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COURT OF APPEALS

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STATE OF WASHINGTON

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No. 40067-7-II
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STEVE B. DIXON,

Respondent,

v.

CRAWFORD, McGILLIARD, PETERSON and YELISH, a
Washington general partnership; WILLIAM M. CRAWFORD and
JANE DOE CRAWFORD, and the marital community thereof;
JOHN H. McGILLIARD and JANE DOE McGILLIARD, and the
marital community thereof; RICHARD L. PETERSON and
JANE DOE PETERSON, and the marital community thereof;
MARK L. YELISH and JANE DOE YELISH, and the marital
community thereof;

Appellants.

APPEAL FROM THE SUPERIOR COURT FOR PIERCE COUNTY
THE HONORABLE JAMES ORLANDO

BRIEF OF APPELLANTS

EDWARDS, SIEH, SMITH
& GOODFRIEND, P.S.

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I. ASSIGNMENTS OF ERROR

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12. The trial court erred in denying discovery and excluding evidence of plaintiff's post-partnership earnings. (CP 478)

13. The trial court erred in entering judgment of \$332,102.51 against defendants. (CP 371)

14. The trial court erred in denying defendants' motion for reconsideration and motion for new trial. (CP 472-73)

The trial court's Letter Opinion (CP 341-43), Findings of Fact and Conclusions of Law (CP 364-69), and Judgment (CP 370-72) are attached as Appendices to this brief.

II. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Can a dissociating lawyer force his former partners to purchase his "goodwill" interest in a law firm, arising from ongoing public defense contracts that are not assignable and for which the dissociating partner will have no ongoing responsibility?

2. If so, can the dissociating partner rely on dissolution law to value goodwill in the firm?

3. Are a former partner's post-partnership earnings relevant to the determination of the buyout price when the court adopts an "excess earnings" analysis to value goodwill?

4. Is a former partner entitled to statutory interest from the date of his voluntary withdrawal on the disputed value of his partnership interest, which the trial court valued based on its assessment of the past profits of the firm and the demonstrated earning power and professional reputation of its individual partners?

III. STATEMENT OF FACTS

A. The Parties Were Partners Practicing Law In Kitsap County, And Equally Shared Profits For Many Years. Plaintiff Paid Nothing To Buy Into The Partnership.

Plaintiff Steve Dixon is a former partner of the defendants in the Port Orchard law firm of Crawford, McGilliard, Peterson & Yelish (the "Crawford firm"). The Crawford firm was established in 1980. (FF 7, CP 365; RP 125) In 1984, Mr. Dixon joined the firm as an employee. (FF 9, CP 365) He was paid a fixed salary for his work representing indigent defendants on public defense contracts the Crawford firm had with Kitsap County, and a percentage of fees

he generated outside the defense contracts. (RP 53) Mr. Dixon became a junior partner in 1989, and a full equity partner in 1991. (FF 9, CP 365)

The firm operated on a consensus basis. (RP 40) Mr. Dixon was not required to buy into the partnership. (RP 50-51) The parties never had a written partnership agreement. (FF 11, CP 366) The parties had no agreement on how workload would be divided. (RP 34) The “partners also had no agreement regarding payment of the value of a disassociated partner’s interest.” (FF 11, CP 366) As a full equity partner, Mr. Dixon and the defendants each received distributions of 20% of the profits of the firm, calculated annually. (FF 9, 16, CP 365, 366)

B. The Law Firm Was Profitable For Many Years, Largely Because of Its Public Defense Contracts With Kitsap County. Plaintiff Shared Equally In The Firm’s Success.

“The business strategy for the Crawford Firm from its formation was to develop a public defense practice to the point where the practice could be serviced by salaried employees, liberating the Crawford Firm partners to build practices unrelated to and not dependent on public defense work.” (FF 13, CP 366) Mr. Dixon was a full participant in that plan, which the partners

“successfully implemented” during the 1990s and early 2000s. (FF 13, CP 366)

In time, almost all the day-to-day work on the public defense contracts was done by associates, freeing the partners, including Mr. Dixon, to develop their civil practices. (FF 23, CP 368; RP 134-35) Three associates were doing public defense when Mr. Dixon was hired. Six or seven associates were doing public defense when Mr. Dixon became a full partner. (RP 31-32) The partners remained primarily responsible for the legal work done under the public defense contracts (see Exs. 11-20; RPC 5.1), and were responsible for supervising the associate attorneys handling the day-to-day defense work under the contracts. (FF 12, CP 366; FF 23, CP 368) After becoming a full partner, however, Mr. Dixon had a civil practice, and spent very little time on the public defense contracts. (RP 33) He did no criminal felony work under the public defense contracts after 2003. (FF 23, CP 368)

The public defense contracts were very profitable to the firm, generating over half its gross income and essentially paying all the firm’s overhead obligation and the salaries of the employees who handled most of the work on the public defense contracts. (FF 15,

CP 366) Between 2002 and 2005, each of the equity partners, including Mr. Dixon, took annual draws of \$192,438 to \$230,380. (CP 73; Ex. 30) During those same years, Mr. Dixon himself generated fee income of \$231,182 to \$249,434. (CP 126; Ex. 30)

C. Concerned That The Public Defense Contracts Might Not Continue, And That Older Partners Were Working Less, Plaintiff Left The Partnership In 2006, Taking All His Clients With Him.

As plaintiff acknowledged at trial (RP 29), founding partner defendant William Crawford was largely responsible for negotiating and renegotiating the public defense contracts, and his personal relationship with the officials in Kitsap County was critical to the firm's success in obtaining and renewing the contracts over the years. (RP 29, 54, 126-28, 170-71) It often took months to negotiate each contract. (RP 131) Each of the contracts required a written agreement with Kitsap County before any "right, duty, interest or portion" of the contract could be assigned or otherwise transferred in any manner. (Exs. 11-20)

The firm's public defense contracts typically ran for one, to no more than three, years. (RP 129-30) "All members of the Crawford firm were aware . . . of the potential that the Crawford Firm would not be able to retain the Contracts after the expiration of

their terms.” (FF 14, CP 366) In the 2005 negotiations, Kitsap County had sought a provision making the contracts explicitly terminable “at will.” (RP 45) Mr. Dixon became involved in the negotiations, and the firm was able to remove that provision from the agreement. However, Kitsap County had insisted upon indemnification as well. (RP 54) The public defense contract negotiated in 2005 required the firm to indemnify the County for any claims arising from their performance of the contract. (RP 46)

Mr. Dixon voluntarily left the Crawford Firm on April 3, 2006. (FF 10, CP 366) Mr. Dixon chose to dissociate from the firm because the net profits were still being shared equally, even though more senior partners such as Mr. Crawford were working fewer hours. (RP 47-48) Mr. Dixon was concerned about the long term viability of the public defense contracts, believing there was a substantial risk that Kitsap County would not continue to contract with the firm for public defense. (RP 48) Mr. Dixon also was concerned that the two non-equity partners who were managing the public defense contracts might leave the firm, perhaps to compete for the public defense contracts themselves. (RP 42-43)

“Every one” of Mr. Dixon’s clients elected to follow him to his new office. (RP 58) In 2007, Mr. Dixon had gross income of \$360,000. (RP 61) At trial in 2009, Mr. Dixon testified that he did not know whether his income was higher in 2008 than 2007. (RP 62) The trial court had denied the defendants evidence that would have provided accurate information on Mr. Dixon’s post-partnership earnings or profits. (CP 345)

D. Litigation Commenced After The Non-Equity Lawyer Supervising The Contracts Left The Firm To Oversee Public Defense For Kitsap County. The Senior Partner Was Paid \$40,000 For His Interest In The Firm When He Then Retired.

