information

Date of Valuation 5/31/2014
 Date of Preparation 5/31/2014
 Date of Marriage 1/1/1986
 Years of Marriage 28.4
 Marital Percentage 84.0%

Plan Information

Employer Previous Employer Def Ben Plan
 Payout Method Straight Life Annuity
 Date of Retirement 10/29/2015
 Plan Name TCRS

Participant Information

Participant Wife Date of Plan Participation 8/1/1980
 Sex F Date of Birth 10/29/1955
 Race W Age at Valuation Date 58.6
 Date of Hire 8/1/1980 Retirement age used in
 Years of Creditable Service this calculation 60.0
 as of Date of Valuation 33.8 Vested Percentage 100.0%

Calculations

Monthly Retirement Benefit as of Valuation Date	<u>\$425</u>	a.
Life expectancy at valuation date ¹	26.2	b.
Number of years to retirement age (deferral period)	<u>1.4</u>	c.
Years of life expectancy beyond retirement age (payout period)	24.8	d. b. - c. = d.
Discount rate for payout period ²	3.42%	
Less COLA ³	<u>1.70%</u>	
Net discount rate for payout period	1.72%	e.
Present value of monthly benefits at retirement date	102,904	f. Present value of a. discounted with e.
Discount rate for deferral period ²	3.42%	g.
Present value of retirement benefits at valuation date	98,172	h. Present value of f. discounted with g.
Marital Percentage	<u>84.0%</u>	i.
Marital value of retirement benefits at valuation (divorce) date	<u>\$82,487</u>	j. h. x i. = j.

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Present Value of an NOL Carryover

Original NOL: \$1,000,000			Federal Income Tax Savings From NOL	Present Value of Federal Income Tax Savings Disc rate 5%
Year	AGI	Remaining NOL		
1	250,000	750,000	66,631	63,458
2	250,000	500,000	66,631	60,436
3	250,000	250,000	66,631	57,558
4	250,000	0	66,631	54,817
An Intangible Asset on the MBS				<u>236,268</u>

Dissipation of Marital Assets by Husband

Girlfriend Expenses

					Girlfriend Expenses					Casino		
					Clothing & Dept. Stores					Athletic Tickets	ATM Cash	Cosmetic Medical
Date	Check Num	Description	Memo	Totals	Travel	Meals & Ent.	Loans to G'friend	Jewelry				
10/1/05		Disney World Trip	H's ROGS	5,000.00		5,000.00						
10/13/05	1032	Wrestlemania	H's ROGS	2,000.00					2,000.00			
11/1/05	1016	Check to Girlfriend		2,500.00			2,500.00					
11/1/05	1045	Wrestlemania	H's ROGS	2,000.00					2,000.00			
11/28/05		Abercrombie And Fitch		518.95		518.95						
11/28/05		Banana Republic		219.58		219.58						
12/6/05		Airline	H's ROGS	503.90	503.90							
12/6/05		Airline	H's ROGS	503.90	503.90							
12/20/05	1053	Check to Girlfriend		415.00			415.00					
12/27/05		Miguelas Clothing	Girlfriend	692.65		692.65						
12/29/05		Miguelas Clothing	Girlfriend	127.00		127.00						
1/3/06		Airline		915.14	915.14							
1/3/06		Airline	Chicago trip	915.14	915.14							
1/18/06		Ruth's Chris Steak House	H seen w/ Girlfriend	341.00		341.00						
1/20/06	1183	Limo Service To Night Clubs	paypal reimbursement	500.00		500.00						
2/15/06		Cosmetic Dentist Inc.		5,000.00							5,000.00	
2/15/06		Hair Plugs R Us	Per H's Admission	10,200.00							10,200.00	
2/22/06	1123	Check to Girlfriend		360.00			360.00					
5/10/06		Victoria's Secret		127.28		127.28						
5/11/06		Barbie Live	H's ROGS	135.55		135.55						
5/12/06		Atm Cash Withdrawal		402.00						402.00		
5/12/06		Ticketmaster	H's ROGS	1,021.55		1,021.55						
5/19/06		Girlfriend's Diamond Ring	Per H's Depo	20,000.00				20,000.00				
5/20/06		ABC Marina	H's ROGS	175.26	175.26							
5/30/06		Marriott Hotels LA		578.28	578.28							
6/8/06		Atm Cash Withdrawal		400.00						400.00		
6/9/06	1130	Cash		1,300.00						1,300.00		
7/10/06		Gap		411.85		411.85						
7/10/06		Victoria's Secret		343.05		343.05						
8/17/06		Over-the-counter Withdrawal		6,000.00						6,000.00		
9/8/06	1283	Cash		800.00						800.00		
Totals				64,407.08	3,591.62	2,440.36	6,998.10	3,275.00	20,000.00	4,000.00	8,902.00	15,200.00



