

**COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT**

SJC NO. FAR - \_\_\_\_\_  
2025-P-0748

DELPHINE SANDQUIST,  
Plaintiff/Respondent

vs.

CHARLES F. BOSWORTH,  
Defendant/Applicant

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**CHARLES BOSWORTH'S APPLICATION FOR  
FURTHER APPELLATE REVIEW**  
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August 26, 2026

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## **REQUEST FOR FURTHER APPELLATE REVIEW**

Charles Bosworth (Bosworth)<sup>1</sup> respectfully requests further appellate review of an August 5, 2026 Appeals Court panel's (the "Panel") decision. Sandquist v. Bosworth, 107 Mass. App. Ct. 1110 (Memorandum and Order Pursuant to Rule 23.0)(2026)(No. 25-P-748) (the "Decision"). In summary, the Panel ratified precisely what this Court explicitly discouraged in Dalessio v. Dalessio, 409 Mass. 821, 828 (1991), viz. it approved the redistribution by an alimony order, the capitalized value of Bosworth's income that already had been equitably divided in the divorce. What is worse, it signaled to trial judges that they are now ostensibly "required to do so" unmistakably deviating from Dalessio's standard. Specifically, the Panel concluded:

it was proper for the judge to calculate Bosworth's alimony obligation using his actual income rather than the one included in the valuation of his business. Indeed, the judge may have been required to do so.

See Decision at \*12.

This case presents fundamental issues affecting the public interest and interests of justice: the Panel sidestepped not only Dalessio but several other applicable and controlling decisions that uniformly eschew

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<sup>1</sup> For consistency, counsel utilizes the names ascribed to the parties by the Appeals Court panel. No disrespect is intended.

double dipping,<sup>2</sup> abandoned principles of *stare decisis* and otherwise upset well-settled law on which lawyers and litigants alike had come to rely since 1991. The result requires Bosworth to pay Sandquist more than **\$1.35M**, tax-free, for her interests in Bosworth's business determined via capitalizing and present valuing his future earnings and to pay Sandquist tax-free annual alimony of \$260,000 that was calculated using the very same future dollars that were capitalized and present valued.<sup>3</sup>

Though the Panel's Decision is unpublished, it reaches far beyond the circumstances of this case. Its lengthy holding is factually robust. It is not limited to any unique or quirky issues. Its holding is not limned by any unusual type of business. There also is no question, at a minimum, that the Decision has persuasive value for a generalized application

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<sup>2</sup> See e.g., Dalessio v. Dalessio, *supra*, Adams v. Adams, 459 Mass. 361 (2011), Sampson v. Sampson, 62 Mass. App. Ct. 366 (2004), and Trethewey v. Trethewey, 104 Mass. App. Ct. 114 (2024).

<sup>3</sup> The effect of this erroneous application of Massachusetts decisional law results in Bosworth paying not just the **\$1.35M** tax-free payment (1/2 the value of DAB Co.) but an *additional* **\$1.65M** more in excessive alimony during its approximate 10 duration, calculated as follows:

Current Order:      \$260,000 (~ 35% of \$800,000) x 10 years = \$2.6M

Reas. Comp:      \$270,000 x 35% = \$94,500 x 10 years = \$945,000

Redistribution of Assets through Alimony:      \$1,654,500

across a broad range of businesses in all divorces. See Chase v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008). What is more, trial judges routinely cite to and rely on unpublished decisions as evidenced by the trial judge's reliance here on a Rule 1:28 Memorandum and Order from 2018. Add. at 76.

At bottom, the Panel's Decision undermines years of continuity and predictability and encourages rank double-dipping in all cases using the capitalization of earnings method to value businesses.

### **STATEMENT OF PRIOR PROCEEDINGS**

The underlying divorce proceedings began in the Norfolk Probate & Family Court in December 2020 and were ultimately tried over nine days between September 28, 2023 and August 1, 2024. Judgment originally entered on November 7, 2024, but was amended on January 2, 2025. Both parties cross-appealed. On August 5, 2026, a panel of the Appeals Court (Rubin, Massing & Toone, JJ.) affirmed the trial court's decision in all respects other than a mathematical error in the calculation of a lump sum payment due Delphine Sandquist (Sandquist). Bosworth now seeks further appellate review. He has not sought reconsideration with the Appeals Court.

## **STATEMENT OF RELEVANT FACTS**

The following facts are omitted from the Panel's decision below.

### *Valuation of DAB Co.*

Bosworth is the sole owner of DAB Co., an S-Corporation specializing in heavy civil construction. As part of the divorce proceedings, Bosworth retained an expert, Marc Bello (Bello), to appraise DAB Co. Bello was qualified at trial as a business valuation expert without objection. He utilized the capitalization of income approach to value DAB Co., reviewed 7 years (6 years from 2016 to 2021 plus the “trailing twelve months” covering July 1, 2021 to June 30, 2022) of data because “the more data the better he can understand the business,” and weighed all years equally. Bello's valuation report was admitted into evidence. Add. at 56.

The trial judge found that Bello’s decision to use the capitalization of income methodology was appropriate and credited his opinion that **\$270,000** was “reasonable compensation for [Bosworth]” that was “subtracted out” from Bello’s going concern opinion of fair value. The Court concluded that “Bello’s analysis was sound in all respects,” credited his “valuation methodology and analysis in [their] entirety,” and found that the “fair value of Bosworth's interest in DAB Co. is

**\$2,759,000.”** Add. at 54-59 (Finding Nos. 72-117). Importantly, the trial judge acknowledged that had Bello "used a higher reasonable compensation figure [i.e. > \$270,000] for [Bosworth] in the business valuation, [his] ultimate opinion of value for DAB Co. would have been lower." Add. at 76 (Rationale at \*34).

To arrive at the \$2,759,000 valuation, Bello made several normalization adjustments, including adding back Bosworth's actual compensation and W-2 income as well as that of all of his family members (including Sandquist), into the profits of the business but subtracting out reasonable compensation of \$270,000. Add. at 57-58 (Finding Nos. 108-113). At bottom, he capitalized operating profit of **\$367,384**, Add. at 113 (derived from RAXI/762, page 27 of Bello report). To equalize the division of the marital estate Bosworth is now required to pay Sandquist **\$1,082,706**. See Decision at \*4-5.

Based on the trial judge's Findings it is reasonable to infer that had Bello *excluded* \$800,000 -- the income the trial judge used to determine Bosworth's support obligations, see infra -- as opposed to the \$270,000 as "reasonable officer compensation," the value of DAB Co. would have been much "lower" than \$2,759,000 and his payment to Sandquist accordingly would have been much less than \$1,082,702 ordered here.

*Bosworth's Income.*

When determining Bosworth's income for purposes of alimony, the trial court ignored Bello's "sound" business valuation and analysis in its entirety and concluded that the "best method" to determine Bosworth's gross income for support purposes was to "average the portion of the parties' total gross income as reflected on only their 2018-2021 tax returns *attributable* to Bosworth less dividend / interest / pension / annuity income." (emphasis added) Add. at 53 (Finding No. 64) and 76 (Rationale at \*34). In particular, rather than use a 7-year average as Bello had used, the Court used the following 4-year average:

|              |             |
|--------------|-------------|
| <b>2018:</b> | \$528,748   |
| <b>2019:</b> | \$939,118   |
| <b>2020:</b> | \$511,128   |
| <b>2021:</b> | \$1,279,713 |

then rounded the figure down to **\$800,000**, making no further adjustments for Bello's simultaneous use of \$367,384 of capitalized excess income above Bosworth's \$270,000 of ascribed reasonable compensation to value DAB Co. Add. at 76.

As justification for her decisions to ignore the “double dipping”<sup>4</sup> and use the entirety of the four year average of Bosworth's total earnings, to determine alimony, the trial court reasoned:

. . . Mr. Bello’s task in valuing DAB Co. is entirely different than the Court’s task in determining [Bosworth's] gross income for support purposes. In determining alimony, the Court is required pursuant to the Massachusetts Child Support Guidelines to consider [Bosworth's] *actual* “gross income from whatever source,” not a hypothetical amount of income that is reasonable for an officer of the business performing the same roles and responsibilities as Bosworth to earn under current market rates, as Mr. Bello determined in the DAB Co. business valuation. Moreover, not a single piece of evidence reflects [Bosworth] earning an annual gross income as low as \$270,000 since 2018. After carefully considering the equities of the situation, the Court concludes that it would be inequitable to use \$270,000 as [Bosworth's] gross annual income for support purposes.

Add. at 76-77 (Rationale at \*34-35)(emphasis in original).

Notwithstanding that a separate portion of Bosworth's income was identified for support purposes that was not utilized in, and in fact had been *excluded* from valuing DAB Co. (i.e. \$270,000), the trial judge ignored this Court's admonition in Dalessio v. Dalessio, 409 Mass. at 828, and nearly tripled Bosworth's income for support purposes, using

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<sup>4</sup> The phrase "double dipping" refers to “the seeming injustice that occurs when property is awarded to one spouse in an equitable distribution of marital assets and then also considered as a source of income for purposes of imposing support obligations.” Champion v. Champion, 54 Mass. App. Ct. 215, 219-20 (2002)(citations omitted).

100% of the very same dollars used by Bello to capitalize DAB Co. That was error, as was the Panel's decision to affirm it.

**STATEMENT OF POINTS WITH RESPECT TO WHICH  
FURTHER APPELLATE REVIEW IS SOUGHT**

Bosworth requests further appellate review to address the following issues:

1. Whether an Appeals Court Panel improperly abandoned principles of *stare decisis* and abrogated more than 35 years of legal precedent and erroneously encouraged asymmetrical applications of equitable principles in awarding alimony and valuing and equitably dividing businesses as part of divorce proceedings.

2. Whether a trial court can properly award alimony using all of a payor's earnings, including the same income that was capitalized to value a business that already has been equitably divided in a divorce.

**FURTHER APPELLATE REVIEW IS APPROPRIATE**

I. THE PANEL IGNORED YEARS OF PRECEDENT AND ABANDONED PRINCIPLES OF *STARE DECISIS*

As an intermediate appellate court, the Appeals Court is generally bound by decisions of this Court. See H. Alperin, 14 Mass. Pract., Summary of Basic Law § 4:96 (5<sup>th</sup> ed.). Toward that end, nearly since its inception, that Court has confirmed that it is not "one of [its] functions to alter established rules of law." Burke v. Toothaker, 1 Mass. App. Ct. 234, 239 (1973). As the SJC has observed, while not absolute, adherence to the principle of *stare decisis*:

. . . is [the] preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process...Reliance upon judicial precedent is of particular concern in contract and property law cases, in which reliance upon existing judicial precedent often influences individual action.

Shiel v. Rowell, 480 Mass. 106, 108-109 (2018) (quotation marks and citations omitted). Accordingly, appellate courts should be reluctant to "upset settled law unless the benefits of so doing outweigh the values underlying *stare decisis*." Walsh v. Commonwealth, 485 Mass. 567, 590 (2020).

There was no justification to upset settled law here. Dalessio is not outdated. And the capitalization of earnings valuation method is not unsound. Cf. Sampson v Sampson, 62 Mass. App. Ct. 366 (2004). As a practical effect, the result will lead to the abandonment of the capitalization of earnings approach in favor of what is often a less accurate methodology -- the asset approach. At least with the latter there is clarity in the absence of double dipping and greater parity in the equitable treatment of both spouses. See Champion v. Champion, 54 Mass. App. Ct. 215, 221-22 (2002) (no inequitable double dipping where support order based on husband's future earnings from business, which earnings were *not* considered in establishing business's value for

property division purposes). Furthermore, reliance on judicial precedent is critically important in divorce cases where counsel should be able to rely on existing precedent when advising clients about some of the most important decisions they will ever make.

The Panel's decision significantly deviates from Dalessio, creates new law inviting -- if not explicitly requiring -- trial judges to ignore the double dip and the inequity it imposes on alimony payors, and otherwise stands double dipping on its head.

**A. Double Dipping**

For more than 35 years reported appellate decisions have instructed judges and lawyers that if different components of income *can* be separated for asset division and support allocation obligations, the law favors doing so. In 1991, this Court first recognized the principal of "double dipping" in Dalessio v. Dalessio. While the circumstances of Dalessio differ from those here, the Court clearly disfavored the practice, explaining:

So long as it is possible. . .to identify separate portions of a given asset of a divorcing spouse as the separate bases of the property assignment and any alimony or support obligations (thus avoiding redistribution by an alimony...order of specific assets that already have been equitably assigned), there is nothing improper about including a particular asset with a spouse's assignable

estate, assigning part of it, and then counting its remainder for alimony...purposes.

409 Mass. at 828. There, because the trial judge identified two identifiable components of a marital asset, he had not impermissibly "double dipped" by assigning the wife *part* of husband's interest in lawsuit proceeds and then basing husband's child support obligations on the *remaining proceeds*. Id.

**B. Double Dipping in Business Valuation and Alimony Cases**

This Court revisited double dipping in Adams v. Adams, 459 Mass. 361 (2011).<sup>5</sup> There, this Court repeated that double dipping is "disfavore[d]," highlighting that since it was "possible...to identify the *separate* sources of the husband's income" being used to **[a]** capitalize, value and divide his partnership interests, and **[b]** determine his child support obligations, the trial court did "nothing improper." Id. at 394.