This action began when, just as Mr. Dixon had feared, one of the non-equity partners, Tim Kelly, left the firm in June 2008, to become the supervisor of a division of the Kitsap County Clerk’s Office that had just been created to oversee public defense. (CP 150) Claiming an equity interest in the firm, Mr. Kelly on August 20, 2008, filed a complaint for an accounting and purchase of his interest against the remaining partners (but not against Mr. Dixon) in Pierce County Superior Court. (CP 1) In December 2008, Mr. Dixon moved for leave to intervene and file a “Complaint In Intervention For De[c]laratory Relief” in Mr. Kelly’s action,

concerned that he might have some liability were Mr. Kelly to prevail in his claim that he had an equity interest in the firm. (CP 24, 31) Leave to file the complaint was granted December 26, 2008. (CP 157)

Thereafter, Mr. Kelly dismissed his claim, without payment of any monies by defendants, and Mr. Dixon became the sole plaintiff in February 2009. (CP 165) In March 2009, defendant senior partner Crawford retired, accepting a buyout payment of \$40,000 for his one-quarter equity interest in the firm. (FF 8, CP 365) Mr. Dixon's case against his four former partners, including Mr. Crawford, went to trial before Pierce County Superior Court Judge James Orlando on September 1-2, 2009.

E. Finding The Public Defense Contracts To Have Divisible Value, The Trial Court Awarded Plaintiff \$332,000 For His Interest In The Firm Based On A Dissolution "Excess Earnings" Goodwill Valuation.

At trial, plaintiff presented the testimony of Allan Vander Hamm, a certified public accountant, to place a value on the public defense contracts. Based on a "discounted cash flow method," and assuming the contracts would be in existence for at least 10 years, Mr. Vander Hamm valued the income stream, applied a discount rate of 24%, and claimed that the value of a one-

fifth “share” in the public defense contracts was \$333,000. (RP 85)¹ When asked if he could “change the time period” over which the public defense payments were received to terminate in 2009, Mr. Vander Hamm testified that he could not do the math on the stand (RP 87), but then agreed with plaintiff’s counsel’s claim that the value of a one-fifth share in the contracts would be \$230,000 to \$250,000. (RP 88)

Plaintiff also presented the testimony of accountant Joe Lawrence, who testified to the three accounting methods of valuing goodwill in dissolution cases approved in *Marriage of Hall*, 103 Wn.2d 236, 692 P.2d 175 (1984). (RP 94-96) Mr. Lawrence testified that his approach was different from Mr. Vander Hamm’s because he purported to calculate the value of the practice, whereas Mr. Vander Hamm only looked at the profits on the public defense contracts. (RP 97) Mr. Lawrence testified to goodwill value based on the partners’ “excess earnings,” assuming each partner’s individual “replacement value” with an attorney based on Mr. Dixon’s estimation of how much it would cost to hire a salaried

¹ The reports of the experts were admitted as Plaintiff’s Exhibits 30 and 31 and Defendants’ Exhibits 32-34. For ease of reference this brief cites to the identical version of those reports in the Clerk’s Papers.

lawyer to handle each of his former partners' practices. (RP 105-07) Combining these excess earnings (RP 101) and using a 21% discount rate (RP 115), Mr. Lawrence valued plaintiff's one-fifth interest in the firm at \$350,000 to \$360,000. (RP 116)

The defendants' accounting experts, accountants James Weber, Steve Kessler and Roland Nelson, provided evidence challenging both the claimed "replacement value" of the firm's partners, based on regional salary surveys, and the discount rate. (Kessler Dep.; RP 186, 191, 198; Ex. 32-34) The parties' accountants all agreed that the firm's tangible assets, including accounts receivable, had a value of \$38,000-\$43,000 when Mr. Dixon voluntarily dissociated. (Ex. 30 at 45, CP 124)

Using Mr. Lawrence's excess earnings analysis, but adopting slightly higher "replacement value" salaries than those testified to by Mr. Lawrence (CP 342), the trial court calculated that the firm had goodwill value of \$1,160,714, and that Mr. Dixon's one-fifth interest was worth \$232,143. (FF 20, CP 367) In reaching this conclusion, the trial court also relied on Mr. Vander Hamm's analysis and valuation of Mr. Dixon's "share of the actual and estimated profits from the Contracts through the end of the terms of

the Contracts in force as of the date of disassociation.” (FF 21, CP 368) The trial court entered judgment for \$232,143, plus prejudgment statutory interest of \$99,140.96, calculated from the day Mr. Dixon voluntarily dissociated from the firm in April 2006, plus statutory costs, for a total judgment of \$332,102.51, jointly and severally against all four defendants on October 27, 2009. (CP 371)

F. The Trial Court Refused To Reconsider Its Buyout Award When Kitsap County Did Not Renew The Public Defense Contracts And All The Firm’s Associates Quit After Trial.

Defendants moved for reconsideration or for a new trial, submitting evidence that, since trial, Kitsap County had failed to renew two significant public defense contracts, reducing the firm’s anticipated annual income by \$687,900, and that all five of the firm’s associates handling the defense work had given notice of their intent to leave the firm. (CP 395-400) Although the trial court had earlier stated its buyout value was premised on the fact that “[t]hese contracts have been renegotiated successfully over the years,” and the court’s belief that “the firm’s reputation and close relationship with local government will allow them to continue to negotiate contracts that will benefit the firm” (CP 342), the trial court

denied reconsideration or a new trial on November 20, 2009. (CP 472)

Defendants satisfied the judgment the day it was entered. (CP 583) They now appeal. (CP 474)

IV. ARGUMENT

The trial court erred in concluding that a lawyer voluntarily dissociating from a law partnership was entitled to be compensated for the claimed value of ongoing public defense contracts which could not be assigned and for which the attorney had no responsibility once he voluntarily left the firm. Even if the contracts could be ethically valued and sold, the trial court further erred in calculating the buyout price for a law firm partnership to include goodwill based on the excess earnings method, which has been used exclusively in dissolution property distributions in this state.

If the goodwill value of a law partnership could be calculated in this manner in a dispute between law partners, the trial court erred in refusing to allow discovery and consider all relevant evidence of the dissociating lawyer's post-partnership income in establishing the buyout amount. In any event, the Legislature could not compel the imposition of prejudgment interest at the statutory

rate on a trial court's equitable determination of the buyout amount due a dissociating partner using such a discretionary, illiquid method. This court should reverse and remand with directions to establish a buyout price based solely on the partnership's ethically divisible tangible assets.

A. A Lawyer Dissociating From A Law Firm Is Not Entitled To Be Compensated For The Value Of Ongoing Public Defense Contracts Which Could Not Be Assigned And For Which The Attorney Had No Responsibility Once He Voluntarily Left The Firm.

RCW 25.05.250 governs the forced purchase by the remaining partners of a dissociated partner's interest in a business that is not being wound up. RCW 25.05.250(2) requires that the "buyout price" of the disassociated partner's interest be "based upon a sale of the entire business as a going concern," as though the partnership was being "wound up." RCW 25.05.250(4) requires the partnership "to indemnify a dissociated partner whose interest is being purchased against all partnership liabilities" not incurred by the dissociated partner's acts. This court should hold that under these provisions, a lawyer dissociating from a law firm cannot ethically be compensated for the claimed value of ongoing public defense contracts which could not be assigned and for which the

attorney had no responsibility once he voluntarily left the firm. The trial court's decision, premised on plaintiff's right to share in the firm's "actual and estimated" future profits in the public defense contracts after dissociation, was in error.