A Few Interesting & Complex Situations

Commingling & Deception

- Prenuptial Agreement-W receives alimony, but H's separate property at DOM is all his
- H claimed never to have commingled any asset and never purchased marital businesses
- Trial is continued a few times during 2012 and the 2012 tax returns have to be filed
- H's CPA prepares joint return-W refuses to sign
- H prepares a MFS return for H & W to show tax difference

Commingling & Deception

- W's separate tax return shows a partnership on her return only-was removed from H's
- Indicates W owned 100% of partnership
- H had claimed no value and no cash flow
- W tax returned showed large profits-all distributions were plowed back into capital & another farm partnership
- I say that is commingling & deception!

Paternity Fraud

“Wrongful Birth”

- Alleged paternity fraud perpetrated upon father by the child’s mother
- Mother claimed child was his for 20 years
- Father got behind on child support and received a judgment against him for \$50k which cannot be reversed once ordered
- Father tested DNA and found out he was not the father

Paternity Fraud

“Wrongful Birth”

- Lawyer indicated the judge was looking for some offset against the child support judgment
- In a wrongful birth engagement, we will estimate the costs to raise a child that was unexpected, delivered against the will of the father, or delivered with a birth defect that was undetected
- What does it cost to raise a child?

Paternity Fraud “Wrongful Birth”

United States
Department of
Agriculture



Center for Nutrition
Policy and Promotion

Miscellaneous
Publication
Number 1528-2006

Expenditures on Children by Families, 2006

Table 6. Estimated annual expenditures* on a child by husband-wife families, Rural areas,† 2006

Age of Child	Total	Housing	Food	Trans- portation	Clothing	Health care	Child care and education	Miscel- laneous‡
Before-tax income: Less than \$44,400 (Average = \$27,700)								
0 - 2	\$6,820	\$2,010	\$970	\$1,060	\$330	\$640	\$1,150	\$660
3 - 5	7,000	1,980	1,090	1,030	320	610	1,290	680
6 - 8	7,050	1,940	1,410	1,170	360	690	760	720
9 - 11	7,100	1,760	1,710	1,260	400	740	460	770
12 - 14	7,910	1,980	1,790	1,410	680	760	330	960
15 - 17	7,960	1,520	1,950	1,850	600	790	540	710
Total	\$131,520	\$33,570	\$26,760	\$23,340	\$8,070	\$12,690	\$13,590	\$13,500

Paternity Fraud “Wrongful Birth”

Estimated Annual Expenditures on a Child by Husband-Wife Families, Rural Areas¹

(A) Year	(B) Age	(C) With Income Less Than	(D) Total After Adjust- ment	(E) Adjust- ment Factor ²	(F) Total	Housing	Food	Trans.	Clothing	Health- care	Child Care and Educa- tion	Miscel- laneous	(G) CPI % Incr. ³
3/15/1993	1	32,173	6,019	1.24	4,854	1,467	766	748	341	379	662	492	3.0%
3/15/1994	2	33,138	6,200	1.24	5,000	1,511	789	770	351	390	682	507	2.6%
3/15/2006	14	44,400	9,808	1.24	7,910	1,980	1,790	1,410	680	760	330	960	
3/15/2007	15	45,700	10,193	1.24	8,220	1,560	2,040	1,900	590	830	580	720	
3/15/2008	16	57,090	9,821	1.24	7,920	1,810	1,830	1,600	690	910	540	540	
3/15/2009	17	56,880	9,863	1.25	7,890	1,830	1,870	1,440	690	940	570	550	
3/15/2010	18	57,790	10,020	1.25	8,016	1,859	1,900	1,463	701	955	579	559	1.6%
			<u>145,475</u>		<u>117,191</u>	<u>30,367</u>	<u>25,066</u>	<u>20,271</u>	<u>8,973</u>	<u>11,243</u>	<u>9,374</u>	<u>11,898</u>	

DOB: 3/15/1992

Average per year from Column D.