The Appeals Court also considered double dipping in Sampson v. Sampson, supra and Trethewey v. Trethewey, 104 Mass. App. Ct. 114 (2024). In Sampson one of the parties' major assets was wife's business. 62 Mass. App. Ct. at 372. The trial judge credited the testimony of the expert who valued it using a capitalized income method, as used here. As part of its financial award, however, the Sampson trial judge used

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<sup>5</sup> Cited by the Appeals Court panel at \*11.

100% of wife's earnings from her business to both [a] value it and [b] determine *wife's need* for alimony. As the Appeals Court explained, implicitly recognizing the inequity of using the same income for two purposes:

such a [capitalized income] method requires subtraction from business income of a reasonable salary expense for the operator of the business. Without subtraction of a sum representing a reasonable salary, there is a significant concern that the business may be overvalued. Moreover, where such a salary is subtracted [a here], it facilitates the identification of those portions of a given asset providing separate bases of property assignment and alimony as articulated in Dalessio...

Id. at 375-76.

*Reversing and remanding*, the Appeals Court concluded “there appear to be some ‘double counting’ and other inequities present” to the detriment of the alimony-recipient wife. Id.<sup>6</sup>

Similarly, in Tretheway the Appeals Court described the impermissible “paradigm of double dipping” as follows:

when an asset -- for example one spouse's retirement account -- is divided as part of the marital estate, but all of the income from the retirement account is still considered income of the supporting spouse for alimony purposes.

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<sup>6</sup> Bosworth submits there is no cogent reason not to apply the same analysis when considering the *payor-husband's ability to pay alimony* as was done in Sampson when considering the *payee-wife's need* for it.

104 Mass. App. Ct. at 118. There, the trial court considered a bonus received by husband for future employment to be, *inter alia*, both [a] an asset that was divided as part of the marital estate and [b] a component of husband's income when determining his alimony obligations. Though the trial judge did not appear to have "considered" whether double dipping had occurred, the Appeals Court again *reversed*, concluding the judge's division of husband's bonus:

"amount[ed] to an error of law" and was "classic double dipping, which is disfavored **and unlikely to be valid even if the judge provide[d] a rationale**...The result was, in essence, the same problem identified in Dallessio -- redistribution by the assignment of assets of money already allocated to support.

Id. (emphasis added). To correct the "double dipping" error, and to eliminate the "double counting," the Appeals Court "reverse[d] the award to the wife of approximately \$1.7M from the" parties' bank account, leaving only her support intact. Id. at 122.

C. Double Dipping in *Bosworth*.

This case presented identical issues found to be improper in Sampson and errors of law in Tretheway. The only decision cited by the Panel in which double dipping was potentially found to exist, but *not* disapproved was Croak v. Bergeron, 67 Mass. App. Ct. 750 (2006). Croak, however, had nothing to do with valuing a business. The payor

was unemployed and elected to use a retirement account to support himself. Under that limited circumstance, it was found to be inequitable to allow him to escape his support obligations while living off his assets. Id. at 759.<sup>7</sup> No such equitable considerations are present here. Sandquist already received 50% of the equity of DAB Co., whose primary value to Bosworth lies in its ability to generate future income -- the same income he now must also pay to Sandquist as alimony.

The trial judge's decision to utilize 100% of Bosworth's average income (i.e. \$800,000) for support purposes while also simultaneously using a substantial subset of the same income to value DAB Co. (i.e. \$367,384) guts the principles first enunciated by the SJC in Dallessio, then followed in Adams, Sampson and Tretheway. Bosworth is forced to pay both an unreasonable amount of alimony and an inflated cash

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<sup>7</sup> The remaining decisions cited by the panel are inapposite. In Ludwig v. Lamee-Ludwig, 91 Mass. App. Ct. 36, 39 (2017), cited at \*11 for the premise that "double counting is not prohibited as a matter of law," there was no double dipping because the shares on which husband was ordered to pay support "were not part of the equitable distribution of assets" in the first place. Id. at 38-39. Neither Calvin C. v. Amelia A., 99 Mass. App. Ct. 714 (2021), nor Zaleski v. Zaleski, 469 Mass. 230 (2014) had anything to do with business valuations or double dipping. Bosworth concedes that as a basic premise where a spouse's business income is *not* being both capitalized and assigned and considered for support purposes, an alimony obligation "must be based on his or her actual gross income." See Decision at 12. As this Court instructs, however, that premise recedes when business income *is* being capitalized, valued and divided.

payment. See fn. 3, supra.

II. THE PANEL RELIED ON IMPROPER CONSIDERATIONS, ENCOURAGES AN ASYMMETRIC APPLICATION OF EQUITABLE PRINCIPLES, AND MAKES NEW LAW.

While the trial judge may have "considered" whether double dipping had occurred, see Decision at \*11, her "consideration" was hardly the end of the inquiry. The above cases teach that after having determined a double dip had occurred, the trial judge was then required to attempt *to avoid* its inequity. Not only did the trial judge not attempt to avoid it here, she leaned into it.

Further, even if the trial judge correctly observed, in a vacuum, that Bello's "task in valuing DAB Co. is entirely different than the Court's task in determining [Bosworth's] gross income for support purposes," see Decision at \*11, she and the Panel ignored years of appellate decisions that eschew "double dipping" and the inequitable result to the *alimony-payor*, Bosworth.<sup>8</sup>

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<sup>8</sup> The panel also misapplies the holding in Bernier. See Decision at \*11. This Court's Bernier opinion replaced the "fair market value" methodology with what is referred to as "fair value" methodology when valuing businesses as part of a divorce. Specifically, this Court held:

[a]s a preliminary matter, where valuation of assets occurs in the context of divorce, and where one of the parties will maintain, and the other be entirely divested of, ownership of a marital asset after divorce, the judge must take particular

What is worse, the Panel suggests that the trial judge actually "may have been required" to double dip here to avoid an "inequity" to the *alimony recipient*, Sandquist. See Decision at \*12 (emphasis added). This conclusion is especially troublesome for several reasons. First, it ignores the corresponding inequity to Bosworth, who already was required to make a substantial payment to equalize the asset division that included the (likely inflated) value of his business. Second, it sanctions and encourages disparate treatment flying in the face of other decisions requiring "evenhanded" and "reciprocal" treatment to both spouses. See e.g. Grubert v. Grubert, 20 Mass. App. Ct. 811, 817 (1985); Hassey v. Hassey, 85 Mass. App. Ct. 518, 528 (2014); Prenaveau v. Prenaveau, 75 Mass. App. Ct. 131, 149 (2009). The Panel's encouragement of asymmetrical equitable considerations deviates from Grubert, Hassey and Prenaveau.

Third, if the equities to *both parties* was considered, one approach would have been to use an average of Bosworth's income over 4 years but then deduct, at a minimum, the \$367,384 of capitalized operating

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care to treat the parties not as arm's-length hypothetical buyers and sellers in a theoretical open market, but as fiduciaries entitled to equitable distribution of...assets.

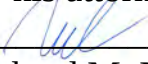
Bernier v. Bernier, 449 Mass. 774, 775-76 (2007).

profit<sup>9</sup> used to value the business:

|             |                                                                                                         |
|-------------|---------------------------------------------------------------------------------------------------------|
| \$800,000   | income available for support                                                                            |
| (\$367,384) | operating profit used for business valuation                                                            |
| \$432,616   | separate portion of Bosworth's income to be used for support purposes consistent with <u>Dalessio</u> . |

### CONCLUSIONS

For the foregoing reasons, Bosworth respectfully requests this Court allow further appellate review, and either vacate the alimony award or, consistent with the decision in Trethewey, reverse so much of the trial court's decision that valued then divided DAB Co.. See 104 Mass. App. Ct. at 122 & n.9.

|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| August 26, 2026 | Respectfully submitted,<br>Charles Bosworth<br>By his attorneys,                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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<sup>9</sup> It is unclear whether \$367,384 or some other figure would have been used for those 4 years because Bello's calculation was predicated on a 7-year average.

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CERTIFICATE OF COMPLIANCE

I, Richard Novitch, hereby certify that this Application and accompanying Addendum complies with the rules of court that pertain to the filing of briefs including but not limited to (i) Mass. R. A. P. 16(1)(3) (addendum), Mass. R. A. P. 16(e) (references to the record), Mass. R. A. P. 18 (appendix to the briefs), Mass. R. A. P. 20 (form and lengths of briefs, appendices and other documents) and Mass. R. A. P. 21 (redactions). I further certify that the forgoing brief complies with the applicable length limitations in Mass. R. A. P. 20 because it is produced in Times New Roman font Courier New at size 14 and the Further Appellate Review is Appropriate segment contains 1,993 total words including footnotes.



---

Richard M. Novitch, BBO#636670

CERTIFICATE OF SERVICE

Pursuant to Mass. R. A. P. 13(e), I, Richard M. Novitch, attorney for Applicant, Charles Bosworth, hereby certify that on this 26<sup>th</sup> day of August 2026, I caused service to be made of foregoing Application for Further Appellate Review by electronic service through eFileMA.com, and by electronic mail to:

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\_\_\_\_\_  
Richard M. Novitch

## **ADDENDUM**

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NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

25-P-748

DELPHINE SANDQUIST<sup>1</sup>

VS.

CHARLES F. BOSWORTH.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Delphine Sandquist appeals from an amended judgment of divorce, raising several claims concerning the division of the marital estate. Charles F. Bosworth cross-appeals, arguing that the judge impermissibly treated his business as both an asset in the division of the estate and as a source of income for alimony purposes. Concluding that one claim raised by Sandquist has merit, we modify the judgment to increase the lump sum equalizing payment that Bosworth was ordered to make to Sandquist; with this modification, we affirm the judgment.

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<sup>1</sup> As allowed by the judgment of divorce, Delphine Bosworth was entitled to resume the use of her former name, Delphine Sandquist. The caption therefore reflects her current name, notwithstanding the use of her married name on the complaint for divorce.

Background. The parties married in 1998 and separated in 2019; Sandquist commenced this action for divorce in 2021. The parties have three children, all of whom had reached the age of majority by the time of the divorce. During the marriage, the family enjoyed an "upper-class" lifestyle and amassed a marital estate valued at approximately \$9 million. The marital estate included Bosworth's family construction business, David A. Bosworth Company (DAB Co.); homes in Westwood, Massachusetts, and Naples, Florida; and multiple country club memberships. Sandquist worked sporadically throughout the marriage, cared for the children, and performed most household chores. Their lifestyle was financed primarily by Bosworth's employment at -- and later, ownership of -- DAB Co.

Discussion. 1. Sandquist's appeal. "General Laws c. 208, § 34, governs the division of marital assets in this Commonwealth." Brash v. Brash, 407 Mass. 101, 104 (1990). "The 'ultimate goal of G. L. c. 208, § 34,' is 'an equitable, rather than an equal, division of property.'" Adlakha v. Adlakha, 65 Mass. App. Ct. 860, 864 (2006), quoting Williams v. Massa, 431 Mass. 619, 626 (2000). In reviewing a judge's division of marital property under § 34, we undertake a two-part analysis: "First, we examine the trial judge's findings to determine whether all relevant factors were considered (and whether

irrelevant factors were disregarded). Next, we decide whether the rationale underlying the judge's conclusions is apparent and whether these flow rationally from the findings and rulings" (quotation and citations omitted). Hassey v. Hassey, 85 Mass. App. Ct. 518, 524 (2014). Probate and Family Court judges enjoy "abundant discretion" in dividing marital property. Adams v. Adams, 459 Mass. 361, 374 (2011), S.C., 466 Mass. 1015 (2013). "The judge's reasons for [her] conclusions, however, must be apparent in [her] findings and rulings," and "[a]ny failure in the decision-making process to consider and explain the effect of an important fact may require reversal of the judgment in order to permit consideration and explanation of the omitted subject." Redding v. Redding, 398 Mass. 102, 108 (1986).

a. Lump sum payment. The judge ordered "an approximately equal division" of the marital estate. Because Bosworth retained a greater share of the estate's assets -- including his entire interest in DAB Co., which the judge found to be worth \$3,050,000 -- the judge ordered Bosworth to make an equalizing lump sum payment of one half of the difference between the value of the assets allocated to him and the value of the assets allocated to Sandquist. This amounted to \$1,228,206.67. However, upon Bosworth's motion to amend the judgment, the judge reduced the value of DAB Co. by \$291,000, to \$2,759,000, and

amended the judgment by deducting the full \$291,000 from the lump sum equalizing payment owed to Sandquist, reducing it to \$937,206.67. Sandquist moved for reconsideration, asserting that because the reduction in value of DAB Co. decreased the value of the assets assigned to Bosworth by \$291,000, the calculation of fifty percent of the difference between the value of the assets now allocated to Bosworth and the value of the assets allocated to Sandquist should have reduced the amount of the equalizing payment by only \$145,000. Because the trial judge had retired, a different judge considered the motion and denied it, stating that she was "not in a position to reconsider [the trial judge's] judgment or to assess whether an error, clerical or otherwise, should be identified and/or corrected." Sandquist renews her argument on appeal.

