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## Intellectual property growing valuation area in divorce cases

Matrimonial proceedings have long brought disputes over the division of property and, at times, the valuation of property belonging to the spouses.

Typically, this involves valuation of tangible property or an interest in an existing business. Rarely are there new issues. The cases usually boil down to a battle of the spouses' valuation experts.

But more and more cases today involve the valuation of intellectual property owned by one of the parties. Some have been high profile cases involving well known authors, such as Tom Clancy. In the Clancy case, the court had to consider not only the value of works that Clancy had already authored, but also the value of future works involving his recurring character, Jack Ryan.

With new forms of intellectual property now regularly emerging, it's likely that future controversies will become even more complex. Over the past decade, traditional print-based authors have been joined by such Internet-based writers as bloggers. Those bloggers who have gained financial success from writing about technical, business, political or other topics and become established figures in their field clearly have an interest in a potentially valuable property.

Divorce proceedings involving such blog owners will necessarily require a valuation of such intellectual property. Questions involving not only the current value of these interests but their future potential – or lack thereof – will have to be addressed and resolved.

Attorneys working their way through valuation issues concerning new media interests would be well-advised to seek the assistance of financial experts who are familiar with issues arising in valuing these emerging forms of intellectual property. Our firm can help.

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### **Follow the money: How CPAs can help attorneys**

If "follow the money" is a useful rule, it only makes sense to bring in a money expert to assist with the financial aspects of a lawsuit.

### **Matrixx Case key: Total mix of information**

A recent U.S. Supreme Court decision held that a plaintiff may maintain a securities fraud claim – in this case against a pharmaceutical company –

This is true whether the issue is a common question such as lost wages in a personal injury suit, a commercial case that involves questions of business valuation or lost profits, or a matrimonial dispute with possible hidden assets.

But when it comes to high dollar damages, juries seem to be growing more skeptical. CPAs can provide the nuts-and-bolts calculations that support or refute the numbers and make the entire case-building process easier. Long before a case goes to trial, CPAs can assist in the planning phase – possibly even before a complaint is filed or answered – by identifying weaknesses in the evidence, pinpointing missing data and suggesting other expert witnesses who should be called in.

They can help the representing attorney prepare relevant questions to ask during trial and in depositions, and if necessary, can serve as expert witnesses in the courtroom.

**Understanding financial statements.** Even the most brilliant attorneys may have trouble reading financial statements, which is why they often rely on CPAs during planning to help them get a better grasp of the financial aspects of the case.

The CPA can help script the trial by suggesting open-ended questions for the attorney to ask in direct examination. Those questions create an opportunity for the accountant to lay out the financial facts that the jury needs to hear.

Where necessary, the CPA can also interpret the financial statements for the jury. Likewise, the CPA can help the attorney anticipate the arguments the opposing counsel is likely to use and suggest closed-ended questions to ask in cross-examination to limit the information that comes out from the opposing counsel's witnesses.

In today's changing world, attorneys are finding

even without alleging that the company received a "statistically significant" number of adverse event reports regarding one of its products.

The decision in *Matrixx Initiatives, Inc. v Siracusan* (No. 09-1156, March 22, 2011) held that statistical significance was not a bright line test for determining whether undisclosed information would be considered material by a reasonable investor.

Instead, the court held that the "total mix" of information should be considered in determining whether the information should have been disclosed in order to make the company's statements regarding that product not be misleading.

In this case, the information under consideration was reports of adverse effects associated with use of the defendant's leading product.

**The Supreme Court held that plaintiffs were not required to allege the existence of statistically significant evidence of a potential hazard from use of the product.**

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The defendant company in *Matrixx* had received a number of reports that one of its leading products, designed for use as a cold remedy, had been associated with a loss of the sense of smell by certain patients.

However, the company did not report this fact in a series of statements that it made concerning its revenues and the safety of its products.

Citing decisions by some federal appellate courts, the company argued that the reports did not establish a "statistically significant" correlation between use of the product and loss of smell.

The Supreme Court, however, held that plaintiffs

more and more reasons to call in a trusted CPA to provide support. Following are a few ways CPAs are helping in the preparation and execution of court cases.

**Environmental cleanup costs.** As the demand for businesses to be good citizens increases across the nation, with it comes a growing need to put a dollar figure on the losses suffered. There is also a need to calculate the cost to clean up the mess and help establish procedures to prevent a recurrence.

**Medical regulation applications.** Accountants are being brought in to calculate details necessary for filing these applications, which can be complex.

**Rate setting.** When there is need for a precise calculation such as in a rate-intensive industry like insurance or utility companies, accountants assist with the administrative proceedings.

**Billing duplication.** Some CPAs are finding themselves regularly asked to scour billings for duplication in areas such as utilities, where it takes expertise to spot duplications.

**White-collar crime.** When it comes to white-collar crime, like embezzlement or inventory theft, CPAs have been an underused resource in the past. That is an oversight that seems to be changing as more forensic accountants are being called in to apply their training and expertise to help untangle the financial aspects to the case.

For more information about how a CPA might be able to assist your firm, please call us.

were not required to allege the existence of statistically significant evidence of a potential hazard from use of the product.

The court found that whether a fact would be deemed material to a reasonable investor could not be determined solely from the existence of statistical evidence, but rather required that the total mix of available information be considered. Accordingly, the court allowed the case to proceed.

*Matrixx* involved a motion to dismiss made at the outset of the case. But statistical analysis is expected to remain very important in securities cases with respect to issues of loss causation and damages as the case progresses.

As both parties present evidence of the effect of corrective information on stock price movements and the behavior of the market as it absorbs such disclosures, accountants with experience in analyzing this information can provide vital expertise and assistance on motions for summary judgment and at trial in cases that proceed beyond the pleading motion stage.

Call our firm for assistance.

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