RCW 25.05.250 derives from the Revised Uniform Partnership Act of 1997 (RUPA), which replaced the older Uniform Partnership Act of 1914 (UPA). 6 U.L.A. (Supp.); see generally Tiffany A. Hixson, Note, *The Revised Uniform Partnership Act – Breaking Up (Or Breaking Off) Is Hard To Do: Why The Right To "Liquidation" Does Not Guarantee A Forced Sale Upon Dissolution Of The Partnership*, 31 W. New Eng. L. Rev. 797 (2009) (discussing history of two acts). Section 701 of RUPA, RCWA 25.05.250, governs partnership dissociation and the buyout of the withdrawing partner's interest.

RCW 25.05.250(1) requires that a partner's interest be bought out if a partner dissociates and the partnership does not dissolve and wind up. RCW 25.05.250(2) provides the method for calculating the buyout amount absent a settlement. It provides in pertinent part:

The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under RCW 25.05.330(2) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. . . .

Comment 3 to § 701 of RUPA states that the term “buyout price” is intended to be a new term, and is not necessarily synonymous with “fair value” or “fair market value,” but that “discounts, such as for a lack of marketability or the loss of a key partner, may be appropriate.” Significantly, Comment 3 also states that it rejects the former rule under the UPA that forfeited a wrongfully dissociating partner’s interest in goodwill. *See also* Comment 3, RUPA § 602.

Plaintiff relied on these provisions to argue successfully to the trial court that Mr. Dixon as a dissociating partner was entitled to his share of the law firm’s “goodwill,” and in particular to the profits attributable to the firm’s ongoing and expected public defense contracts. But dissociation from the parties’ partnership here is governed not just by the RUPA, as codified in RCW 25.05.250, but by the ethical obligations of all the parties as

lawyers. See **Simpson v. Thorlund**, 151 Wn. App. 276, 287 ¶¶ 21, 211 P.3d 469 (2009) (“The applicability of RUPA does not obviate a partner’s duties to comply with other laws . . .”).

In this state, as in many others, goodwill in a law practice may not ethically be sold:

[P]laintiff’s theory requested the court to place a price tag on the goodwill of a law practice. Such a result is contrary to public policy.

Koehler v. Wales, 16 Wn. App. 304, 311, 556 P.2d 233 (1976) (“A lawyer has no proprietary interest in former clients. . . .”); **Walsh v. Brousseau**, 62 Wn. App. 739, 743, 815 P.2d 828 (1991) (quoting **Geffen v. Moss**, 53 Cal.App.3d 215, 226, 125 Cal.Rptr. 687 (1975) in reciting “the policy reasons against the sale of goodwill of a law practice.”); see also **Bump v. Stewart, Wimer & Bump, P.C.**, 336 N.W.2d 731, 737 (Iowa 1983) (“Though instances may exist in which goodwill of a law practice may properly be valued . . . [citing cases] (all involving property settlement in divorce), the transfer or withdrawal of a portion of a law practice, such as we have here, is not such a situation.”); **Stern v. Stern**, 66 N.J. 340, 331 A.2d 257, 261 n.5 (1975).

Valuation and sale of goodwill as part of a buyout price under RCW 25.05.250(2) would necessarily violate not only the ethical rules prohibiting solicitation or referral of clients for compensation, RPC 7.3, but the prohibition against splitting fees with an attorney outside a firm in a manner unrelated to the lawyers' responsibilities to their clients. RPC 1.5(e). The trial court's judgment, ordering the forced buyout of Mr. Dixon's claimed "proprietary interest" in ongoing and expected public defense contracts which could not be assigned and for which he had no ongoing responsibility, violates these ethical rules.

The only exception to the rule in this state that goodwill in a law firm cannot be sold is contained in RPC 1.17, which was promulgated six months *after* Mr. Dixon voluntarily left the firm, the date of dissociation on which the buyout price must be established under RCW 25.05.250(2). "A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including goodwill, if the following conditions are satisfied. . ." RPC 1.17 (adopted effective September 1, 2006). Even that provision makes clear that forced purchase of a withdrawing partner's goodwill interest in a law firm is not authorized by the Rules of Professional Conduct. "The

Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters." Comment [6], RPC 1.17.

Yet this prohibited partial sale is precisely what Mr. Dixon sought, and the trial court ordered, here. Mr. Dixon was awarded the claimed "goodwill" value of ongoing public defense contracts to represent clients for whom he had no ongoing responsibility. Indeed, RCW 25.05.250(4) would affirmatively obligate the defendants to indemnify plaintiff from any responsibility for these contracts. At the same time, Mr. Dixon took with him, without compensation to the firm or his former partners, the lucrative private clients he had developed while practicing with the firm, all of whom chose, as was their right, to leave the firm when Mr. Dixon voluntarily dissociated from his former partners.

None of the parties paid any consideration for goodwill upon becoming a partner. No amount was ever paid by any of the parties, nor by any other lawyer, for goodwill in the firm. (RP 51)

Goodwill was not and never had been reflected on the firm's balance sheets. (Ex. 30 at 45, Sch. 2; CP 124) Mr. Crawford upon his retirement received nothing for goodwill. (FF 8, CP 365) Given these indisputable facts, Mr. Dixon was not entitled to an award for goodwill upon voluntarily leaving the partnership. See **Kaplan v. Joseph Schachter & Co.**, 261 A.D.2d 440, 690 N.Y.S.2d 91 (1999); **Dawson v. White & Case**, 88 N.Y.2d 666, 672 N.E.2d 589, 649 N.Y.S.2d 364 (1996) (rejecting award of goodwill in winding up partnership when partners had never valued goodwill during the partnership); **Johnson v. Munsell**, 170 Neb. 749, 104 N.W.2d 314, 326 (1960) ("an inference that there was to be no accounting for good will . . . of a partnership may be drawn from the fact that no notice was taken of it as an asset when new members were admitted to the firm or old ones went out."); see also **Berg v. Settle**, 70 Wn.2d 864, 869, 425 P.2d 635 (1967) (court properly considered market value formula used to value a potential partner's interest in calculating doctor's interest in defunct medical partnership).

"The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will."

Comment [1], RPC 1.17. The trial court erred in treating the firm's public defense contracts, and its indigent clients, as a commodity that could be valued and awarded to Mr. Dixon as a dissociating partner when he voluntarily left both the firm and its obligation to serve these clients. This court should reverse the judgment premised on the forced purchase and sale of the firm's public defense contracts.

B. The Buyout Price For A Law Firm Partnership Cannot Include Goodwill Calculated Based On The Excess Earnings Method Used Exclusively In Dissolution Property Divisions.

Respondent may now attempt to distance himself from his experts', and the trial court's, questionable valuation and forced buyout of the firm's public defense contracts by relying on the "excess earnings" method of valuing dissolution goodwill that the trial court adopted. (FF 17, CP 366; CP 341: "Assuming that one of the current partners had divorced in 2003-2006, I think it would be very difficult for the trial judge to find no goodwill based upon the financial success enjoyed by the partners.") But this analysis of professional business goodwill was developed in this state to quantify the ongoing value to the marital estate of the high earning

capacity of an entrepreneurial professional spouse, in order to insure a fair and equitable division of property on divorce *despite* the professional spouse's inability to sell his practice. It has no place in determining the buyout price of a dissociating partner's interest in a law firm in a dispute not with his spouse, but with his partners.