We agree with Sandquist that reducing the lump sum payment by \$291,000 was inconsistent with the judge's intent to effect an equal division of the marital estate. We discern no "cogent explanation" for the new lump sum payment amount. Bernier v. Bernier, 449 Mass. 774, 787 (2007). "Mathematical precision is not required of equitable division of property," Fechtor v. Fechter, 26 Mass. App. Ct. 859, 861 (1989), but the judge's conclusions must still "flow rationally from the findings and rulings." Williams, 431 Mass. at 631. The amount of the lump

sum payment due by Bosworth to Sandquist must be increased by \$145,000, to \$1,082,706.67, to correct the judge's irrational application of the reduction in value of DAB Co.

b. DJB Trust. In October 2019, a few months after the parties separated, Bosworth's mother died, and Bosworth inherited a twenty-five percent interest in the Dorothy J. Bosworth 2015 Trust (DJB Trust). The trust holds title to the mother's former home in Milton, where Bosworth was residing at the time of the trial. The trial judge was unable to determine the value of Bosworth's interest in the trust, noting that Bosworth did not list a value for the property on his financial statements or testify about its value at trial. Sandquist's grandmother also passed away after the parties had separated, and Sandquist estimated she would inherit up to \$20,000 from the sale of her grandmother's home in France, although the property was not yet on the market. The trial judge awarded inheritances "to the receiving party without offset to the other."<sup>2</sup> Sandquist contends that the trial judge erred in allowing Bosworth to retain his full interest in DJB Trust.

As a threshold matter, we reject any suggestion that the judge erred by failing to consider Bosworth's interest in the

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<sup>2</sup> The judge treated the parties' personal bank accounts in the same fashion.

DJB Trust as part of the marital estate subject to possible division under § 34. The judge listed DJB Trust as the third of five real estate or trust interests in the marital estate. See Williams, 431 Mass. at 625 ("The judge clearly knew the law on the point because she listed these assets in her findings as part of the marital estate"). Accordingly, we consider only whether the judge abused her discretion in awarding Bosworth's interest in DJB Trust to him, without offset to Sandquist.

The judge cited the following factors as reasons for excluding Bosworth's interest in DJB Trust -- and Sandquist's future inheritance from her grandmother -- from the remainder of the marital estate, which was divided equally: "the sources of the inheritances, that the inheritances were kept separate and not commingled with any joint property, and, most importantly, the timing of the passing of the individuals whose inheritances are at issue, which was after the parties had decided to end their marriage." Sandquist argues that the judge placed undue emphasis on the timing of Bosworth's inheritance, failing to recognize that Bosworth's interest in DJB Trust was commingled with the marital estate, and treating it differently from Sandquist's inheritance during the marriage of \$1 million from her father.

It was clearly within the judge's discretion to treat the inheritances differently from the other assets of the estate. See Williams, 431 Mass. at 626 ("Once the judge included these assets as part of the marital estate, she had broad discretion to determine how to divide the entire estate equitably, including discretion not to divide the inherited and gifted assets between the parties" [citation omitted]). We discern no error in the judge's finding that the inheritances were kept separate and not commingled with any joint property. Sandquist points to the work performed by DAB Co. to renovate the Milton house and the fact that Bosworth paid rent to live in the house as evidence of commingling, but these activities all occurred years after the parties had separated in 2019 and support, rather than contradict, the judge's finding. Nor did the judge overlook the fact that Bosworth benefited from Sandquist's earlier \$1 million inheritance. The judge cited the "\$1 million inheritance she received during the marriage" as a key factor in concluding that Sandquist contributed equally to the marital enterprise and was entitled to an equal share of the marital estate. The judge appropriately considered the § 34 factors, including "the respective contributions of the parties to the marital partnership," as well as "the source of the assets, each [party's] role in managing the assets, and whether the assets in

question had been kept separate or commingled with the couple's jointly owned property." Id. at 626-627. The judge also cited Bosworth's interest in DJB Trust in concluding that he had a far greater opportunity than Sandquist to acquire income and assets in the future. See G. L. c. 208, § 34. Because the judge considered the relevant factors and her treatment of the inheritances does not fall "outside the range of reasonable alternatives," L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014), the judge did not abuse her discretion.<sup>3</sup>

c. Other assets. Sandquist argues that the trial judge's division of marital property was erroneous in two other respects: the judge failed to dispose specifically of Bosworth's interest in the 485-487 Blue Hills Parkway Trust LLC (BHP LLC), and the judge assigned the Florida home separately from the Florida country club membership.

Sandquist's contentions concerning Bosworth's interest in BHP LLC do not warrant disturbing the judgment. The judge made substantial findings concerning the activities of the LLC and

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<sup>3</sup> Sandquist also argues that the judge rewarded Bosworth for not including the value of DJB Trust in his financial statements or providing any evidence of its value at trial. It does not appear that Sandquist presented this argument to the trial judge, who was uniquely positioned to fashion sanctions if she was so inclined. See Rule 401(g) of the Supplemental Rules of the Probate and Family Court (2012). Moreover, the value of the interest (or lack of evidence thereof) was not a factor in the trial judge's analysis.

valued Bosworth's interest at \$450,000 based on his contributions as shown on his trial financial statement. The judge specifically stated in her findings of fact and conclusions of law that Bosworth would retain this interest. Although, in an apparent oversight, the judge omitted a specific reference to BHP LLC in the amended judgment, the math underlying the valuation of the marital estate and the calculation of the lump sum payment to compensate for the greater share of the assets retained by Bosworth depends on allocating BHP LLC's value of \$450,000 to Bosworth. To the extent that the \$450,000 valuation from the financial statement is inconsistent with Bosworth's trial testimony, it was within the judge's discretion to determine which evidence to credit, and because her valuation was supported by the evidence, it was not clearly erroneous. See Fechtor, 26 Mass. App. Ct. at 863 ("Unless clearly erroneous, the trial judge's determination of value will stand").

Finally, nothing in the record suggests that it was an abuse of discretion to award the Florida home to Sandquist but the country club membership to Bosworth. The evidence supports the judge's findings that Sandquist had no interest in retaining the country club membership and that Bosworth did. Most importantly, neither party, at trial or on appeal, could point

to any evidence or articulate any basis for concluding that ownership of the house and membership in the country club were linked in any meaningful way other than geographical proximity. Based on the evidence before her, the trial judge was entitled to order what she determined to be "a fair balance of sacrifice between the wants and needs of the two parties." Pierce v. Pierce, 455 Mass. 286, 298 (2009).

2. Bosworth's appeal. In his cross appeal, Bosworth argues the judge's treatment of DAB Co. as both an asset assigned to him and a stream of income for alimony purposes was improper "double dipping." In his valuation of DAB Co., Bosworth's expert factored in \$270,000 to account for "reasonable compensation" to Bosworth. Although the judge accepted the expert's valuation, she calculated Bosworth's alimony obligation based on an income of \$800,000 -- a rough average of Bosworth's total gross income from the four years of tax returns in evidence.

"Commentators use the phrase 'double dipping' to describe the seeming injustice that occurs when property is awarded to one spouse in an equitable distribution of marital assets and is then also considered as a source of income for purposes of imposing support obligations." Champion v. Champion, 54 Mass. App. Ct. 215, 219 (2002). "While disfavored, double counting is

not prohibited as a matter of law." Ludwig v. Lamee-Ludwig, 91 Mass. App. Ct. 36, 39 (2017). Instead, "the judge must look to the equities of the situation to make her determination." Croak v. Bergeron, 67 Mass. App. Ct. 750, 759 (2006). "[W]e decline to disturb an award . . . for inequitable 'double dipping' where it is possible to 'identify separate portions of a given asset of a divorcing spouse as the separate bases of the property assignment and any alimony or support obligations.'" Adams, 459 Mass. at 394, quoting Dalessio v. Dalessio, 409 Mass. 821, 828 (1991).

The trial judge provided a detailed rationale demonstrating "that [she] considered whether double dipping had occurred, and whether [her] orders were consistent with the principles" that govern asset division and support obligations. Sampson v. Sampson, 62 Mass. App. Ct. 366, 377 (2004). She correctly observed that the accountant's "task in valuing DAB Co. is entirely different than the Court's task in determining Husband's gross income for support purposes." Generally, the object of a valuation is to determine the fair market value of a business, or "the price at which the property would change hands between a willing buyer and a willing seller" (quotation and citation omitted). Bernier, 449 Mass. at 779 n.8. Factored into this price is an estimate of the "reasonable compensation"

that the hypothetical buyer might draw from the company. By contrast, a spouse's alimony obligation must be based on his or her actual gross income. See Calvin C. v. Amelia A., 99 Mass. App. Ct. 714, 719 (2021). Thus, the compensation included in the valuation of DAB Co. and the income used to calculate Bosworth's alimony obligation were based on entirely different considerations. In fact, Bosworth's expert's report specifically stated that Bosworth's "actual compensation" had been "added back into the profits" of DAB Co., and instead, a "reasonable compensation" figure was used for the valuation. Given this distinction, it was proper for the judge to calculate Bosworth's alimony obligation using his actual income rather than the one included in the valuation of his business.

Indeed, the judge may have been required to do so. "Even were we to conclude that the trial judge had given [Sandquist] a 'double benefit,' we would conclude that to have done otherwise would have resulted in an inequity." Champion, 54 Mass. App. Ct. at 222. Bosworth's actual income was nowhere close to \$270,000. It was well within the judge's discretion to focus her analysis on Bosworth's most recent tax returns. See Zaleski v. Zaleski, 469 Mass. 230, 243 (2014) (judge may award support based on parties' current incomes). The trial judge therefore did not err in ascribing to Bosworth an income of \$800,000 for

the purpose of calculating his alimony obligation and also adopting a valuation for the company based on the expert's \$270,000 salary approximation.

Conclusion. The amended judgment shall be modified to increase the amount of the lump sum payment due from Bosworth to Sandquist by \$145,500, from \$937,206.67 to \$1,082,706.67. As so modified, the amended judgment of divorce, dated December 26, 2024, is affirmed.<sup>4</sup>

So ordered.

By the Court (Rubin,  
Massing & Toone, JJ.<sup>5</sup>),

  
Clerk

Entered: August 5, 2026.

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<sup>4</sup> The parties' requests for attorney's fees are denied.

<sup>5</sup> The panelists are listed in order of seniority.

# Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 25-P-748

DELPHINE SANDQUIST

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vs.

CHARLES F. BOSWORTH.

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Pending in the Probate and Family

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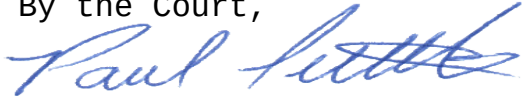
Court for the County of Norfolk

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Ordered, that the following entry be made on the docket:

The amended judgment shall be modified to increase the amount of the lump sum payment due from Bosworth to Sandquist by \$145,500, from \$937,206.67 to \$1,082,706.67. As so modified, the amended judgment of divorce, dated December 26, 2024, is affirmed.

By the Court,

 Clerk

Date August 5, 2026.

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**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT**

**NORFOLK DIVISION**

**DOCKET NO. 20D1405DR**

**DELPHINE BOSWORTH,**  
*Plaintiff/Defendant-In-Counterclaim*

**v.**

**CHARLES L. BOSWORTH,**  
*Defendant/Plaintiff-In-Counterclaim*

**AMENDED JUDGMENT OF DIVORCE NISI**  
**On Delphine Bosworth's Complaint for Divorce**  
(filed on December 18, 2020)  
**On Charles L. Bosworth's Counterclaim for Divorce**  
(filed on February 2, 2021)

All persons interested having been notified in accordance with the law, and after hearing, it is adjudged nisi that a divorce from the bond of matrimony be granted for the cause of irretrievable breakdown as provided by G. L. c. 208, § 1B, and that upon and after the expiration of ninety (90) days from the entry of this Judgment, it shall become and be absolute unless, upon the application of any person within such period, the Court shall otherwise order.

Upon due consideration, it is hereby ORDERED and ADJUDGED:

1. Commencing the first Friday following this Judgment, and every Friday thereafter, Charles L. Bosworth ("Husband") shall pay to Delphine Bosworth ("Wife") general term alimony of \$5,000 per week. The provisions of G. L. c. 208, §§ 48-55 shall apply in their entirety to this Judgment. Absent future modification, Husband's alimony obligation shall continue until the first to occur of the following: Wife's remarriage, the death of either party, or Husband attaining full retirement age (as defined in G. L. c. 208, § 48).
2. For so long as Husband has an alimony obligation to Wife, Husband shall maintain life insurance benefitting Wife with a death benefit of at least \$2.5 million. To the extent Husband does not already have life insurance policies with this total death benefit, he shall obtain such policy/ies no later than February 28, 2025. Husband shall be entitled to reduce the amount of insurance benefitting Wife by \$250,000 on January 1 of each year beginning in 2026. Husband shall provide Wife with proof of his compliance with this paragraph within ten (10) days of Wife's request, but he is not required to do so more frequently than once per year.