8,082 a.

Average expenses for 3.08 years⁴

24,892 b.= a. x 3.08

Total 1996-2000⁵ from Column D

35,030 c.

Total expenses while child lived with Mr. X

59,922 d. = b.+c.

1) Lino, Mark. Expenditures on Children by Families, Annual Report. U.S. 1995-2012 Department of Agriculture, Center for Nutrition Policy and Promotion. Miscellaneous Publication No. 1528-1995; Table 6.

Attempted LLC Interest Dilution

Father Attempts to Cover for Daughter

- Daughter is in nasty divorce battle
- Father and daughter are surgeons and own their surgery center 50/50 in an LLC
- Father makes 3 “Optional Additional Cash Contributions” to capital totaling \$600k for “investment planning” purposes and daughter makes none
- Mortgage debt is paid down

Attempted LLC Interest Dilution

Father Attempts to Cover for Daughter

- Father thinks he has diluted her interest from 50% to 13%
- The Membership Interest of such Member failing so to make such contributions shall be diluted accordingly (subject first to adjustment of the Capital Accounts of all Members pursuant to the provisions of Section 4.5(e)(i))

Attempted LLC Interest Dilution

Father Attempts to Cover for Daughter

- The Membership Interest shall be adjusted ... upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to each Company Property as if such Unrealized Gain or Unrealized Loss had been recognized upon an actual sale of each such Property immediately prior to such issuance
- Building book value \$1.9m; appraisal \$3.5m

Attempted LLC Interest Dilution

Father Attempts to Cover for Daughter

Calculation of Unrealized Gain of LLC Assets at Time of Contribution

Cost of Building, Land & Improvements as of 12/31/12	a)	2,600,000	
Less Accumulated Depreciation of Building & Improvements		<u>(680,000)</u>	
Net Book Value		1,920,000	
Appraised Value as of 7/16/2013	b)	<u>3,500,000</u>	
Unrealized Gain as defined in Sec. 4.5(e)(i) to be allocated to Members at their current ownership Interest of 50% & 50%		<u>1,580,000</u>	

Calculation using Appreciated Value of Building at Time of "Optional Additional Cash Contribution"

Capital Balance as of 12/31/12, before cash contribution - Father	a)	35,000	<u>Ownership</u>
<i>50% of Unrealized Gain above</i>		<u>790,000</u>	
Recalculated Capital Balance as of 12/31/12, before cash contribution - Father		825,000	
Optional Additional Cash Contribution-2012		400,000	
Optional Additional Cash Contribution-conversion of debt to equity-2012		100,000	
Optional Additional Cash Contribution-2013		<u>100,000</u>	
Total Father Capital Using Appreciated Value of Building		<u>1,425,000</u>	61.56%
Capital Balance as of 12/31/12, before cash contribution - Daughter	a)	100,000	
<i>50% of Unrealized Gain above</i>		<u>790,000</u>	
Total Daughter Capital Using Appreciated Value of Building		<u>890,000</u>	38.44%
Total LLC Appreciated Value		<u>2,315,000</u>	<u>100.00%</u>

Attempted LLC Interest Dilution

Father Attempts to Cover for Daughter

Adjusted Book Value/Capital Value	2,370,000
Subject Ownership Percentage-Method 1	<u>38.44%</u>
Indicated Value	<u>911,145</u>
Rounded	<u>911,000</u>
Subject Ownership Percentage-Method 2	<u>13.62%</u>
Indicated Value	<u>322,794</u>
Rounded	<u>323,000</u>
Difference	<u>588,000</u>