Goodwill has been defined in the dissolution context as the "expectation of continued public patronage." ***Marriage of Lukens***, 16 Wn. App. 481, 483, 558 P.2d 279 (1976), *rev. denied*, 88 Wn.2d 1011 (1977). Salaried professionals do not have goodwill that can be valued and awarded to the professional spouse as part of the marital estate on dissolution; goodwill is enjoyed only by professionals who earn more than they could be expected to were they paid a salary for their services. ***Marriage of Hall***, 103 Wn.2d at 242 ("as a matter of law a salaried employee . . . cannot have goodwill.").

"The fact that professional goodwill may be elusive, intangible, and difficult to evaluate is not a proper reason to ignore its existence in a proper case" ***Lukens***, 16 Wn. App. at 486. To the contrary, it has become a reason that forensic accountants,

including the five expert witnesses in this case, now make good livings testifying about the application of the goodwill valuation methods approved in *Hall* to the professional practices of spouses at dissolution, even though these methods would never be used to value these practices for the marketplace. (See RP 194, 203-04)

This is because our courts have held that goodwill in a professional practice can be valued and distributed in a marital dissolution, *Marriage of Fleege*, 91 Wn.2d 324, 326, 588 P.2d 1136 (1979), even though goodwill in a law firm may not ethically be sold. *Marriage of Freedman*, 35 Wn. App. 49, 52, 665 P.2d 902, *rev. denied*, 100 Wn.2d 1019 (1983) (“Next, the husband argues an award of goodwill is not justified because an attorney may not sell his legal practice. . . . The test is not whether goodwill can be sold but whether it has value to the professional spouse. . . . Such spouse enjoys the benefits of goodwill regardless of its salability.”) (citations omitted). The award of goodwill as an asset in the marital context is largely based on the need to protect the non-professional spouse in making a fair and equitable division of the marital estate.

The court is obligated to consider the economic circumstances of the spouses at the time of the dissolution in dividing the marital estate. RCW 26.09.080. The entrepreneurial professional's ongoing ability to earn more than a similar salaried professional is considered an asset because it affects the economic circumstances in which the spouses will be left upon dissolution. Many courts also have viewed it as unfair to the non-professional spouse to ignore their contributions to a professional practice:

Under the principles of community property law, the wife, by virtue of her position as wife, made to that value [goodwill] the same contribution as does a wife to any of the husband's earnings and accumulations during marriage. She is as much entitled to be recompensed for that contribution as if it were represented by the increased value of stock in a family business.

Mitchell v. Mitchell, 152 Ariz. 317, 732 P.2d 208, 211 (1987); quoting ***Golden v. Golden***, 270 Cal.App.2d 401, 405, 75 Cal. Rptr. 735, 738 (1969) (brackets in original).

In the context of partnership dissociation, however, there is no such need to protect the withdrawing partner. The dissociating partner departs with goodwill based on his work and reputation while at the firm, whereas a divorcing spouse will cease to have any benefit from the partnership. In short, a non-professional

spouse has no professional reputation to take with them. In a dispute between professional partners, however, that is indisputably not the case – each partner leaves – or remains in – the partnership with his goodwill from the firm intact.

In this case, for instance, it is beyond dispute that the plaintiff benefited from the goodwill and reputation he built while at the firm. “Every one” of plaintiff’s clients followed him to his new firm. (RP 58) From the limited information available, given the trial court’s improper denial of discovery on plaintiff’s post-partnership earnings (see Arg. C., *infra*), Mr. Dixon earned more money in the year after he left the firm, from clients he took with him from the firm, than he had in previous years. (RP 61; CP 73, Ex. 30) In his motion to exclude evidence plaintiff claimed that the “loss of those clients is not a loss of goodwill to the Crawford Firm because the Crawford Firm would have no expectation of continued patronage from clients who had no obligation to continue to use the services of the Crawford Firm and elected to leave.” (CP 214) However, this is precisely what the firm did have under plaintiff’s dissolution-based, individual-excess-earnings reasoning, as goodwill is the “expectation of continued public patronage.”

The inapplicability of dissolution goodwill analysis also is reflected in the illogical consequences of the trial court's use of the excess earnings method to calculate the *firm's* goodwill and the plaintiff's buyout price, as opposed to the individual partners' professional goodwill, in this case. The court recognized that a professional's goodwill may be independent of his law firm interest in ***Marriage of Brooks***, 51 Wn. App. 882, 756 P.2d 161, *rev. denied*, 111 Wn.2d 1021 (1988). The court in ***Brooks*** held that the husband's partnership interest in his law firm, having been acquired before marriage, was his separate property, while his professional goodwill, acquired through his community labor in the practice during marriage, was community property. 51 Wn. App. at 889.

In this case, the trial court purported to calculate the firm's, rather than the individual partner's, goodwill. It did so, however, by separately calculating the replacement compensation of each of the law firm's partners, including its two non-equity partners but excluding Mr. Dixon. (FF 20, CP 367; CP 342) And it did so based on its assessment of "the age, past demonstrated earning power, professional reputation" *not* "of the Crawford Firm in the

community,” as the trial court stated (FF 18, CP 367), but based on the *individual partners’* “judgment, skill and professional success.” The trial court then combined those disparate excess earning values and obligated each of the equity partners to pay *Mr. Dixon* for their own calculated excess earnings, as well as those of the non-equity, non-party partners.

RCW 25.05.250(2) requires the dissociated partner’s buyout price be calculated as the higher of “liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up.” Excess earnings calculations for multiple individual professionals, such as those undertaken by the trial court here, cannot lead to any buyout value required by RCW 25.05.250(2). Although the courts of this state have held that calculating earnings in excess of replacement compensation is proper in considering the economic circumstances of entrepreneurial professionals and their divorcing spouses, the court’s application of this dissolution goodwill analysis in these circumstances does not and cannot establish the buyout price recognized and required under RCW 25.05.250(2). This

court should reverse the judgment based on this excess earnings dissolution goodwill analysis.

C. The Trial Court Erred In Refusing To Allow Discovery Or Consider All Relevant Evidence Of The Dissociating Lawyer's Post-Partnership Income In Establishing The Buyout Price.

Plaintiff in this case did not leave the firm empty-handed. He left with the goodwill and reputation he built while at the firm. He also left with all of his clients, who had been attracted and retained through the firm's strategy of using the public defense contracts to free each of the partners, including Mr. Dixon, to develop their successful civil law practices. Plaintiff in effect received his share of any goodwill in the firm in taking a substantial portion of the firm's clients. See *Harstad v. Metcalf*, 56 Wn.2d 239, 242-43, 351 P.2d 1037 (1960) ("Each partner is continuing his own engineering business after a division of the assets of the former partnership. Accordingly, there is no good will accruing to respondent's business for which appellant is entitled to be paid."); *Hanson v. Hanson*, 125 Ariz. 553, 611 P.2d 557 (1979); *Engel v. Vernon*, 215 N.W.2d 506 (Iowa 1974). At a minimum, plaintiff's post-partnership income should have been discoverable and considered by the trial court in establishing a buyout price if the trial court did not err in using the

excess earnings of the remaining partners to calculate the buyout price.

Plaintiff's post-partnership income was relevant because it would demonstrate the amount of goodwill that Mr. Dixon took with him when he voluntarily left the firm. (CP 319) Plaintiff's counsel admitted that Mr. Dixon should not be compensated for the goodwill that he took with him. (RP 2-3, 13) Plaintiff also argued that any clients Mr. Dixon got after leaving the firm that were unrelated to the firm had no relevance to the case. (RP 325) That may be true, but it also implies that the clients plaintiff obtained after dissociating that *were* related to the firm are relevant, and thus that the post-dissociation earnings of plaintiff are relevant.