3. Husband shall maintain and pay for the existing health insurance policies (or such successor policies as are available through his employment/business which offer reasonably similar coverage) for the benefit of Wife until she is either ineligible to be covered or until she qualifies for Medicare coverage, whichever first occurs. If Husband is notified or is aware that Wife is or will be no longer eligible for coverage, he shall immediately notify her in writing and provide her with copies of documents containing details relevant to her ineligibility.
4. Husband shall maintain and pay for the existing health insurance policies (or such successor policies as are available through his employment/business which offer reasonably similar coverage) for the benefit of all unemancipated children, so long as they are eligible to be covered.
5. Each party shall be responsible for his or her own uninsured health expenses.
6. Neither party shall pay child support to the other.
7. Until each child's emancipation pursuant to the terms of G. L. c. 208, § 28, the parties shall share equally each unemancipated child's routine out-of-pocket and uninsured medical and dental/vision expenses, pursuant to the Massachusetts Child Support Guidelines. The parties shall attempt to agree on an allocation of any extraordinary out-of-pocket and uninsured medical and dental/vision expenses for the unemancipated children, and if they cannot agree, they may submit the issue to the Court for determination. Reimbursements pursuant to this paragraph shall be made by the other parent within ten (10) days of presentation of proof of payment of the expense.
8. Until each child's emancipation pursuant to the terms of G. L. c. 208, § 28, after the exhaustion of the 529 account funds (of which Husband shall continue to be the custodian), the parties shall equally share the unemancipated children's remaining college expenses (defined below). College expenses shall include tuition, room and board (or rent and food expenses, if the child lives off campus), fees assessed by the university, textbooks, and transportation expenses incurred by Charlotte to travel between Massachusetts and Louisiana during school breaks.
9. If any funds remain in the unemancipated children's 529 account after both have either graduated from college or otherwise become emancipated, all 529 account funds remaining shall be divided equally between the parties, after consideration of any tax consequences to Husband as determined by an accountant (if the parties cannot otherwise agree).
10. Husband shall be entitled to claim both children as dependents for federal and state income tax purposes (including any child tax credits) each year unless Wife has at least \$40,000 in total income (not including alimony) within a calendar year; in that case, the parties shall each claim one child while two children are eligible to be so claimed. When only one child remains eligible to be claimed, in years Wife has at least \$40,000 in total

income (not including alimony), Husband shall claim the child in odd-numbered years, and Wife shall claim the child in even-numbered years. Wife shall notify Husband no later than January 31 if she has at least \$40,000 in total income (not including alimony) for the prior tax year.

11. Wife shall retain 12159 Colliers Reserve Drive, Naples, Florida ("the Florida Property"). By March 31, 2026, Wife shall refinance or otherwise remove Husband's name from the mortgage note. Wife shall have sole use and occupancy of the home and be responsible for timely paying all expenses relating to the home. She shall also be entitled to all tax deductions associated with the home commencing in tax year 2025. Husband shall receive the tax deductions in 2024 and prior tax years if he files separately from Wife. Within ten (10) days after Wife provides to Husband documentary confirmation that his name has been removed from the mortgage note, Husband shall execute and deliver to Wife a quitclaim deed conveying his interest in the Florida Property to Wife. If Wife is unable to remove Husband's name from the mortgage note by March 31, 2026, she shall place the Florida Property on the market for sale by April 30, 2026, sell the property as expeditiously as possible, and be entitled to retain all net sale proceeds. Any capital gains tax liability resulting from the sale of the Florida Property shall be Wife's sole responsibility. Husband shall provide to Wife all relevant documentation relating to renovations and improvements of the Florida Home for capital gains purposes.
12. Wife shall be responsible for paying the assessment on the Florida Property, which as of trial was approximately \$8,500.
13. The parties' property located at 48 Milk Street, Westwood, Massachusetts ("the Former Marital Home") shall be placed on the market for sale no later than March 31, 2025. Until the Former Marital Home's sale, Wife shall continue to have sole use and occupancy of the home. Husband shall continue to be responsible for paying all expenses relating to the home, he shall be responsible for any expenses of preparing the Former Marital Home for sale, and he shall be reimbursed for all such payments at the closing of the sale of the property as outlined below. Neither party shall further encumber the Former Marital Home until its sale, absent written agreement. The parties shall jointly select a real estate agent to serve as listing agent. If the parties are unable to agree on an agent, the parties shall each select an agent, and the two agents shall mutually select a third agent whom the parties shall use. The parties shall adhere to the listing agent's recommendations with respect to completion of repairs/improvements, list price, price reductions, negotiation, and offer acceptance, unless the parties agree otherwise. The net sale proceeds of the Former Marital Home (defined as the sale price less payment of the mortgage note and other customary closing costs) shall be distributed as follows: first, \$150,000 shall be deposited into the unemancipated children's 529 account to be applied toward their college expenses; second, Husband shall be reimbursed for all carrying costs of the Former Marital Home and costs to prepare the Former Marital Home for sale he paid following the date of this Judgment (Husband to provide proof of payment of expenses one week prior to closing); third; all remaining net sale proceeds shall be divided equally between the parties. If the parties file taxes separately the year the Former Marital Home

is sold, each party shall report 50% of the capital gain on his/her individual tax returns and shall exchange all relevant documentation relating to renovations and improvements for capital gains purposes.

14. Husband shall be entitled to retain the Collier's Reserve Country Club membership and the Wollaston Country Club membership, shall be responsible for paying the Collier's Reserve Country Club liability, and shall be responsible for all dues and expenses relating to the memberships if he chooses to maintain them. The parties shall cooperate in executing any necessary membership transfer documents.
15. Wife shall retain her Weymouth Club membership and be responsible for all dues and expenses relating to the membership.
16. Husband shall retain David A. Bosworth Company ("DAB Co."). Husband shall be solely responsible for any liabilities, taxes, operating costs, and expenses associated with DAB Co., and Husband shall indemnify and hold Wife harmless from and against any claim relating to liabilities, taxes, costs, and expenses.
17. Husband shall retain his interest in 15 RSP LLC. Husband shall be solely responsible for any liabilities, taxes, operating costs, and expenses associated with his interest in 15 RSP LLC, and Husband shall indemnify and hold Wife harmless from and against any claim relating to liabilities, taxes, costs, and expenses.
18. Husband shall retain his interest in the Dorothy J. Bosworth 2015 Trust.
19. Wife shall retain her motor vehicles, and she shall be fully responsible for all expenses related to the operation, insurance, and maintenance of the vehicles, including the outstanding loans.
20. Husband shall retain his motor vehicle, and he shall be fully responsible for all expenses related to the operation, insurance, and maintenance of the vehicle.
21. Each party shall retain all non-retirement financial accounts standing in his/her individual name and disclosed on his/her trial financial statement.
22. Husband shall retain the Northwestern Mutual life insurance policies in his name.
23. Within thirty (30) days of the date of this Judgment, the parties shall equally divide the balances in the joint Franklin Templeton and Legg Mason accounts and thereafter, close the accounts.
24. By December 31, 2024, Husband shall pay the joint JetBlue credit card in full and thereafter, the parties shall either close the account (if truly a joint credit card) or remove Wife's authorized access to the card (if the credit card is in Husband's sole name with Wife as an authorized user).

25. In consideration of the asset/liability division outlined above, within ten (10) days following the sale of the Former Marital Home, Husband shall pay to Wife as property division the sum of \$937,206.67. If Husband dies without having paid Wife this sum, Wife shall have a claim against Husband's estate in the amount of \$937,206.67.
26. By June 30, 2025, the total value of the parties' retirement accounts (i.e., Wife's Capital Group/American Funds Roth IRA and Husband's Nationwide 401K) shall be divided equally, as of the date of this Judgment, plus or minus any adjustments for passive gains and losses from the date of this Judgment until such time the division occurs. If a Qualified Domestic Relations Order ("QDRO") is necessary, the parties shall equally share the costs for preparation of the QDRO and shall cooperate in submitting the QDRO to the Court for approval. Neither party shall withdraw or take distributions from any retirement account until the retirement accounts are divided.
27. Within sixty (60) days of this Judgment, Husband shall be entitled to retrieve any of his personal belongings still remaining in the Former Marital Home and in the Florida Property, and Husband shall return to Wife her jewelry in his possession. Wife shall be entitled to keep the home furnishings in the Former Marital Home and in the Florida Property. Each party shall otherwise retain any personal property currently in his or her possession.
28. If the parties choose to file any tax returns for tax year 2024 or earlier jointly, or have already filed tax returns jointly for any such tax year, they shall equally divide any refund and equally share responsibility for any liability.
29. Pursuant to G. L. c. 208, § 38, the parties shall equalize legal fees and costs actually paid (not incurred) to their counsel and expert witnesses as of the date of this Judgment. Within thirty (30) days of this Judgment, the parties shall exchange statements of attorney's fees, expert witness fees, and costs listing the amount paid as of the date of this Judgment. Within sixty (60) days of this Judgment, the party who has paid his/her counsel and expert witnesses more in fees and costs shall pay the other party one half ( $\frac{1}{2}$ ) of the difference between the amount he/she paid and the amount paid by the other party. Other than as specifically provided in this paragraph, each party shall be responsible for his or her own legal fees, expert witness fees, and costs.
30. Except as otherwise provided in this Judgment, each party shall retain all assets and be responsible for his or her own liabilities as listed on his or her trial financial statement.
31. Wife shall be entitled to resume her former name of Delphine Sandquist.

Date: 12/26/24  
*nunc pro tunc to 11/7/24*

  
 Patricia A. Gorman, Justice  
 Norfolk Probate and Family Court

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42 Final: 02.06.2025

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

NORFOLK DIVISION

DOCKET NO. 20D1405DR

DELPHINE BOSWORTH,  
*Plaintiff/Defendant-In-Counterclaim*

v.

CHARLES L. BOSWORTH,  
*Defendant/Plaintiff-In-Counterclaim*

**AMENDED RELEVANT PROCEDURAL HISTORY, FINDINGS OF FACT,  
RATIONALE AND FURTHER FINDINGS, AND CONCLUSIONS OF LAW**

**On Delphine Bosworth's Complaint for Divorce**

(filed on December 18, 2020)

**On Charles L. Bosworth's Counterclaim for Divorce**

(filed on February 2, 2021)

These matters came before the Court, Gorman, J. presiding, for trial on September 28 and October 6, 2023; and on January 3, January 31, May 7, May 17, June 28, July 19, and August 1, 2024. Delphine Bosworth ("Wife") was represented at trial by Attorneys Mia Frabotta and Alison O'Sullivan. Charles L. Bosworth ("Husband") was represented at trial by Attorneys Gary Todd and Megan Rothermich. At trial, 107 exhibits were introduced to evidence, and the Court heard testimony from three witnesses, namely, the parties and Husband's expert witness, Marc Bello. After consideration of all credible evidence and all inferences drawn therefrom, the Court hereby enters the following Relevant Procedural History, Findings of Fact, Rationale and Further Findings, and Conclusions of Law:

**I. Relevant Procedural History**

1. On December 18, 2020, Wife filed a Complaint for Divorce pursuant to G. L. c. 208, § 1B requesting, *inter alia*, custody of the children, a suitable amount of support for herself and the children with suitable provision for health insurance, an equitable division of the marital estate, and to resume her former name of Delphine Sandquist.
2. On February 2, 2021, Husband filed an Answer & Counterclaim for Divorce. In his Counterclaim, also pursuant to G. L. c. 208, § 1B, Husband requested joint legal and physical custody of the children, a suitable amount of support for the children with suitable provision for health insurance, and an equitable division of the marital estate.

3. On or about November 24, 2021, Wife filed a Motion for a Discovery Master. On November 30, 2021, Husband filed an Opposition.
4. Also on or about November 24, 2021, Wife filed a Motion for Award of Counsel Fees *Pendente Lite*. On November 30, 2021, Husband filed an Opposition. On December 3, 2021, the Court (Gorman, J.) denied the motion without prejudice.
5. On March 17, 2022, Wife filed a Motion for Sole Use and Occupancy of Marital Home.
6. On March 21, 2022, Wife filed a Motion for Award of Counsel Fees *Pendente Lite*.
7. On the same date, Wife filed a Motion for Temporary Orders.
8. On March 23, 2022, Husband filed a Consolidated Opposition to Wife's Motion for Temporary Orders, Motion for Sole Use and Occupancy of Marital Home, and Motion for Award of Counsel Fees *Pendente Lite*. On or about June 7, 2022, Husband filed a Supplemental Opposition to those motions.
9. On May 10, 2022, Wife filed a Supplemental Motion for Temporary Orders.
10. On November 10, 2022, the Court (Gorman, J.) issued an Order providing, *inter alia*, as follows:
  1. The Parties shall comply with the June 8, 2022 stipulation, which is hereby incorporated and made part of this order.
  2. Husband shall continue to pay all expenses on the three residences, Westwood, Dedham and Naples Florida, including but not limited to the normal and ordinary maintenance costs, i.e., pool, snow removal, etc. and all uninsured medical, dental and vision expenses for the children and Wife with the exception of any elective or cosmetic expenses.
  3. No fees shall be advanced at this time, however if one or more parcels of real estate are sold the Court may consider advances to each Party.
  4. The Parties shall stop involving the children in their disagreements and this litigation.

