

## Professional Goodwill May Be Divisible At Divorce

Madison, Wisconsin July 12, 2011 - The Wisconsin Supreme Court has affirmed [McReath v. McReath, 2011 WI 66](#), a divorce action in which we provided expert testimony. The court held that the value of a business interest that is part of the marital estate for purposes of divorce shall include the value of the **salable** professional goodwill attendant to the business interest. Prior to this decision, "Professional goodwill" was considered to encompass both "personal goodwill" and "enterprise goodwill," the former not includable in the marital estate. As a result of this decision, circuit courts should not distinguish between personal and enterprise goodwill and instead should focus on whether the business has goodwill value that is salable.

It first must be determined whether there is goodwill value associated with the professional practice. This requires an analysis of the practice's income as well as the characteristics of the individual practitioner. Then, it must be determined if the goodwill is salable. The amount of salable goodwill can vary widely, and even a solo practice can have significant salable goodwill, as is the case in *McReath*.

This analysis is also important because valuation of the professional practice and any maintenance that the professional may be ordered to pay must be coordinated to avoid "double counting." In *McReath*, the value of the professional business, an orthodontics practice, was determined assuming a normalized, market-based level of compensation would be paid to the orthodontist. In turn, maintenance was based on this level of compensation. As the court summarized, the business owner has the option of selling the practice at its fair market value (and presumably working somewhere else) or retaining the interest in the practice, earning income from it, and selling it at a later date without necessarily diminishing its value. As with income from other income-earning assets, the income that the business owner earns while continuing to own the practice is separate from the value of the practice itself.

In reaching its decision, the Court relied upon and was complimentary of the in-depth analysis performed by Craig Billings of our firm. As stated in the decision:

*In accepting Billings' valuation, the court highlighted that Billings had "provided a comprehensive and thorough evaluation" of the business and "[h]is conclusions were supported by direct work with the practice including a site visit or visits, conversations with [Tim, a] review of the financial records" and "external information sources unique to the profession such as surveys and professional journal data."*

*The court found [the opposing expert's] valuation problematic because, among other things, [the opposing expert] relied significantly on information provided by Tim and did little independent or critical analysis; [the opposing expert] used only financial data from 2007 (one of Orthodontic Specialists' worst financial years in terms of net income) in making his valuations; [the opposing expert] did not look to outside sources and industry norms to support his conclusions; and [the opposing expert's] valuation was not supported by the record given the fact that Tim had bought the practice in the 1990s for over \$900,000 and the business grossed in excess of \$1.6 million per year.*