When explaining his goodwill analysis, plaintiff's expert testified "So -- and that value includes not only the goodwill, but Mr. Dixon's pro rata share of the accounts receivable, the work in process, the personal injury cases, and net tangible assets of the practice itself as of the time of departure." (RP 116) But plaintiff's expert analysis calculated the goodwill of the firm as it existed the day Mr. Dixon left without discounting for the significant portion of goodwill that Mr. Dixon took with him out the door.

In essence, Mr. Dixon has, by any measure, been compensated twice; once by the forced buyout of the firm's goodwill, which by definition represents the continued expectation of patronage of firm clients, and again by those clients following him to his new firm. Without evidence of Mr. Dixon's own post-partnership earnings, the court also could not calculate his interest as if he was still a partner, contrary to RCW 25.05.250(2), which requires the buyout be calculated as the "value based on a sale of the entire business as a going concern *without the dissociated partner.*" If the goodwill value of a law partnership can be calculated by the excess earnings method adopted by the trial court in a dispute between law partners, the trial court erred in refusing to allow discovery and consider all relevant evidence of the dissociating lawyer's post-partnership income in establishing the buyout price.

D. A Former Partner Is Not Entitled As A Matter Of Law To Interest From The Date Of Withdrawal On The Disputed Value Of His Partnership Interest.

RCW 25.05.250(2), codifying RUPA, also provides that "Interest must be paid from the date of dissociation to the date of payment" on the buyout price of a dissociated partner. Based on

this provision, almost one-third of the trial court judgment against the defendants, \$99,140.96, was comprised of statutory interest, calculated at 12 percent per annum, from April 3, 2006, the date plaintiff voluntarily withdrew from the firm with no agreement how his partnership interest would be valued. Even if the trial court did not err in calculating the forced buyout price based on the individual partners' "excess earnings," this court should hold that a former partner is not entitled to as a matter of law to statutory 12% interest from the date of his withdrawal on the disputed value of his partnership interest, when in the absence of the parties' agreement the trial court has established a buyout value based on its discretionary assessment of the firm's past profits and of the age, past demonstrated earning power and professional reputation of the individual partners.

The interest provision in Section 701 of RUPA, codified at RCW 25.05.250(2), was intended "to compensate dissociated partners for the use of their capital." *Shoemaker v. Shoemaker*, 275 Neb. 112, 745 N.W.2d 299, 316 (2008). As comment 3 notes, in promulgating the provision for interest the "option of electing a share of the profits in lieu of interest" in the former UPA was

“eliminated” in RUPA. Comment 3, RUPA § 701. “Since the buyout price is based on the value of the business at the time of dissociation, the partnership must pay interest on the amount due from the date of dissociation until payment to compensate the dissociating partner for the use of his interest in the firm.” Comment 3, RUPA § 701.

That purpose is not served by the mandatory imposition of above-market statutory interest in a case such as this. First, Mr. Dixon had no “capital” in the firm; he had paid nothing for his interest. Second, the manner in which the trial court established the buyout price *did* give Mr. Dixon a “share of the profits,” eliminating the justification for an award of interest under RUPA. Finally, because the parties had no valuation agreement, the buyout price was not liquidated and necessarily required the exercise of the trial court’s discretion in a manner that makes an award of prejudgment interest inequitable.

The provision for payment of interest on a dissociating partner’s buyout price in the RUPA was intended to encourage the prompt resolution of legitimate, easily calculated claims of a dissociating partner. Comment 8, RUPA § 701. This intent is

reflected in the RUPA's straightforward provisions for timely calculation and payment of easily calculable buyout amounts to a dissociating partner. RCW 25.05.250(5),(9)

This, however, is a very different case. As plaintiff himself conceded:

Q. Did you have an understanding as to what the value of your interest in the firm might be?

A. I really did not.

(RP 43) Despite knowing as lawyers the inherent illiquidity of an unwritten, discretionary claim to further law firm profits, the parties here never had a written partnership agreement, much less one that would have made any sums payable to a dissociating partner under RCW 25.05.250(2) readily calculable and subject to statutory interest. To the extent the recital of a "mandatory" obligation to pay interest exists in the partnership dissociation statute, RCW 25.05.250(2), (3), its purpose would not be served and cannot be upheld under the circumstances of this case.

Prejudgment interest is available only on a liquidated sum, and not when the amount of the claim must be established by the trier of fact based on competing evidence presented by the parties regarding the amount owed:

A claim is unliquidated [if] the exact amount of the sum to be allowed cannot be definitely fixed from the facts proved, disputed or undisputed, but must in the last analysis depend upon the opinion or discretion of the judge or jury as to whether a larger or a smaller amount should be allowed.

Scoccolo Const., Inc. ex. rel. Curb One, Inc. v. City of Renton, 158 Wn.2d 506, 519, 145 P.3d 371 (2006), quoting ***Hansen v. Rothaus***, 107 Wn.2d 468, 473, 730 P.2d 662 (1986), and ***Prier v. Refrigeration Engineering Co.***, 74 Wn.2d 25, 33, 442 P.2d 621 (1968). Here, the trial court only after considering the evidence of five experts as to the proper buyout price established the “exact amount” due plaintiff, who despite each party’s knowledge and expertise in the law had no agreement with the defendants establishing the value of his interest in the firm.

Our courts have made clear that there can be no “absolute right” to prejudgment interest. ***Colonial Imports v. Carlton Northwest, Inc.***, 83 Wn. App. 229, 243, 921 P.2d 575 (1996). “Washington trial judges have discretion to disallow prejudgment interest . . .” ***Litho Color, Inc. v. Pacific Employers Ins. Co.***, 98 Wn. App. 286, 300, 991 P.2d 638 (1999). The trial court here erred in concluding it had no discretion to deny prejudgment interest. (CL 3, CP 369) When, as here, the parties had no agreement that

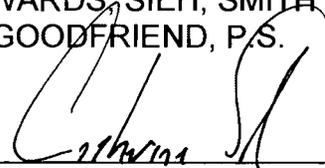
“definitely fixed” their partnership interests, regardless of the validity of the trial court’s calculation of any goodwill buyout value, the imposition of statutory prejudgment interest was improper, and the Legislature exceeded its authority in purporting to make an award of interest mandatory in adopting Section 701 of the RUPA, RCW 25.05.250.

V. CONCLUSION

This court should reverse and remand with directions to establish the buyout price based solely on the partnership’s ethically divisible tangible assets.

Dated this 14th day of June, 2010.

EDWARDS, SIEH, SMITH
& GOODFRIEND, P.S.

