



**Allocation of Goodwill: Can We Limit the Subjectivity?**

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Florida Courts, like many courts throughout the country wrestle with the somewhat complex and arduous task of determining a proper allocation of Goodwill in a business. Determining the proper allocation of Goodwill is not only important in Family Law Courts but also in corporate / shareholder matters and in US Tax Courts. In recent decisions, in Muszynski vs. Muszynski and in Mann v. Mann give insights into the allocation of Goodwill in the family law setting. Based on these cases and the seminal referenced business valuation case, Thompson v. Thompson, we can now glean the following insights:

1. Under Thompson, Fair Market Value is the Standard of Value in Florida family law matters;
2. There is no directive from either a statute or appellate case ruling that proscribes the exact valuation methodologies a business appraiser / financial expert witness must utilize; and
3. A credibly supported allocation of Goodwill will likely be adopted by the Court as there is no moratorium on the determination of enterprise goodwill as both the recent Muszynski and Mann decisions demonstrate.

Goodwill is a catch-all term accounting term used in finance to recognize a company's value above its tangible and identifiable intangible assets. Within the purview of Florida Family Law Courts, Enterprise Goodwill may be attributable to the marital estate (See Thompson) whereas Personal (aka Professional) Goodwill is not included in the marital estate. With these insights in mind, we are presenting three models for determining a credible allocation of Goodwill:

- 1. The Multi-Attribute Utility Model**
- 2. Top Down Analysis**
- 3. Bottom's Up Analysis**

We have utilized all three models in the family law context and in certain tax and shareholder appraisals for allocation of Goodwill between Personal and Enterprise.

**Multi-Attribute Utility Model**

The Multi-Attribute Utility Model utilizes Factors ("MUM Factors") that are either reflective of the existence of Personal Goodwill or Enterprise Goodwill. The appraiser then allocates between these two subsets of Mum Factors and determines a weighting based on the Mum Factors' existence and weighting in the Company's overall Goodwill. The MUM Factors analysis has been adopted by many courts throughout the United States. The appraiser then weights each of the identified MUM Factors. This weighting

is based on what the appraiser has observed based on their analysis, interview of the Company's Management and a site visit. These Mum Factors can be viewed as subjective and open to interpretation. To successfully deliver a credible allocation, an experienced appraiser must devote proper professional time interviewing the Company's Management and stakeholders to give specific reasons for the determined allocation.

**Top Down Analysis**

As the name suggests, the appraiser starts by determining the fair market value of the company. Then, the appraiser identifies and values the intangible assets associated with personal goodwill: family name, owners' reputation, employment contracts, etc. Finally, the value of identified intangible assets associated with personal goodwill is deducted from the company's top-level value and the residual value, Enterprise Goodwill, is considered divisible within the marital property.

**Bottom-Up Analysis**

This analysis is somewhat the reverse of the Top Down Analysis. This approach begins by appraising the company's tangible assets. Next, the appraiser values the company's enterprise intangible assets. Any residual value, relative to the Fair Market Value of the company as a whole, is determined to be Personal Goodwill.

Identifiable intangible assets include: Software, Assembled Workforce, Trade Names and Marks, Patents, Non-Compete Agreements (to employees other than Earning Spouse), Customer Relationships, etc. Based on the qualities of the underlying intangible asset, we would use the appropriate valuation methodology.

The MUM Factors Analysis has the benefit of simplicity based on a more subjective, qualitative approach. The Top Down Analysis and Bottom's Up Analysis have the advantage of being more quantitatively based. Certainly, providing the Mum Factors Analysis with one of the other two quantitative approaches provides a layered argument for the allocation of Goodwill.

**Summary**

We have presented three analysis models for allocating the Goodwill of a Company – Mum Factors Analysis, Top-Down Analysis and Bottom-Up Analysis. It is important that your expert witness review the different analysis models to derive a credible and clearly conveyed allocation of Goodwill.

