

## NIFA RECENT DEVELOPMENTS

We are pleased to announce that **Thomas Worley Jackson & Co** have recently joined the NIFA network as the member for **Manchester**.

## NIFA ACCOUNTANTS DON'T HAVE X-RAY VISION!

The majority of instructing solicitors provide excellent instructions but every now and again we get the impression that a solicitor thinks we have X-ray vision. In such cases, it is assumed that, if an accountant starts really hard at a set of accounts, then somehow, magically, information will appear before his/her eyes that is invisible to lesser mortals.

We have, for example been asked to 'look at the accounts for the last three years and give an opinion as to why sales have fallen and directors' remuneration has increased'. It would, we suspect, be considered futile to respond 'because the director sold less and paid himself more?'. Holding the pages of the accounts over a candle and so forth reveals hidden answers to such questions written in lemon juice and, inevitably, therefore our reply is that we need to be given the opportunity to interview the director.

Therein lies the most important message for any instructing solicitor. If you want to get the most out of your forensic accountants, give them the opportunity to meet those who run the businesses about which their advice is being sought. Such meetings are invaluable. In matrimonial cases we are often surprised by how much the spouse who runs the business (it is usually the husband and we shall assume it is the husband for the purpose of this newsletter) discloses to us



information that goes directly against his best interests.

### The interview

You might expect every husband, facing an interview with the single joint expert forensic accountant, to blanch into a shade about the difficulties of running a business when his personal life is in tatters. Where the husband plays a key role, as is often the case, you might think he would predict a severe worsening of performance and even the imminent demise of the business altogether. Logic dictates that if he wants us to put as much a value on the business as possible, he will provide us with financial forecasts of doom and gloom. Happily, for many wives, logic does not always prevail!

If a husband has spent many years building up a successful business of which he is understandably proud, it seems it is often impossible for him to do other than describe it in its true glory. In a recent case, for example, we were asked to value the goodwill of a

professional practice run and owned by the husband whose wife was seeking ancillary relief. There was no doubt that the practice had been founded largely on the reputation of the husband but the question we had to address was whether or not it continued to rely entirely upon his personal reputation and was no more than the trading style under which he operated.

We were able to interview the husband. Both his and his wife's lawyers had representatives present to take notes of the meeting so there was little doubt that what was said would be 'taken down and used in evidence'. Despite this, the husband proudly explained that he had created a "brand" such that the name of the practice had become far more than simply being synonymous with the name of the proprietor. Accordingly we attributed a significant value to the goodwill and in the subsequent settlement the wife obtained a share of a six figure sum in this respect alone.

### Treasures at the bank

Not every wife can rely on her husband steering himself in the fast though, in many cases, the husband does indeed provide a pessimistic outlook and it is then left to us to form a view as to whether his forecasts are genuine or contrived. In these circumstances it is often very useful to obtain disclosure of any correspondence with the banks' bankers. It is surprising how often the

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my husband's dependent tone to us lies in the face of his studiously optimistic analysis of the performance of his business presented to the bank in support of an application for continued or extended credit?

### What's the use?

Having collected the evidence and formed a view as to the likely future profitability of the husband's business, the expert next has to consider its valuation. This is where close guidance is needed from the instructing solicitor. Unlike valuations in shareholder disputes, unfair prejudice actions and tax related cases, valuations in matrimonial proceedings cannot be made in isolation from the context of the litigation generally. The expert needs to know the purpose for which his evidence is required.

It may be of only limited use to calculate the theoretical open market value of a family business if it is the only significant asset and there are no realistic circumstances in which it is to be sold. On the other hand, if there are other valuable assets such as the former matrimonial home or a pension fund, then a theoretical valuation may be helpful in assisting the court to apportion the family's wealth fairly between the spouses.

Instructing solicitors should therefore make it plain at as early a stage as possible, whether pure valuation evidence is needed or whether it will be more useful to have evidence focusing, for example, on the level of borrowing

that the business could support or the level of future income that it might reasonably be expected to generate.

Even if a capital valuation is required, careful thought needs to be given as to the circumstances in which it is envisaged that the value might be realised. It is sometimes said that valuations based on the concept of a willing buyer and willing seller may not be appropriate if it is deemed inconceivable that the husband would ever be a willing seller. That said, even the most driven workaholic cannot work forever. Any prudent businessman should give some thought to the question of succession planning and ought to plan a retirement exit strategy.

If, however, the exit strategy is simply to pass the business to the next generation and the proprietor's children are already being groomed to take it over, then it may indeed be irrelevant to calculate its value on an open market sale. Similarly, if the business is such that it could only conceivably ever be sold in its entirety then there is no point applying discounts for minority shareholdings. This was confirmed in the recent case of *G v G* (2002 2 FLR 1145).

### Evolution of the instruction

For all these reasons, it is imperative that every effort be made to ensure experts are involved as early in the proceedings as possible. This is particularly important in matrimonial proceedings. Real value can be added at the initial stages by using the expert to identify sources of information to be investigated and agreeing the end purpose for which his

evidence is intended and the context in which it is to be set. If the expert is appointed late in the day it can all too often be impractical to open new avenues of enquiry, critical evidence can be excluded and either can be wasted producing irrelevant valuations.

The expert's instruction should ideally be a matter of evolution, with the broadest possible terms of reference being given as the starting point. As the instruction progresses it should be possible for the expert and instructing solicitor to work together to narrow down areas of significance or contention and concentrate on these.

This tends to be easier if each side has its own expert. We have noticed when we act as a single joint expert we are treated with a certain wariness. Instructing solicitors seem to be reluctant to raise matters in case their questions draw our attention to something that we would not otherwise have considered and thereby open a can of worms detrimental to their client. Our experience is that these concerns are almost always unfounded and it is only by being as frank as possible with your expert that you will get meaningful evidence from them.

In short, to get the maximum value from your experts, instruct them early, brief them fully and frankly and allow them to investigate and interview freely. In so doing you will not only get the best possible evidence but, by avoiding wasted effort, you will also keep the costs to a minimum!

## NIFA Accredited Forensic Accountants

Philip Alvey, Barber, Hartson & Platt - Sheffield  
David Muggidge, Brady Neville - Halesowen  
Christopher Topley, Dylan Topley - Shrewsbury  
Clive Hancock, Radcliffe - Luton  
Mark Berry, Robinson - Nottingham  
Nick White, John Gordon Mathis & Co - Leeds  
Peter Fiddell, Russell Steele - Truro

Clive Adams, Nibley Fox - Northampton  
Michael Wood, Dible & Company - Gloucester  
Graham Manning, Manning & Gilling - Ipswich  
Roger Isaac, Wilford Langdon - Taunton  
Roger Gubate, Peter Elworthy & Moore - Cambridge  
Brian Spruce, Thomas Worley Jackson & Co - Northampton  
Christopher Harber, Watts Gregory - South Wales