By: 

Catherine W. Smith
WSBA No. 9542

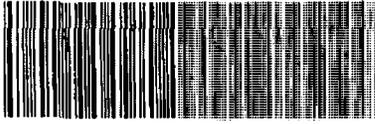
Attorneys for Appellants

APPENDICES

Letter Opinion, dated September 9, 2009 (CP 341-43)

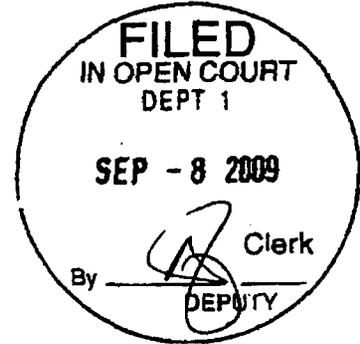
Findings of Fact and Conclusions of Law, dated October 23, 2009
(CP 364-69)

Judgment, dated October 23, 2009 (CP 370-72)



08-2-11581-5 32816695 LTR 09-14-09

**SUPERIOR COURT
OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY**



JAMES R. ORLANDO, JUDGE
L. Janet Costanti, *Judicial Assistant*
DEPARTMENT 1
(253)798-7578

334 COUNTY-CITY BUILDING
930 TACOMA AVENUE SOUTH
TACOMA, WA 98402-2108

September 4, 2009

Mr. Paul E. Brain
Attorney at Law
1102 Broadway Plaza, #403
Tacoma, WA 98402

Mr. Joe Gordon, Jr.
Attorney at Law
PO Box 1157
Tacoma, WA 98401-1157

Re: Dixon v Crawford et al, # 08-2-11581-5

Dear Counsel:

The deposition testimony of Steven Kessler was helpful to my conclusion in this case, but not for the reason offered. Mr. Kessler stated that at the end of a valuation, he will walk down the hallway to his partner and say, "I've come up with this value for this type of business, and see if he berates me because it's so ridiculous or he says, Yeah, that would make some sense based on what I understand about these things".

Applying the Kessler logic to my decision, I asked myself, does it make sense that a law firm that generates \$500,000 a year in profit from public defense contracts would have no goodwill. Assuming that one of the current partners had divorced in 2003-2006, I think it would be very difficult for the trial judge to find no goodwill based upon the financial success enjoyed by the partners.

In determining fair value, each of the CPA's came up with different numbers. Each of the CPA's values was based on different assumptions. They cannot all be correct. I found the approach by Mr. Lawrence to be the most accurate way to determine excess earnings and goodwill, but disagreed with his conclusion as to reasonable compensation. The assumption for reasonable compensation using the Altman Weil study does not take in to account the

economic realities of practice in Kitsap County, but the numbers used by Mr. Lawrence do not reflect the length of time these attorneys have been in practice or the economic benefit derived by the firm for their community activities. I found the testimony of Mr. Lawrence was most credible as to his method of determining reasonable compensation/replacement value but believe that he undervalues the assumed reasonable compensation by one-third. I find the reasonable compensation to be as follows:

Crawford	\$100,000
McGilliard	\$100,000
Peterson	\$167,000
Yelish	\$133,000
Adams	\$100,000
Kelly	\$100,000

In effect, I increased the assumed replacement value/reasonable compensation by one-third for Mr. Yelish and Mr. Peterson. I rounded up. Using the formula on the Lawrence report, pages D000021-24 the guaranteed payments to partners was \$ 1,025,000 in 2006. The excess earnings using the replacement value/reasonable compensation set forth above would be \$325,000. The after tax, assuming 25% would be \$243,750. The estimated total value would be $(\$243,750 / 21\% = \$1,160,714)$ Mr. Dixon's share would be $\$1,160,714 \times 20\% = \$232,143$.

I also considered the testimony of Mr. Vander Hamm that indicated that by reducing his calculation to account for a shorter contractual period, i.e., not ten years, the value he came up with was in the range of \$230,000 using a cash flow type analysis. Under any of the methods, I believe the valuations using the Lawrence and Vander Hamm methods are close to the same.

I did not find Mr. Larson or Mr. Kessler's testimony to be helpful or persuasive. The assumptions they made as to reasonable compensation basically led to the conclusion that there was no goodwill. I also did not find Mr. Weber's assumptions reasonable as to compensation in Kitsap County and disagreed with him as to the absence of goodwill.

Under Marriage of Hall, I considered the straight capitalization accounting, capitalization of excess earnings, and the IRS variation of capitalized excess earnings. I also considered the age, past demonstrated earning power, professional reputation in the community as to judgment, skill, and professional success.

I note this is a highly respected group of attorneys who have long enjoyed success as a preeminent public defense firm. I also note that in reviewing Exhibit 39, it does not appear that any of the partners had involvement with felony cases since 2003, with the exception of income partner Tim Kelly. These contracts have been renegotiated successfully over the years and I believe the firm's reputation and close relationship with local government will allow them to continue to negotiate contracts that will benefit the firm. Despite the departure of Steve Dixon, the firm has continued to enjoy financial success with its clients and the public defense contracts.

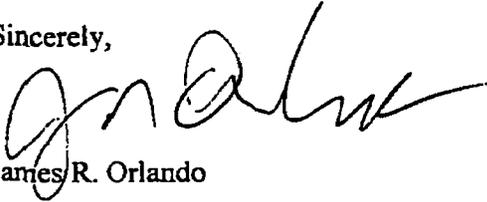
The definition of goodwill set forth in Marriage of Lukens, "is a benefit or advantage which is acquired by an establishment beyond the mere value of the capital, stock, funds or property employed therein, in consequence of the general public patronage and encouragement, which it receives from local position or common celebrity, or reputation for skill or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices."

I cannot think of a better definition for the fine success of William Crawford and his partners.

I make my findings mindful that Mr. Crawford left the firm with a modest sum. But the agreement he signed took in to consideration that the remaining partners were assuming liability to Mr. Dixon, and in Mr. Crawford's own words, "the hassle factor." With those considerations in mind, the value of his settlement with the firm is not out of line with that awarded to Mr. Dixon.

Please contact me with any questions. I anticipate receiving proposed findings and conclusions in the near future.

Sincerely,

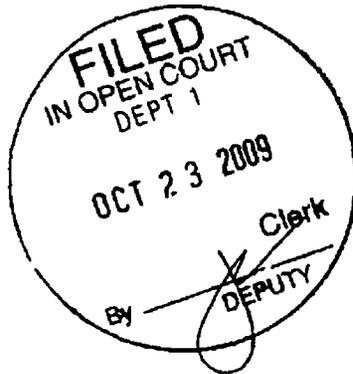


James R. Orlando



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The Honorable James Orlando
Hearing Date: October 23, 2009
Hearing Time: 9:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STEVE B. DIXON, a married person,
Third-Party Plaintiff/
Intervenor,

v.

CRAWFORD, MCGILLIARD, PETERSON &
YELISH, a Washington general partnership;
WILLIAM M. CRAWFORD and the marital
community comprising WILLIAM M.
CRAWFORD and JANE DOE CRAWFORD;
JOHN H. MCGILLIARD and the marital
community comprising JOHN H.
MCGILLIARD and JANE DOE
MCGILLIARD; RICHARD L. PETERSON
and the marital community comprising
RICHARD L. PETERSON and JANE DOE
PETERSON; and MARK L. YELISH and the
marital community comprising MARK L.
YELISH and JANE DOE YELISH,
Defendants.

Case No. 08-2-11581-5

~~PROPOSED~~
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter was tried before this Court commencing on September 1, 2009 and
concluding on September 2, 2009. On the basis of the evidence adduced at trial, this Court finds
as follows:

FINDINGS OF FACT AND CONCLUSIONS
OF LAW - Page 1

*Smith
Alling
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A Professional Services Corporation
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364

JH
 a married person

1 1. Steve B. Dixon ("Dixon") is an attorney licensed to practice in the State of
 2 Washington since 1983.

3 2. Crawford, McGilliard, Peterson & Yelish (the "Crawford Firm") is a Washington
 4 general partnership as that term is defined at RCW 25.05.055. The Crawford Firm's principal
 5 place of business is in Port Orchard, Kitsap County, Washington.