The parties' June 8, 2022 Stipulation provided as follows:

1. The parties shall jointly agree to retain Richard Goulet to appraise 48 Milk Street, Westwood and complete said appraisal within 60 days.
  2. The parties stipulate to the value of 12159 Colliers Reserve Drive, Naples, Florida of \$1.9 m[illion] as of May 16, 2022.
  3. The experts, counsel, and parties shall meet prior to the November 1, 2022 pretrial conference.
11. On January 3, 2023, Wife filed a Motion for Sale of Second Home.

12. On January 10, 2023, a Pretrial Conference was held. During the hearing, the parties' counsel brought to the Court's attention the issue of the valuation date of Husband's business, David A. Bosworth Company. Husband's counsel asked that the Court specify a valuation date so that there would be an "apples to apples" comparison of the parties' respective expert opinions and requested that the valuation date be June 30, 2022. Wife's counsel acknowledged that her expert witness had the financial documents for Husband's business through June 30, 2022 but stated that until now, Husband had asked for a valuation date of December 31, 2021. Wife's counsel also expressed reluctance at using mid-year financial data for the business in determining its value.
13. On January 12, 2023, following the Pretrial Conference, the Court (Gorman, J.) issued a Trial Scheduling Order that, *inter alia*, scheduled the matter for a two-day trial on August 18, 2023 and September 29, 2023, listed the contested issues for trial as "property division/support (valuation date of business 6/30/22<sup>1</sup>)," and further provided as follows:  
 "6. On or before sixty (60) days before trial, each party shall mail or deliver to the other the following: a) a final written trial witness list of the names and addresses of any witness (other than a party) who will testify at trial (no witness shall be allowed to testify unless they have been identified either in prior Pretrial Memo or prior to the close of discovery; and b) a final written exhibit list as well as copy of all exhibits which that party intends to enter as an exhibit at trial. **Absent extraordinary circumstances, any witness that was not listed on a Pretrial [M]emo or previously identified in writing to the other party shall not be permitted to testify and any document not so listed and/or copied shall not be admitted into evidence.**"  
 (Emphasis in original.)<sup>2</sup>
14. On March 2, 2023, Wife filed a Renewed Motion for Award of Counsel Fees *Pendente Lite*.
15. On June 21, 2023, the Court (Gorman, J.) issued a Scheduling Order providing as follows: "The trial date of August 18, 2023 has been taken off due to a scheduling conflict. The trial date of September 29, 2023 @ 9:30 am will remain as scheduled."
16. On August 23, 2023, Husband filed a Motion *In Limine* to Preclude Wife from Calling Witnesses at Trial and a Motion *In Limine* to Preclude Wife from Introducing Exhibits at Trial. On August 24, 2023, Husband filed a Motion *In Limine* to Preclude Wife from Offering Expert Testimony. In his motions, Husband argued that although his counsel provided Wife's counsel with a copy of his witness list, exhibit list, and copies of

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<sup>1</sup> In her post-trial submissions, Wife erroneously asserts that the valuation date of Husband's business was a contested issue for trial. The Trial Scheduling Order clearly states that property division and support were the contested issues, and the Court was specifying that the valuation date for Husband's business, which is one of the assets to be divided, would be June 30, 2022.

<sup>2</sup> Neither party requested that the Court reconsider any of the provisions of the January 12, 2023 Trial Scheduling Order, including the June 30, 2022 valuation date for Husband's business.

proposed exhibits on June 19, 2023, Wife's counsel had, to date, failed to provide to Husband's counsel her witness list, exhibit list, or copies of any proposed exhibit.

17. On August 28, 2023, Wife filed an Emergency Motion for Clarification of Business Valuation Date, an Emergency Motion to Compel Production of Financial Information, an Emergency Motion to Continue Trial Dates, and an Emergency Motion to Extend Deadline for Trial Witness and Exhibit Lists, together with a Motion for Speedy Hearing and an Affidavit of Emergency signed by her counsel in support of her emergency motions.
18. On August 30, 2023, the Court (Gorman, J.) issued an Order scheduling "a speedy hearing concerning trial related issues on 9/6/23 at 9 am. [Husband]'s motions in limine shall also be heard, at the Court's discretion, on 9/6/23 at 9 am. Email notice of this order forthwith."
19. On September 5, 2023, Wife filed an Opposition to Husband's motions *in limine*.
20. On September 6, 2023, following a hearing, the Court (Gorman, J.) allowed Husband's Motion *In Limine* to Preclude Wife from Calling Witnesses at Trial, Husband's Motion *In Limine* to Preclude Wife from Introducing Exhibits at Trial, and Husband's Motion *In Limine* to Preclude Wife from Offering Expert Testimony.
21. Also on September 6, 2023, the Court (Gorman, J.) denied Wife's Emergency Motion to Continue Trial Dates and in a margin notation stated that the "[t]rial dates are set for 9/28/23 @ 9:30 [am] and 10/6/23 @ 9:30 [am]."
22. On September 12, 2023, Wife filed a Motion for Findings of Fact, Conclusions of Law, and Clarification of Rulings Dated September 6, 2023.
23. Also on September 12, 2023, Wife filed an Emergency Motion for Reconsideration of Orders Dated September 6, 2023 (Gorman, J.), together with a Motion for Speedy Hearing and a supporting Affidavit. On the same date, the Court (Gorman, J.) denied the underlying emergency motion.
24. Also on September 12, 2023, Wife filed a Motion *In Limine* to Preclude Husband from Offering Expert Testimony and Exhibits, which the Court (Gorman, J.) denied on the same date with the following notation: "Trial Order indicated motions in limine to be scheduled 30 days before trial."
25. On September 28, 2023, the Court (Gorman, J.) issued orders denying Wife's Emergency Motion to Compel Production of Financial Information and Emergency Motion to Extend Deadline for Trial Witness and Exhibit Lists.
26. On or about May 2, 2024, the parties filed a Stipulation Regarding Property Valuations, providing as follows:

1. The 48 Milk Street Realty Trust holds title to the real property located at 48 Milk Street, Westwood, MA ("Westwood Property"). The parties stipulate that the fair market value of the Westwood Property for purposes of their divorce is \$2,325,000.00.
  2. The parties hold title to the real property located at 12159 Colliers Reserve Drive, Naples, FL ("Florida Property"). The parties stipulate that the fair market value of the Florida Property for purposes of their divorce is \$1,900,000.00.
  3. David A. Bosworth Co. holds title to the real property located at 10 Richardi Reservoir Road, Randolph, MA ("Randolph Property"). The parties stipulate that the fair market value of the Randolph Property for purposes of their divorce is \$2,250,000.00.
  4. 15 RSP LLC holds title to the real property located at 15 Roc Sam Park Road, Braintree, MA ("Braintree Property"). The parties stipulate that the fair market value of the Braintree Property for purposes of their divorce is \$1,110,000.00.
  5. The parties acknowledge that the stipulated fair market values listed in Paragraphs 1-4 above do not include, consider, or factor in any encumbrances, including but not limited to mortgages and/or lines of credit.
27. On July 19, 2024, Husband filed a Motion for Attorney's Fees and Costs, together with a Statement of Attorney's Fees and Costs and a supporting Affidavit of Counsel.
  28. On July 25, 2024, Wife filed a Motion for Award of Counsel and Expert Fees and Costs, together with an Affidavit of Counsel.
  29. On July 26, 2024, the Court (Gorman, J.) issued a Temporary Order providing as follows: "This matter is scheduled for final day of trial on 8/1/24 at 9:30 am. On 8/1/24 Wife's counsel shall be allowed to question Marc Bello in regard to document previously removed (list of various notes used when valuing business entities). The issue of admissibility of said document is a separate issue. 8/1/24 cross[-examination] of Marc Bello to be completed, redirect/recross and arguments/submission of affidavits re: fees to be heard."
  30. On August 2, 2024, Wife filed an Offer of Proof With Respect to Valuation of Marital Assets, Income, and Marital Lifestyle.

## **II. Findings of Fact**

### **Basic Factual Information and Length of the Marriage**

1. The parties were married on June 27, 1998 in Milton, Massachusetts.
2. This is the first marriage for both parties.

3. The parties separated in July of 2019 and last lived together on September 4, 2019.
4. The Court finds that the parties' marriage has irretrievably broken down and that there is no hope for reconciliation.
5. The parties were married for twenty-two years, six months (or 270 months) at the time Husband was served with Wife's Complaint for Divorce on January 15, 2021. The parties were married for more than twenty-six years at the conclusion of trial.
6. The parties have three children:
  - a. Isabelle Bosworth, born on May 31, 2000 ("Isabelle");
  - b. Elise Bosworth, born on April 26, 2003 ("Elise"); and
  - c. Charlotte Bosworth, born on August 19, 2004 ("Charlotte").
7. Isabelle is emancipated. She graduated from Roger Williams University in the spring of 2023 and is currently employed at Bertucci's.
8. Elise graduated high school in 2021. She previously attended High Point University in North Carolina for two semesters and is currently attending Curry College.
9. Charlotte graduated high school in 2023. As of the beginning of trial, she was completing a gap year program in Italy and Greece called Carpe Diem. In January of 2024, she began attending college at Louisiana State University ("LSU").
10. Wife resides at the former marital home located at 48 Milk Street, Westwood, Massachusetts ("Former Marital Home"), along with all three of the parties' children.
11. Husband resides at 77 Brierbrook Street, Milton, Massachusetts with his girlfriend of approximately three years, Marie Duquette ("Ms. Duquette").

**Age, Health, and Station/Marital Lifestyle of the Parties**

12. Wife was born in October of 1970 and was fifty-three years old as of the conclusion of trial.
13. Husband was born in June of 1968 and is fifty-six years old.
14. Wife testified credibly that she has no major health problems.
15. Husband testified credibly that he is relatively healthy other than his chronic back problems resulting from his career in the construction industry. Husband has had four back operations, comprised of three laminectomies and, most recently, a spinal fusion in December of 2020. Each of Husband's back surgeries has required a three- to four-month recovery. Husband testified credibly that his back problems cause him daily pain.

16. Two of three of the parties' children were born while the parties lived in a South Boston townhome. Husband credibly characterized the parties' lifestyle as "modest" at that time.
17. In 2004 or 2005, the parties purchased a home in Canton for just over \$500,000. They sold the home in or about 2015.
18. At some point in or before 2008, the parties purchased land in Milton for approximately \$75,000 and later sold it for \$900,000.
19. Husband's business experienced a downturn from approximately 2009 to 2013 following a recession, but the business became more profitable thereafter and generated significant income for the parties.
20. The parties purchased the Former Marital Home in 2014 for \$750,000. Thereafter, in 2014 and early 2015, the parties spent more than \$1 million renovating the Former Marital Home, including adding a pool. The parties have stipulated that the Former Marital Home is currently worth \$2,325,000. They moved into the Former Marital Home in mid-2015.
21. Wife selected the furniture for the Former Marital Home without regard to cost.
22. The funds used for the purchase and renovation of the Former Marital Home came from the sale of their Milton land and Canton home.
23. Wife received a more than \$1 million inheritance from her father in or about 2014 or 2015 that increased the parties' lifestyle.
24. During the marriage, the parties primarily vacationed in Naples, Florida. The parties traveled to Naples approximately two to three times per year with the children and took additional trips without the children. The parties purchased their Naples home located at 12159 Colliers Reserve Drive, Naples, Florida ("Florida Property") in 2015 for \$1,085,000.
25. In 2018, the family took a vacation to London and Rome.
26. During the marriage, the family took three to four trips to Disney World and traveled once to Atlantis in the Bahamas.
27. For Wife's fortieth birthday, she, Husband, and friends traveled to Punta Cana, Dominican Republic.
28. Wife was born in France. During the marriage, she traveled to France approximately once per year. For some trips, Husband joined her. Wife took the children to France for the summer approximately once every two to three years.

29. During the marriage, the parties had dinners with friends every weekend, sometimes at the parties' or another's home, and sometimes to nice restaurants such as Ocean Prime, Capital Grille, and Olivadi.
30. Wife testified credibly that during the marriage, finances were not an issue, the parties did not have conflicts about money, and Husband did not try to limit her spending.
31. For at least ten years, Husband has had a membership at the Wollaston Country Club in Milton, Massachusetts. The club required a \$13,000 bond, and ongoing dues for the club are \$1,300 per month.
32. For the last eight years, the parties have been members of Collier's Reserve Country Club in Naples, Florida. The monthly membership fee is \$1,800.
33. Since 2010, Wife has belonged to the Weymouth Club.
34. The Court finds that the parties' station/marital lifestyle for at least the last decade, and possibly the last fifteen years, of the marriage prior to separation was upper-class.

**Occupation, Employability, Vocational Skills and Amount and Sources of Income of the Parties**

*Wife*

35. Wife obtained her associate degree in animal science from the University of New Hampshire in 1990. She took a few classes at UMASS-Boston during the 1990s but did not attain any further degrees.
36. Wife has ridden horses since she was a child and worked in the equestrian industry since the summer before her senior year of high school.
37. Wife never worked full-time outside the home during the marriage.
38. From 1991 to 2004, which was six years after the parties were married, Wife operated a business teaching horse riding lessons and boarding horses at her parents' Milton property. Wife testified credibly that the highest profit she made in a single year was approximately \$20,000. Although her gross receipts were at times high, her business expenses were also high.
39. After all of the children were in elementary school, Wife acquired a horse that she kept either at a barn in Halifax or a barn in Walpole. She worked at the barn to cover some of the expenses for her own horse, but the parties also contributed their own funds toward horse expenses. Wife had the horse for approximately six to seven years.