Now I Own It/Now I Don't

Father Attempts to Cover for Daughter

- W's father methodically gifted shares in family business over 16 years, but no gift tax returns filed (to be a true gift for IRS purposes it must be irrevocable)
- Meticulous hand written spreadsheets
- Corp. tax returns show W's ownership interest increasing each year
- Father actually issued Deeds of Gift

Now I Own It/Now I Don't

Father Attempts to Cover for Daughter

- Handwritten “death bed” letter from father detailing the gifting and his intentions
- Letter from corp. CPA to a bank explaining W's ownership in the corp. for a bank loan
- Stock redemption agreement in W's name
- At divorce time, father claims it was all a sham to save taxes and only **IF** he died (i.e.-FRAUD)
- Case settled-H came out great!

Underemployment of a Trust Baby

<u># of Years</u>	<u>Year</u>	<u>COLA Factor</u>	<u>Median Wage*</u>	<u>Actual Earnings</u>	<u>Under Employment</u>	<u>Less Taxes</u>	<u>Net Under Employment</u>	<u>Present Value</u>
0	2005	3.9%	66,793	0	66,793	(23,378)	43,415	43,415
1	2004	2.7%	64,194	0	64,194	(22,468)	41,726	43,812
2	2003	1.2%	62,484	0	62,484	(21,869)	40,614	44,777
3	2002	3.1%	61,752	0	61,752	(21,613)	40,139	46,465
4	2001	4.0%	59,850	0	59,850	(20,947)	38,902	47,286
5	2000	5.5%	57,444	0	57,444	(20,105)	37,339	47,654
6	1999	3.9%	54,284	0	54,284	(18,999)	35,285	47,285
7	1998	4.6%	52,153	0	52,153	(18,254)	33,900	47,700
8	1997	4.7%	49,749	0	49,749	(17,412)	32,337	47,776
9	1996	4.0%	47,422	0	47,422	(16,598)	30,825	47,819
10	1995	3.8%	45,526	0	45,526	(15,934)	29,592	48,202
11	1994	1.9%	43,783	0	43,783	(15,324)	28,459	48,675
12	1993	1.6%	42,947	0	42,947	(15,032)	27,916	50,133
13	1992	1.7%	42,259	0	42,259	(14,791)	27,469	51,796
14	1991	3.1%	41,535	0	41,535	(14,537)	26,997	53,453
15	1990	3.9%	40,249	0	40,249	(14,087)	26,162	54,389
16	1989	4.6%	38,697	0	38,697	(13,544)	25,153	54,906
17	1988	3.9%	36,913	0	36,913	(12,919)	23,993	54,993
18	1987	3.9%	35,476	0	35,476	(12,417)	23,059	55,495
19	1986	2.0%	34,077	0	34,077	(11,927)	22,150	55,973
20	1985	0.0%	33,392	0	33,392	(11,687)	21,705	57,590
Present Value of Lost Wages Due to Underemployment								<u>1,049,594</u>

* Bureau of Labor Statistics, Memphis MSA, 2005

H Claimed Substantial Contrib. to W's Sep. Prop. Appreciation

- W was a trust baby; H wanted his “share”
- All of her accounts remained in her name
- H's claimed federal tax w/h from paychecks earlier in the marriage helped to pay tax on W's separate income
- Problem was expert analysis revealed that W actually contributed \$50k to cover H's tax shortages on the income he earned

H Claimed Substantial Contrib. to W's Sep. Prop. Appreciation

- H claimed he gave investment advice to W's trustees and advisers
- Problem was most investments were in gifted *public company stock* or the family's own proprietary mutual funds
- H claimed was allowed to make withdrawals from the trust funds
- Problem was trustees said no, he had to get her permission each time from W

H Claimed Substantial Contrib. to W's Sep. Prop. Appreciation

- Posted large losses on his sole prop. business offsetting tax liability of W's trust income which saved her tons of cash
- Yeah that's right, lose \$1.00 save \$.35
- Hired a CPA to prepare taxes that saved \$41k
- Problem was he gave fraudulent info. to CPA
- Took the 5th about six different times on stand
- Judge didn't buy what he was selling
- Neither did the TN Appellate Court!