6 3. William M. Crawford ("Crawford") was a partner in the Crawford Firm at the
 7 time of Dixon's disassociation from the Crawford Firm and is a married person residing in
 8 Kitsap County, Washington. Crawford disassociated from the Crawford Firm in March 2009.

9 4. John H. McGilliard ("McGilliard") is a partner in the Crawford Firm and was a
 10 partner in the Crawford Firm at the time of Dixon's disassociation from the Crawford Firm.
 11 Mr. McGilliard is a married person residing in Pierce County, Washington.

12 5. Richard L. Peterson ("Peterson") is a partner in the Crawford Firm and was a
 13 partner in the Crawford Firm at the time of Dixon's disassociation from the Crawford Firm.
 14 Mr. Peterson is a married person residing in Kitsap County, Washington.

15 6. Mark L. Yelish ("Yelish") is a partner in the Crawford Firm and was a partner in
 16 the Crawford Firm at the time of Dixon's disassociation from the Crawford Firm. Mr. Yelish is
 17 a married person residing in Pierce County, Washington.

18 7. In or about 1980, two or more of the Defendant Partners formed the Crawford
 19 Firm for the purpose of engaging in the practice of law in the State of Washington, and since
 20 that time, the Crawford Firm has been operating continuously for that purpose.

21 8. Senior partner Crawford retired from the Crawford Firm in March 2009. He and
 22 the Crawford Firm negotiated a buyout of Crawford's 25% equity interest in the Crawford Firm
 23 for the sum of \$40,000. The Agreement and General Release entered into by and between
 24 Crawford and the Crawford Firm (Trial Exhibit 37) does not relieve Crawford from liability to
 25 Dixon.

26 9. Dixon joined the Crawford Firm as an associate attorney in 1984, became a
 27 junior partner in 1989, and a full partner in 1991. As of the date Dixon became a full partner,
 28 Dixon's ownership share of the Crawford Firm partnership was 20%.

1 10. Dixon disassociated from the Crawford Firm effective April 3, 2006.

2 11. The Crawford Firm partners had no agreement regarding payment of the value of
3 a disassociated partner's interest.

4 12. The assets of the Crawford Firm included public defense contracts with Kitsap
5 County ("Contracts"). (Trial Exhibits 11-20). The Contracts do not require the principals of the
6 Crawford Firm to actually provide any of the legal services contracted for in the Contracts and,
7 in fact, nearly all of the services provided under the Contracts are not provided by the individual
8 Defendants, although the individual Defendants do spend time supervising the provision of
9 services under the Contracts. Prior to his disassociation, Dixon was involved in supervising the
10 provision of services under the Contracts.

11 13. The business strategy for the Crawford Firm from its formation was to develop a
12 public defense practice to the point where the practice could be serviced by salaried employees,
13 liberating the Crawford Firm partners to build practices unrelated to and not dependent on public
14 defense work. Dixon was a part of implementing that plan. Several years prior to the date of
15 Dixon's disassociation, the strategy had been successfully implemented.

16 14. All members of the Crawford firm were aware, as of the date of Dixon's
17 disassociation, of the potential that the Crawford Firm would not be able to retain the Contracts
18 after the expiration of their terms.

19 15. In the period 2000 through 2008, revenues from the Contracts ~~exceeded~~ *approximately* 50% of
20 the total revenues of the Crawford Firm and typically exceeded operating expenses of the
21 Crawford Firm, exclusive of partnership compensation. The Contracts were and are profitable
22 to the Crawford Firm.

23 16. All Crawford Firm equity partners participated equally in the profits earned by
24 the Crawford Firm. Historically, the profits from the Contracts were a substantial component of
25 partner compensation.

26 17. The assets of the Crawford Firm as of the date of Dixon's disassociation included
27 "goodwill," as that term is defined in Washington law.

28

1 (18.) This Court considered the following valuation methodologies: (a) straight
2 capitalization accounting; (b) capitalization of excess earnings; and (c) the IRS variation of
3 capitalized excess earnings. This Court further considered the age, past demonstrated earning
4 power, professional reputation of the Crawford Firm in the community as to judgment, skill and
5 professional success.

exclusive of Mr. Van der Ham

6 (19.) All of the experts agreed that a capitalization of excess earnings was the
7 appropriate valuation methodology. The analysis of the experts differed materially only with
8 respect to the assumptions as to replacement compensation and capitalization rate. The
9 assumptions used by Defendants' experts Roland T. Nelson and Steven J. Kessler in determining
10 the value of the goodwill of the Crawford Firm were not credible.

11 (20.) Both Plaintiff's expert Joseph L. Lawrence and Defendants' expert James E.
12 Weber used a "build up" method to assess the capitalization rate. This analysis took into
13 consideration, in Mr. Lawrence's report, the "specific practice risk" including the risk that the
14 revenue flow from the Contracts could change or cease. This Court does not adopt the
15 reasonable replacement compensation assumptions of Plaintiff's expert Joseph L. Lawrence or
16 Defendants' expert James E. Weber. This Court does not adopt the capitalization rate
17 assumption of Defendants' expert James E. Weber. Otherwise, this Court adopts the valuation
18 methodology of Plaintiff's expert Joseph L. Lawrence as set forth in Trial Exhibit 30 at
19 D000021-24 as being reasonable and supported by the evidence. Based on all of the evidence,
20 including the factors enumerated in ¶ 18 above, reasonable replacement compensation for
21 Crawford Firm partners, as of the date of Dixon's disassociation, are as follows:

- 22 Crawford \$100,000;
- 23 McGilliard \$100,000;
- 24 Peterson \$167,000;
- 25 Yelish \$133,000;
- Adams \$100,000; and
- Kelly \$100,000.

26 The applicable capitalization rate for determining the value of the goodwill of the Crawford
27 Firm is 21%. Dixon's interest in the after tax excess earnings of the Crawford Firm is \$243,750.

21. In reaching this conclusion, the Court further relied on the testimony of Alan VanderHamm regarding a valuation of Dixon's share of the actual and estimated profits from the Contracts through the end of the terms of the Contracts in force as of the date of disassociation. Mr. VanderHamm's analysis took into consideration the expiration dates for the contracts. Utilizing a discounted cash flow analysis, and assuming that the Contracts would not be extended past the expirations dates in force as of Dixon's disassociation, Mr. VanderHamm concluded that the minimum present value of those profits as of the date of disassociation would have been \$230,000. Mr. VanderHamm's valuation is reasonable, supported by the evidence, and consistent with and corroborative of the valuation of the excess earnings adopted by this Court.

22. This Court finds that the Crawford Firm is a highly-respected group of attorneys, who has long enjoyed success as a preeminent public defense firm.

23. This Court determined, based upon Trial Exhibit 39, that it does not appear that any of the Crawford Firm partners had involvement with felony cases since 2003, with the exception of income partner Tim Kelly, ~~except in a supervisory capacity.~~ *other than in a supervisory capacity*

24. The value of Dixon's interest in the Crawford Firm as of the date of disassociation is \$232,143.00, including both tangible and intangible assets. Simple interest on that amount at 12% per annum from April 3, 2006 through October 23, 2009 is \$99,140.96. Per diem interest is \$76.32.

25. This Court finds that the calculation set forth in Finding of Fact No. 20 above includes the value of Dixon's interest in all assets of the Crawford Firm including, but not limited to, accounts receivable, furniture, fixtures and equipment and goodwill.