40. After the parties separated, Wife worked three days per week for Connected Home Care, an entity that provides services for people in government housing. Wife cleaned their apartments and ran errands for them and earned \$14 per hour. Wife stopped working for Connected Home Care upon the onset of the COVID-19 pandemic in the spring of 2020.
41. From June of 2021 to December of 2021, Wife began working at a private barn in Walpole, Aspire Farm, caring for horses. She worked 1.5 to 2 hours per day earning \$16 per hour. She left the position because her services were no longer needed. Wife did not list this employment on her financial statements dated during this time period.
42. In March of 2022, Wife began working for a different horse owner at Aspire Farm. She worked approximately two to three hours per day and earned \$20 per hour. Initially, she worked three days per week, and then she began working five days per week. This position lasted until January of 2023, when Wife's employer no longer had the funds to pay her.
43. After that position, Wife worked for Madgin Group, her friends' clothing distribution company in Charlestown, Massachusetts, packing and shipping clothing in the company warehouse. The number of hours Wife worked varied. She earned \$20 per hour, but her salary was in part applied against a \$10,000 loan Wife received from her friends in the spring of 2023 for living expenses. This loan was not listed on any of Wife's financial statements, and it is unknown what amount, if any, Wife still owes on the loan.
44. Wife's trial financial statement dated September 26, 2023 listed \$300 per week in gross employment income from Madgin Group.
45. Wife stopped working for Madgin Group during the trial, sometime between October and December of 2023.
46. Both during the marriage and since the separation, Wife has received a \$52,000 per year paycheck from Husband's business, David A. Bosworth Company ("DAB Co."), even though she has never worked for the business.
47. Since the parties separated, Husband has voluntarily given Wife \$3,000 per month in addition to her paycheck from DAB Co.
48. Wife acknowledged in her trial testimony sending Husband a text message in December of 2023 stating that she is not considering working because she does not want it to impact her support.
49. In January of 2024, Wife began working at two different barns in Walpole and Millis caring for horses and cleaning the barns. She testified credibly that she works twenty to twenty-five hours per week and is paid \$20 per hour. Therefore, Wife earns gross income of between \$400 and \$500 per week.

50. Also in January of 2024, Wife began a catering business. Wife completed three jobs during her first two weeks, one catered dinner party for which she earned a profit of \$150, and two family meal preparations for which she did not testify to her earnings. As of January of 2024, Wife had not yet begun advertising her catering business.
51. There was no credible evidence that Wife has ever engaged in a diligent search for full-time employment.
52. Wife played on four tennis teams during 2023. As of January of 2024, Wife was playing on two tennis teams. One of her current teams practices on Tuesdays at 10:00 am and typically has matches on Thursdays at 11:30 am. Wife acknowledged in her trial testimony that working full-time would conflict with tennis.
53. The Court finds that Wife has the capacity to work 40 hours per week earning minimum wage income. See Frost-Stuart v. Stuart, 90 Mass. App. Ct. 366, 370 (2016) (affirming trial judge's decision to attribute minimum wage income to an unemployed party who had not engaged in a "diligent search for employment"). The minimum wage in Massachusetts is currently \$15.00 per hour. See G. L. c. 151, § 1. Therefore, the Court attributes to Wife full-time gross employment income of \$600 per week.

#### *Husband*

54. Husband received an undergraduate degree from Curry College in 1992 with a major in political history and a minor in Spanish.
55. During and after college, Husband worked for DAB Co., as well as briefly for other construction companies.
56. Husband began at DAB Co. as a foreman and then held positions as crew boss, site superintendent, and general manager. He has held his current position of president for the last 25 years.
57. Husband's sole employment during the marriage has been at DAB Co.
58. At DAB Co., Husband receives a monthly draw. Through 2021, Husband also received W-2 income for contributions DAB Co. made toward his retirement, insurance coverage, and federal and state taxes.
59. DAB Co. has also historically paid certain of Husband's personal expenses, either directly or by charges Husband made on the DAB Co. credit card, such as Husband's motor vehicle expenses, propane for the Former Marital Home, country club dues, rent for Husband's apartment, and legal and expert fees for this case.
60. Husband's trial financial statement dated September 19, 2023 credibly indicates Husband delayed the payment of DAB Co. 2022 payroll taxes to 2023 and that he will not receive

a W-2 for 2022. Husband acknowledged in his trial testimony that in every year before 2022, DAB Co. paid estimated taxes during the course of the year.

61. Husband's DAB Co. K-1s in evidence credibly listed the following distributions to Husband for tax years 2018-2022:
  - 2018: \$289,774
  - 2019: \$584,738
  - 2020: \$545,671
  - 2021: \$528,332
  - 2022: \$439,992
62. Husband's DAB Co. K-1s in evidence credibly listed the following ordinary business income for tax years 2018-2022:
  - 2018: \$ 828,841
  - 2019: \$1,216,792
  - 2020: \$1,061,953
  - 2021: \$1,191,154
  - 2022: \$ 729,324
63. The parties' federal tax returns in evidence credibly reflected the following total income for tax years 2018-2021:
  - 2018: \$ 539,406
  - 2019: \$ 952,275
  - 2020: \$ 516,803
  - 2021: \$1,281,650
64. When interest, dividend, and pension/annuity income are subtracted, the parties' tax returns reflected the following remaining total income for tax years 2018-2021:
  - 2018: \$ 528,748
  - 2019: \$ 939,118
  - 2020: \$ 511,128
  - 2021: \$1,279,713
65. Wife earned minimal income from 2018 to 2021, so the vast majority of the parties' earnings derived from Husband's employment at/ownership of DAB Co.
66. Husband's 2022 financial statements in evidence listed gross income of \$14,557.75 per week, which is the equivalent of \$757,003 per year.
67. Husband failed to list his 2022 income in the "gross income from prior year" section of either of his 2023 financial statements in evidence. Instead, Husband listed his gross income from 2021 on those financial statements.

68. The DAB Co. Account QuickReport in evidence credibly indicated that between January 1, 2023 and September 18, 2023, DAB Co. made a total of \$245,996 in distributions to Husband, which is the equivalent of approximately \$6,650.00 per week.
69. Currently, Husband receives a draw from DAB Co. of \$35,666 per month, which is the equivalent of \$427,992 per year, or \$8,230.62 per week. Until 2023, Husband's draw was \$36,666 per month.
70. Husband's September 19, 2023 trial financial statement listed gross weekly income of \$8,249.25, comprised of \$8,230.62 in salary and \$18.63 in interest. This amount equates to \$428,961.00 per year. The Court's discussion of Husband's income for support purposes can be found in the Rationale and Further Findings, below.
71. The Court finds that Husband is employable commensurate with his education, skills, and experience in his current capacity as owner and operator of DAB Co.

### **Estate of the Parties**

#### *DAB Co.*

72. Husband is the sole owner of DAB Co., which was established in the late 1950s by Husband's father and uncle. Husband currently holds the offices of president, treasurer, and secretary of the business.
73. In the mid-1980s, Husband's uncle left the business, and Husband's father continued operating the business.
74. In or around 2005, Husband bought out his father's interest in DAB Co. and became the sole owner.
75. DAB Co. is an S Corporation.
76. DAB Co. specializes in heavy civil construction, e.g., earth-moving utility infrastructure, foundation work, and road building. DAB Co. also occasionally performs snow removal.
77. Four customers of DAB Co. generate 82% of its revenue.
78. In recent years, DAB Co. has generated gross revenue of \$12 to \$15 million per year (including 2022 when an annualized figure is used) and currently has fifty to sixty employees.
79. DAB Co.'s net profit for calendar years 2016 to 2021 and 2022 year-to-date through June 30, 2022 were as follows:
 

|       |            |
|-------|------------|
| 2016: | \$ 508,679 |
| 2017: | \$ 156,545 |

2018: \$ 633,452  
 2019: \$ 611,123  
 2020: \$1,141,253  
 2021: \$ 504,376  
 2022: \$ 5,611 (as of 6/30/22)

80. DAB Co. had the following retained earnings as of December 31 for calendar years 2016 to 2021:  
 2016: \$2,505,698  
 2017: \$2,037,251  
 2018: \$2,380,929  
 2019: \$2,407,314  
 2020: \$3,002,896  
 2021: \$2,978,940
81. DAB Co. had the following cash as of December 31 for calendar years 2016 to 2021 and as of June 30, 2022:  
 2016: \$1,524,483  
 2017: \$ 538,597  
 2018: \$ 399,719  
 2019: \$ 538,589  
 2020: \$ 228,474  
 2021: \$ 924,332  
 2022: \$ 676,869 (as of June 30, 2022)
82. All three of Husband's siblings have worked at DAB Co. over the years. Currently, two of Husband's siblings, David and Nancy, are employed at the company.
83. DAB Co. owns numerous construction vehicles, equipment, and machinery.
84. DAB Co. also holds title to the real property located at 10 Richardi Reservoir Road, Randolph, MA ("the Randolph Property"), which it purchased within the last five to six years. The parties stipulated that the fair market value of the Randolph Property is \$2,250,000. The Randolph Property has an outstanding mortgage of \$1,111,386, resulting in equity of \$1,138,614.
85. DAB Co. uses the Randolph Property as a shop and lay-down yard. The company keeps equipment there and has a garage there for repairing equipment. They also process materials there.
86. In September of 2020, Husband retained Marc Bello ("Mr. Bello") to appraise Husband's 100% interest in DAB Co.
87. Mr. Bello received his college degree in accounting from Ithaca College and his Master of Science degree in taxation from Bentley College in 2000.

88. Since June of 2023, Mr. Bello has been employed by Willamette Management Associates as the managing director for the Boston office. Before that, he was partner in charge of business valuation at his former firm, Edelstein & Company LLP, for twenty years.
89. Mr. Bello is a certified public accountant (“CPA”) and a certified valuation analyst, is accredited in business valuation, is certified in financial forensics by the American Association of Certified Public Accountants, and is certified as a master analyst in financial forensics by the National Association of Certified Valuators and Analysts.
90. Mr. Bello has performed more than 800 business valuations, has testified as an expert in business valuation at least thirty to thirty-five times, has authored articles on business valuation issues, and has created/chaired more than eighty legal seminars for MCLE.
91. Mr. Bello was qualified at trial as a business valuation expert witness without objection.
92. Mr. Bello’s Conclusion of Value Report dated December 19, 2022 (“the Report”) was in evidence and valued DAB Co. as of June 30, 2022 using the “fair value” standard of value in accordance with Bernier v. Bernier, 449 Mass. 774 (2007). In performing his valuation, Mr. Bello considered the factors set forth in Internal Revenue Service Revenue Ruling 59-60.
93. In conducting his valuation, Mr. Bello reviewed numerous documents relating to DAB Co., including but not limited to financial statements/balance sheets from 2016-2021, internal financial statements/balance sheet through June 30, 2022, tax returns, internal financial statements, backlog reports, depreciation reports, W-2s, and real estate appraisals.
94. DAB Co. financial statements are audited annually by an accounting firm.
95. Mr. Bello credibly explained that he reviewed 6.5 years of data because in his experience, the more data, the better he can understand the business. He weighed all years equally in his analysis.
96. Mr. Bello also met with and interviewed Husband and visited the DAB Co. Braintree site.
97. Mr. Bello considered all three possible general approaches to valuation used by business valuers, i.e., the asset approach, the income approach, and the market approach. Mr. Bello rejected the asset and market approaches and determined that the income approach and specifically, the capitalization of income approach, was appropriate to value DAB Co.
98. Mr. Bello testified credibly that he rejected the market approach because DAB Co. is not comparable to any publicly traded companies, and there were insufficient private sales to serve as data for use in a market approach.

99. Mr. Bello explained in the Report that the asset approach “is usually of greater importance when valuing companies that are marginally profitable or have no earnings history. This concept generally applies to a company with little value beyond the value of its tangible assets.” He further explained that the asset approach “is much less useful for operating companies.”
100. Mr. Bello credibly included in his Report an adjusted value (after making non-operating adjustments and normalization adjustments) of \$1,485,534 for the fixed assets of DAB Co.
101. Mr. Bello explained in the Report that the market approach can be used if “there [are] a sufficient number of similar companies or transactions to make comparisons, or, alternatively, the industry composition must be such that meaningful comparisons can be made.”
102. Mr. Bello testified credibly that he rejected the asset approach because of the type of business DAB Co. is and its ongoing operations, the nature of the balance sheet, the business’ earnings history, and economic and industry factors. Mr. Bello acknowledged at trial that there are some situations in which it would be appropriate to use the asset approach for a going concern premise.
103. The Court finds Mr. Bello’s decision to use the capitalization of income approach in valuing DAB Co. to be reasonable.
104. In performing his valuation, Mr. Bello used the premise that DAB Co. is a going concern, which is an ongoing business that is anticipated to operate in the future, as opposed to a liquidation, which means that the business will shut down. His selection of this premise is supported by the credible evidence at trial.
105. Mr. Bello observed that DAB Co.’s annual revenue ranged from \$10 to \$15 million between 2016 and 2022, with no discernable pattern as to why some years were higher than others.
106. Mr. Bello observed that the backlog, i.e. contracts that DAB Co. has signed but work has not yet been done, was under \$10 million during 2016 and 2017, more than \$10 million from 2018 to 2020, and around \$5 million during 2021 and 2022.
107. In his analysis, Mr. Bello evaluated the gross margin and the operating profit of DAB Co. from 2016 to 2022.
108. As part of his valuation, Mr. Bello had to determine what normalization adjustments to apply. He made a \$450,000 contract receivable adjustment for Husband’s interest in the 485-487 Blue Hills Parkway project, classifying it as a distribution to Husband and not an asset of the business, and he made a \$571,000 adjustment to the stockholder loan in that

amount to Husband, classifying it as a distribution, since it is not expected to be repaid to the business.

109. Mr. Bello also made adjustments to consider the employee retention credit, the company's Randolph property, the company's BMW (driven by Husband's sister, Nancy), and the company's Range Rover (driven by Husband) as non-operating assets. Likewise, the loans/debt related to these items were treated as non-operating liabilities.
110. Mr. Bello credibly explained in his report that "[w]hen a business valuation is being conducted on a business in which the owner is also a day-to-day manager of the company, the amount of compensation paid to the owner should be analyzed to determine whether the compensation is indicative of market rates based on the roles and responsibilities of the officer." In order to do this, Mr. Bello examined market data from Economic Research Institute's Salary Assessor database and opined that reasonable compensation for Husband was \$270,000. Mr. Bello added Husband's actual compensation at DAB Co. back into the profits of the business and deducted his reasonable compensation of \$270,000. The Court finds that Mr. Bello appropriately determined that \$270,000 is reasonable market rate compensation for Husband.
111. Because during the time period Mr. Bello reviewed, Husband received W-2 income for certain of his expenses paid by DAB Co., Mr. Bello added back in the W-2 income, and subtracted out the \$270,000 compensation for Husband. Mr. Bello also subtracted an adjustment for payroll taxes.
112. In his valuation, Mr. Bello added back into the profits of the business via an adjustment compensation of Husband's family members who are on payroll but not actually working for the company.
113. Mr. Bello also adjusted the rent DAB Co. pays to 15 RSP LLC as rent for the Braintree Property. Mr. Bello added back \$45,000 per year to arrive at market rent because DAB Co's landlord, 15 RSP LLC, is a related party.
114. Mr. Bello used the annual revenues and adjusted profit margins from 2016 to June 30, 2022 to calculate the average annual revenue of \$14,098,668 for that period<sup>3</sup> and the average profit margin of 2.6% for that period.
115. Although Mr. Bello reviewed reports estimating the value of DAB Co. equipment and trucks prepared by DAB Co. employees Robert Rosa, Jr. and Doug Crowley, Mr. Bello credibly explained at trial that he did not incorporate these reports into his analysis because that would have been appropriate only under a liquidation premise and is not necessary under a going concern premise.

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<sup>3</sup> Although Mr. Bello's report does not include the trailing 12-month revenue figure from July 1, 2021 to June 30, 2022, Mr. Bello testified credibly that in completing his valuation, he looked at the year-end income statement for each year from 2016 to 2021, as of 6/30/22, and the trailing 12 months as of 6/30/22.

116. Mr. Bello's analysis was sound in all respects, including his determination of the 8.1% capitalization rate to apply in his capitalization of income approach. This rate incorporated both the market risk and the company-specific risk.
117. Mr. Bello's valuation methodology and analysis is credited in the entirety, and the Court finds that the fair value of Husband's interest in DAB Co. is \$2,759,000 as of June 30, 2022.

*Real Estate/Trust Interests*

a. Former Marital Home

118. The parties purchased the Former Marital Home, which they own jointly, in 2014 for \$750,000.
119. The parties stipulated that the Former Marital Home has a fair market value of \$2,325,000.
120. Husband's September 19, 2023 trial financial statement credibly indicated that the mortgage balance on the Former Marital Home is \$184,919.
121. Therefore, the equity in the Former Marital Home as of trial is \$2,140,081.
122. Wife testified that she would like to keep the Former Marital Home while the children are going through life transitions and living at home, until they can live independently. However, in her post-trial submissions, Wife instead requested that the home be sold immediately.
123. Husband testified that he believes the Former Marital Home should be sold because the children are all young adults, the two who are still in college will be done shortly, and the carrying costs do not justify keeping the home.

b. Florida Property/Collier's Reserve Country Club

124. As indicated above, the parties purchased the Florida Property in 2015 for \$1,085,000.
125. Wife contributed approximately \$500,000 from her inheritance from her father toward the purchase price of the Florida Property.
126. The parties stipulated that the fair market value of the Florida Property is \$1,900,000.
127. Husband's September 19, 2023 trial financial statement credibly indicated that the Florida Property has a current mortgage balance of \$72,163.00.

128. Therefore, the equity in the Florida Property as of trial is \$1,827,837.
129. The parties owe an approximately \$8,500 assessment on the Florida Property.
130. Husband has been paying \$1,700 per month for the parties' Collier's Reserve Country Club membership near the Florida Property. The membership does not have a value.
131. Wife testified that she does not want to retain either the Florida Property or the Collier's Reserve membership following the divorce. However, in her post-trial submissions, she requested that the Florida Property be assigned to her in the division of assets.
132. Husband testified that he believes the Florida Property should be sold.
133. Husband testified that he would possibly like to retain the Collier's Reserve membership following the divorce.

c. Dorothy J. Bosworth 2015 Trust

134. Husband's mother, Dorothy Bosworth ("Ms. Bosworth"), passed away in October of 2019, a few months after the parties separated.
135. Husband and his three siblings are equal beneficiaries (25% each) of their mother's trust, the Dorothy J. Bosworth 2015 Trust, and one of Husband's sisters is the trustee. The Dorothy J. Bosworth 2015 Trust holds title to 77 Brierbrook Street, Milton, Massachusetts ("77 Brierbrook Street").
136. The Court did not receive any credible evidence as to the value of 77 Brierbrook Street. Husband did not list a value for the property on any of his financial statements in evidence or testify to its value at trial.
137. On November 1, 2021, Husband as DAB Co. representative and his sister as trustee signed a contract for DAB Co. to perform renovation work for 77 Brierbrook Street. In exchange, DAB Co. will receive cost plus 5% for DAB direct costs, 2.5% on subcontractors, and 2.5% on suppliers.
138. Husband authorized a DAB Co. employee to serve as foreman for the 77 Brierbrook Street renovation.
139. Husband acknowledged at trial that DAB Co. spent funds renovating 77 Brierbrook Street but testified credibly that he did not know how much. DAB Co. has been paid under \$50,000 as of trial in connection with its work on 77 Brierbrook Street.
140. Husband testified credibly that the renovation work on 77 Brierbrook Street includes adding 500 square feet of living area, remodeling the kitchen, building stone walls, removing walls, adding a bathroom, remodeling an existing bathroom, installing

siding/shingles, installing a new roof, raising the attic roof, repaving the driveway, completing interior painting, completing landscaping, and redoing some of the electrical system, plumbing, and HVAC system.

141. Husband testified credibly that the renovations to 77 Brierbrook Street are 90% complete and that the landscaping is yet to be done.
142. The Court was unable to determine from the credible evidence the value of Husband's interest in the Dorothy J. Bosworth 2015 Trust.

d. 15 RSP LLC

143. This entity holds title to 15 Roc Sam Park Road, Braintree, Massachusetts ("the Braintree Property"), the location for DAB Co. headquarters. Both DAB Co. and another tenant pay to rent space there.
144. Husband and his mother originally purchased the Braintree Property in 2000.
145. Husband holds a 62.5% interest in 15 RSP LLC.
146. The parties stipulated that the fair market value of the Braintree Property is \$1,110,000.00. The Braintree Property is unencumbered. Therefore, Husband's 62.5% interest in the Braintree Property is worth \$693,750.
147. Husband's September 19, 2023 trial financial statement credibly indicated that the LLC holds a bank account at Abington Bank with a balance of \$11,651.00. Therefore, Husband's 62.5% portion of that bank account is \$7,281.88.
148. There was no credible evidence that 15 RSP LLC has a value independent of the value of the Braintree Property and its bank account.
149. The Court finds that in total, the value of Husband's interest in 15 RSP LLC is \$701,031.88.

e. 485-487 BHP Trust LLC

150. The initial operating agreement for the LLC was signed on July 10, 2019.
151. Husband is the manager of and owns a 20% interest in the LLC, and his brother-in-law/project partner owns the remaining 80%.
152. This LLC holds title to 485-487 Blue Hills Parkway, Milton, Massachusetts, on which construction of 52 condominium units is in progress. The units range in size from one to three bedrooms.

153. Husband testified on May 7, 2024 that the construction was approximately 50% done and was expected to be completed in the fall of 2024.
154. The LLC acquired 485-487 Blue Hills Parkway for \$3 million on December 3, 2021, which was more than two years after the parties' separation. However, the project was conceived prior to the parties' separation, and Wife was aware of the project before the separation as well. It took significant time to acquire permits and approval from the town and MassHousing for the project.
155. At the time the LLC acquired 485-487 Blue Hills Parkway, there were three buildings on the land.
156. Husband oversaw the permitting process and attended zoning meetings before the LLC acquired 485-487 Blue Hills Parkway.
157. DAB Co. contributed manpower for permitting, engineering, and investigation in the 485-487 Blue Hills Parkway project development process.
158. DAB Co. contributed \$450,000 for the 485-487 Blue Hills Parkway project, but Husband has not contributed any funds personally.
159. DAB Co. continues to provide site work, utility work, and management and oversight services for the 485-487 Blue Hills Parkway project and charges the LLC for its work and services. Husband testified credibly that DAB Co. has received some payment but that he did not know how much.
160. The 485-487 Blue Hills Parkway project was partially financed, and Husband testified credibly that there is an outstanding loan due to Metro Credit Union for approximately \$18.5 million. Husband personally guaranteed the loan.
161. Husband acknowledged in his trial testimony that after the 52 condominium units are sold, he will receive 20% of proceeds after repayment of the loan from Metro Credit Union.
162. Husband listed on his September 19, 2023 trial financial statement a \$450,000 value for his interest in the LLC, based on the amount of DAB Co.'s contributions to the 485-487 Blue Hills Parkway project. In the absence of other credible evidence as to the value of Husband's interest in 485-487 BHP Trust LLC, his representation as to its value is credited.

*Wife's Individual Assets*

163. Wife listed two motor vehicles on her September 26, 2023 trial financial statement, both of which have negative equity. Her representations regarding her motor vehicles are credited as accurate.

164. Other than DAB Co., Husband's LLC/trust interests, the parties' real estate, Wife's motor vehicles, the children's 529 accounts (addressed within Husband's individual assets, below) and Husband's life insurance policy (addressed within his individual assets, below), Wife listed the following additional assets that have a value on her September 26, 2023 trial financial statement, all of which are credited as accurate, except the Wollaston Country Club membership's value (as explained below):

| <u>Asset</u>                                            | <u>Balance/Value</u> |
|---------------------------------------------------------|----------------------|
| a. Capital Group/American Funds Roth IRA x7713          | \$24,228.00          |
| b. Citizens Bank x5835                                  | "working"            |
| c. Citizens Bank savings x1960                          | \$ 240.00            |
| d. Capital Grp/American Funds x9960 (inherited)         | \$ 6,300.00          |
| e. Citizens Bank x9433 (inherited)                      | \$ 8.00              |
| f. Bank of America x0528                                | \$ 1,500.00          |
| g. Fidelity Investments x5312 (inherited)               | \$ 3,369.00          |
| h. Interest in Estate of Marcelle Schreck (grandmother) | \$20,000.00          |
| i. Wollaston Country Club membership, est. value        | \$15,000.00          |

165. Husband credibly testified that no funds would be returned if the Wollaston Country Club Membership is turned in. Therefore, the Court finds it has no value.
166. Wife accidentally failed to list on her financial statements in evidence a Rockland Federal Credit Union account ending in 8728 with a *de minimis* balance. Wife testified credibly that the account has a current balance of \$5.00. The account balance has not changed since at least September of 2021.
167. Wife's grandmother passed away in 2022. Wife testified credibly that she may receive up to \$20,000 following the sale of her grandmother's home in France, but that the property is not yet on the market for sale.
168. Husband gave Wife many items of jewelry during the marriage. After the separation, Wife put the jewelry in a bag and dropped it off at Husband's office. Husband had possession of the jewelry at the time of trial. Husband testified that he is willing to split the jewelry with Wife or return the jewelry to Wife. In her proposed judgment, Wife requested that the jewelry be returned to her. There was no credible evidence regarding the value of the jewelry.

*Husband's Individual Assets*

169. Husband drives a 2021 Range Rover owned by DAB Co. It was purchased for \$140,703.80 in 2020.
170. Husband's September 19, 2023 trial financial statement listed one vehicle, a Jeep with a fair market value of \$10,000 and no outstanding loan, which is credited as accurate.