26. Any Conclusion of Law which is more properly a Finding of Fact is hereby adopted as such.

Based on the foregoing, this Court concludes as follows:

1. Because the Crawford Firm partners had no agreement governing disassociation, payment to a disassociating partner, payment is governed by RCW 25.05.250. The valuation

1 standard set forth in RCW 25.05.250 is a fair value standard precluding the application of
2 minority or marketability discounts.

3 2. Under the valuation standard in RCW 25.05.250, the contribution of the
4 disassociating partner to the goodwill of the partnership is not to be considered. Accordingly,
5 there is no basis for a setoff defense or claim based on the value of the goodwill taken by the
6 disassociated partner.

7 3. Under RCW 25.05.250(2), an award of interest from the date of disassociation to
8 the date of payment on the value of the disassociated partner's interest is non-discretionary.
9 Under RCW 25.05.020 and RCW 19.52.010, the applicable interest rate is 12% per annum.

10 4. Dixon is entitled to judgment against Defendants, jointly and severally, in the
11 amount of \$331,283.96, plus interest after October 23, 2009 at \$76.32 per day until such
12 judgment is paid in full.

13 5. Any Finding of Fact which is more properly a Conclusion of Law is hereby
14 adopted as such.

15 DONE IN OPEN COURT this 23 day of Oct, 2009.

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17 FILED
IN OPEN COURT
DEPT 1
OCT 23 2009
Clerk
DEPUTY

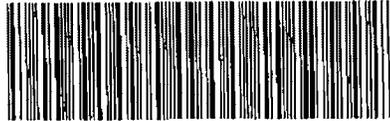
18 THE HONORABLE JAMES ORLANDO

19 Approved as to Form;
20 Notice of Presentment Waived:
21 CRAWFORD, MCGILLIARD,
22 PETERSON & YELISH

23 Presented by:
SMITH ALLING LANE, P.S.
By: Paul E. Brain
Paul E. Brain, WSBA #13438
Attorneys for Third-Party Plaintiff/
Intervenor

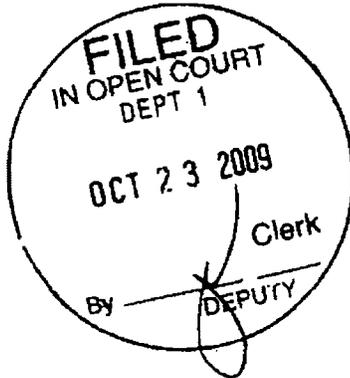
24 By: John H. McGilliard
John H. McGilliard, WSBA #7438
Richard Peterson, WSBA #5311
Mark L. Yelish, WSBA #9517
Attorneys for Defendants

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08-2-11581-5 33082954 JD 10-26-09

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The Honorable James Orlando
Hearing Date: October 23, 2009
Hearing Time: 9:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STEVE B. DIXON, a married person,
Third-Party Plaintiff/
Intervenor,

v.

CRAWFORD, McGILLIARD, PETERSON &
YELISH, a Washington general partnership;
WILLIAM M. CRAWFORD and the marital
community comprising WILLIAM M.
CRAWFORD and JANE DOE CRAWFORD;
JOHN H. McGILLIARD and the marital
community comprising JOHN H.
McGILLIARD and JANE DOE
McGILLIARD; RICHARD L. PETERSON
and the marital community comprising
RICHARD L. PETERSON and JANE DOE
PETERSON; and MARK L. YELISH and the
marital community comprising MARK L.
YELISH and JANE DOE YELISH,
Defendants.

Case No. 08-2-11581-5

~~[PROPOSED]~~
JUDGMENT

[CLERK'S ACTION REQUIRED]

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I. JUDGMENT SUMMARY

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- 1. Judgment Creditor:Steve B. Dixon
- 2. Attorney for Judgment Creditor:Paul E. Brain
Smith Alling Lane, P.S.
1102 Broadway Plaza, Suite 403
Tacoma, WA 98402
- 3. Judgment Debtors jointly and severally: ...
 - (1) Crawford, McGilliard, Peterson & Yelish;
 - (2) William M. Crawford;
 - (3) The marital community comprising William M. Crawford and Jane Doe Crawford;
 - (4) John H. McGilliard;
 - (5) The marital community comprising John H. McGilliard and Jane Doe McGilliard;
 - (6) Richard L. Peterson;
 - (7) The marital community comprising Richard L. Peterson and Jane Doe Peterson;
 - (8) Mark L. Yelish; and
 - (9) The marital community comprising Mark L. Yelish and Jane Doe Yelish
- 4. Attorneys for Judgment Debtors:John H. McGilliard
Richard Peterson
Mark L. Yelish
Crawford, McGilliard, Peterson & Yelish
623 Dwight Street
Port Orchard, WA 98366
- 5. Principal Judgment Amount: \$ 232,143.00
- 6. Interest to Date of Judgment: \$ 99,140.96
- 7. Statutory Attorneys' Fees: \$ 200.00
- 8. Costs: \$ 936.47
 - Filing fee (RCW 4.84.010(1)): \$200.00
 - Transcription fees (RCW 4.84.010(7)): \$736.47
 - Peterson deposition as
Crawford 30(b)(6) designee... ~~\$474.50~~ **156.58**
 - Kessler deposition \$261.97
- 9. Other Recovery Amounts: \$ 0.00
- 10. Total Amount of Judgment: \$ ~~332,420.43~~ **533,102.51**
- 11. Total Judgment Amount shall bear interest at 12% per annum from date of entry

Handwritten initials and signatures:
 A large handwritten "NO" with a downward arrow.
 A signature that appears to be "R.P." with a flourish.
 Another signature to the right.

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II. JUDGMENT

THIS MATTER came on before this Court for.

Consistent with this Court's Findings of Fact and Conclusions of Law in this action, this Court entered judgment as follows:

1. Plaintiff is awarded Judgment against Defendants, jointly and severally, in the amount of \$232,143.00;
2. Plaintiff is awarded interest in the amount of \$99,140.96 for interest from the date of Plaintiff's date of disassociation, April 3, 2006, through the date of this Judgment, October 23, 2009;
3. Plaintiff is awarded statutory attorneys' fees in the sum of \$200.00;
4. Plaintiff is awarded costs in the amount of \$936.47; and
5. Plaintiff is awarded interest which shall accrue at the rate of 12% per annum until this Judgment is paid in full.

THIS MATTER came on regularly before this Court on October 23, 2009 for the presentation of Findings of Fact and Conclusions of Law. Now, therefore, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiff be and he is hereby granted Judgment against Defendants in the principal amount of \$232,143.00, interest to date in the amount of \$99,140.96, attorneys' fees in the amount of \$200.00 and costs in the amount of \$936.47, with interest to accrue on all at the rate of 12% per annum from the date of this Judgment. It is further

ORDERED, ADJUDGED AND DECREED that the Clerk is ordered to enter said Judgment in the execution docket of this Court, and to comply with such other procedures as are required of Clerks in the carrying out of that office, including the proper filing of this Judgment.

DONE IN OPEN COURT this 23 day of Oct, 2009.



[Signature]
THE HONORABLE JAMES ORLANDO

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on June 14, 2010, I arranged for service of the foregoing Brief of Appellants, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division II 950 Broadway, Suite 300 Tacoma, WA 98402	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Paul E. Brain Brain Law Firm PLLC 1119 Pacific Ave., Suite 1200 Tacoma, WA 98402-4323	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail

DATED at Seattle, Washington this 14th day of June, 2010.


Amanda C. King

FILED
COURT OF APPEALS
10 JUN 15 PM 1:49
STATE OF WASHINGTON
BY _____
Clerk