171. Other than DAB Co., Husband's LLC/trust interests, the parties' real estate, and Husband's motor vehicle, Husband listed the following additional assets on his September 19, 2023 trial financial statement that have a value, all of which are credited as accurate:

| <u>Asset</u>                                       | <u>Balance/Value</u> |
|----------------------------------------------------|----------------------|
| a. Santander x6659                                 | \$ 16,545.00         |
| b. Schwab (stock account)                          | \$ 47,397.00         |
| c. Legg Mason Funds (joint brokerage account)      | "unknown"            |
| d. Franklin Templeton (joint brokerage account)    | \$ 2,040.00          |
| e. Nationwide 401K                                 | \$679,480.00         |
| f. Northwestern Mutual (life insurance cash value) | \$166,963.00         |

172. In addition to the above assets, Husband holds a 529 account at Capital Group/American Funds (x8747) for the benefit of both Elise and Charlotte. This 529 account had a balance of \$140,494.00 as of June of 2023, but Husband testified credibly that since that time, two semesters at Curry College and one semester at LSU have been paid from that account. Husband has been contributing \$3,000.00 per month to this account. There was no credible evidence of the value of the 529 account as of the conclusion of trial.

#### **Liabilities and Needs of the Parties and Ability of Each Party to Maintain the Marital Lifestyle**

173. The parties owe an approximately \$8,500.00 assessment on the Florida Property.
174. The parties have a joint JetBlue credit card with a \$43,523.00 balance.
175. Husband's weekly expenses listed on his September 26, 2023 trial financial statement total \$10,075.81.
176. Husband's trial financial statement was completed before he moved to his current home at 77 Brierbrook Street, for which he pays \$5,500 per month (or \$1,269.23 per week) in rent to the Dorothy J. Bosworth 2015 Trust. This is the monthly rent that the trustee determined was fair market rent. Husband's rent is now \$807.69 per week more than his rent was at the time he completed his trial financial statement.
177. Husband's girlfriend, Ms. Duquette, does not contribute toward the rent but does contribute toward the utilities. Husband acknowledged that he filled out his trial financial statement before Ms. Duquette began living with him. However, Husband testified credibly that utility expenses are higher at his current home than he reported for his prior residence.
178. Further, the Court notes that Husband's \$692.31 per week contribution to the children's educational accounts is voluntary. It is anticipated that the remaining cost of the

children's college educations can be paid in full under the terms of the accompanying Judgment without any additional weekly contributions from Husband.

179. After consideration of the facts outlined in the preceding three paragraphs, the Court finds that Husband's true current expenses total approximately \$10,000 per week. However, Husband and/or his business are paying virtually all expenses relating to both of the parties' owned properties in addition to Husband's rental home. Husband's weekly expenses will decrease following trial and the implementation of the accompanying Judgment, which includes the assignment of the Florida Property to Wife and the sale of the Former Marital Home.
180. DAB Co. provides and pays for the family's United Healthcare health insurance.
181. Since the parties separated, Husband has been paying Wife's uninsured medical and dental expenses.
182. Husband has continued to travel frequently since the parties' separation, with some trips for business. He has traveled to many places including Napa, Nantucket, Spain, Italy, Newport, Naples, Montreal, Hilton Head, Budapest, and Palm Beach. Husband often charged travel expenses to the DAB Co. credit card.
183. Husband listed \$6,601.00 per week in net income on his September 19, 2023 trial financial statement. The Court's discussion of Husband's income for support purposes can be found in the Rationale and Further Findings, below.
184. Other than the parties' JetBlue credit card, attorney's fees and costs (addressed below), Husband listed the following liabilities on his September 19, 2023 trial financial statement:
 

|    |                               |                |
|----|-------------------------------|----------------|
| a. | Capital One credit card       | \$24,443.00    |
| b. | Colliers Reserve club charges | \$ 7,880.00    |
| c. | IRS – 2022 tax liability      | \$70,000.00    |
| d. | MA DOR – 2023 tax liability   | “undetermined” |
| e. | IRS – 2023 tax liability      | “undetermined” |
185. Wife's September 26, 2023 trial financial statement credibly listed \$6,587 in weekly expenses that she pays for herself and all three children. She stated in a footnote that Husband pays some expenses directly and therefore she has provided estimates for those expenses. Wife's schedule of expenses includes expenses for both of the parties' properties. Wife credibly indicated on her financial statement that some of her expenses, including dining out/take-out, entertainment, travel, clothing, retail purchases, and personal grooming, have been reduced following the separation. It was unclear from Wife's trial financial statement the total amount of weekly expenses she is currently paying herself.

186. There has been no formal alimony or child support order during the pendency of the divorce.
187. Although Wife has reduced some of her personal expenses since the separation, she has continued to travel frequently. She went to Cape Cod and France, and took multiple trips to Martha's Vineyard and Naples, Florida.
188. Wife's September 26, 2023 trial financial statement listed net weekly income of \$300 per week, all from employment. This is not accurate—Wife receives \$1,000 per week from DAB Co. payroll and \$3,000 per month from Husband. Moreover, Wife's employment income is now higher than it was at the time she filed her September 26, 2023 financial statement.
189. Although the Court did not receive complete information regarding Wife's net income and weekly expenses, it finds that Wife's weekly expenses exceed her net weekly income.
190. Other than the parties' JetBlue credit card and attorney's fees and costs (addressed below), Wife listed the following sole individual liability on her September 26, 2023 trial financial statement: Fidelity credit card, \$14,560.
191. The parties filed joint tax returns for 2022. The parties owe a federal tax liability of \$204,250 and a state tax liability of \$25,304. Husband described the tax liability \$70,000 figure listed on his financial statement as "the estimated personal tax liability." No payments have been made toward the parties' 2022 taxes. Wife testified that she believes that Husband should be responsible for paying 90% of the tax liabilities and that she should be responsible for paying the remaining 10%. Husband testified that he believes that these tax liabilities should be paid from the proceeds of the sale of their property or that each party should pay 50% of the liability.
192. Unlike in prior years, for tax years 2022 and 2023, DAB Co. did not make tax payments on Husband's behalf during the year.
193. Regarding the \$70,000 figure labeled "2022 tax liability" on Husband's trial financial statement, a footnote states that "the estimated personal tax liability is \$70,000," but Husband did not explain further the origin of this figure.
194. Wife acknowledged at trial that she does not have any life insurance policies on her life.
195. As indicated above, Husband has a Northwestern Mutual life insurance policy on his life with a cash value of \$166,963.00 as of trial. There was no credible evidence regarding the amount of the death benefit.

196. As of August 31, 2023, Wife had paid her counsel \$110,000.00 and incurred \$213,678.00 in fees. As of that date, Wife also paid \$21,875.00 for a commercial real estate appraiser, \$5,850.00 to an equipment appraiser, and \$10,000.00 to her business valuation expert.
197. As of August 31, 2023, Husband had paid his counsel \$172,441.64 and incurred \$196,874.64 in fees. As of that date, Husband also paid \$47,339.00 for Mr. Bello's services, \$11,450.00 for real estate appraisals, \$6,000.00 for prior mediation services, and \$1,687.50 for a prior conciliation.
198. Husband can maintain the marital lifestyle from his employment income.
199. Wife cannot maintain the marital lifestyle without support from Husband.

**Opportunity of the Parties for Future Acquisition of Capital Assets and Income**

200. Wife's mother passed away in 2001, and her father passed away in 2012.
201. Wife received a little over \$1 million as an inheritance from her father's estate in 2014 or 2015, which she deposited into an individual account in her name. She spent approximately \$500,000 of her inheritance to purchase the parties' Naples, Florida home in 2015.
202. As indicated above, Wife testified credibly that she may receive up to \$20,000 following the sale of her grandmother's home in France, but that the property is not yet on the market for sale. There was no further evidence indicating any other inheritances Wife expects to receive.
203. Husband's father passed away in December of 2014, and his mother passed away in October of 2019.
204. Husband did not receive an inheritance from his father.
205. Husband's mother's estate is still in the process of being administered, and as of trial, Husband had not yet received anything from her estate. As indicated above, Husband and his three siblings are equal beneficiaries of his mother's trust, the Dorothy J. Bosworth 2015 Trust. The Dorothy J. Bosworth 2015 Trust holds title to Husband's current rented residence located at 77 Brierbrook Street, Milton, Massachusetts.
206. Husband has an excellent opportunity to acquire income and capital assets in the future through DAB Co., which he will be retaining in the division of assets. The business has been in operation more than sixty years as of the time of trial and is very profitable. In addition, Husband has not yet received his portion of the inheritance from his mother.
207. Wife's opportunity to acquire income and capital assets in the future is limited apart from support from Husband and marital assets she is receiving in the divorce. Wife has never

earned significant employment income, is not anticipated to receive much in the way of future inheritances, and was fifty-three years old at the conclusion of trial.

**Conduct, Contribution to the Acquisition, Preservation or Appreciation of the Marital Estate, Economic and Non-Economic Contribution to the Marriage, and Contribution of the Parties to the Home and Family**

208. Wife testified credibly that she did most of the parenting of the children when they were young. She was a stay-at-home parent while the children were babies.
209. Wife arranged activities and playgroups for the children. She also selected their preschool.
210. As the children got older, Wife woke them up in the morning, helped them get ready for school, ensured they were on time to their school bus, and picked them up at school.
211. Wife took care of the children if they became ill at school.
212. Wife brought the children to their medical and dental appointments.
213. Wife brought all three children to dance and gymnastics.
214. Wife made arrangements for the children's summer camps.
215. As a child, Elise had a hearing problem. Wife brought Elise to her audiology appointments at Children's Hospital as often as once per month.
216. As a young child, Isabelle was behind in reaching milestones. Wife brought Isabelle to the pediatrician to address the issues and arranged for her to receive early intervention services.
217. During the entirety of Isabelle's grade school years, she had an IEP. Wife attended all of Isabelle's IEP team meetings. She also arranged tutoring for Isabelle.
218. Wife credibly testified that she attended the children's parent-teacher conferences, but that Husband did not attend.
219. During the few years of the marriage when Wife worked on Saturdays after having children, Husband would care for the children most of the time while Wife worked.
220. Wife credibly testified that Husband was and is a great father and that he was a hands-on parent when home.
221. Wife did most of the cooking during the marriage.

222. Husband did most of the financial management and billpaying during the marriage.
223. Wife acknowledged in her trial testimony that she played tennis more and more often as the children got older, including sometimes during the evenings and on weekends beginning in 2010.
224. Wife acknowledged that her tennis playing, horse riding, and travel were sources of contention between her and Husband, because Husband wanted her to spend less time doing those things and more time with him and the children. Husband testified credibly that Wife would make plans to be away from home without doing the necessary preparations at home or communicating to him about the children's schedule during her time away.
225. Wife took Isabelle on college tours. Husband took Elise and Charlotte on college tours. Elise's college tours were held virtually due to the COVID-19 pandemic.
226. Overall, Husband was the primary financial contributor to the acquisition and the appreciation in value of the marital estate.
227. As indicated above, Wife contributed \$500,000 from the more than \$1 million inherited from her father toward the purchase of the parties' Naples, Florida home in 2015. She also spent some of her inherited funds on appliances for the Former Marital Home and on various expenses for herself and the children during the marriage, including Elise's hearing aids, Isabelle's braces, summer camps, and vacations.
228. Husband oversaw permitting on the parties' land in Milton that they later sold for approximately \$825,000 more than the purchase price.
229. Husband's efforts in owning and operating DAB Co. provided the parties the opportunity to acquire their current assets. Wife testified credibly that he had a strong work ethic, often working from 5:30 am until 6:00 or 7:00 pm.
230. The Court finds that overall, the parties had an equal partnership and contributed equally during the marriage.
231. Since the separation, Husband has been paying all expenses on the parties' properties. Some of these expenses are paid by him personally, and some are paid through DAB Co.
232. Wife had use of the parties' JetBlue credit card until June of 2022.
233. Wife testified credibly that she had approximately \$200,000 or \$220,000 remaining from the inheritance she received from her father at the time of separation.
234. Wife testified credibly that she currently has approximately \$6,000 of inherited funds remaining. She spent down the inherited funds after the parties separated for living

expenses and her legal fees for the divorce. Wife testified credibly that she has spent approximately \$135,000 of inherited funds on legal fees.

235. The parties filed tax returns jointly prior to their separation.
236. During 2022, Wife received two tax refunds addressed to both parties: one for \$25,341.00 (for tax year 2020) and one for \$18,593.00 (for tax year 2021). In 2023, Wife received one tax refund addressed to both parties in the amount of \$42,882.55 (for tax year 2020). She did not notify Husband upon receipt of any of the tax refunds and deposited all three checks into her own individual account without Husband's consent.
237. Wife kept the tax refunds despite the agreement of the parties' counsel during the pendency of these proceedings that the tax refunds would be divided equally between the parties.
238. Wife testified that she kept the tax refunds to partially offset an approximately \$115,000 tax refund Husband received. Wife was mistaken in her belief that Husband received a refund of approximately that amount; in reality, \$79,056 of the parties' \$118,433.50 tax overpayment for 2020 was applied to an unpaid tax balance in 2021, which resulted in the ultimate \$42,882.55 tax refund for 2020.
239. The Court is considering the \$18,593.00, \$25,341.00, and \$42,882.55 joint tax refunds that Wife received and deposited to be advance distributions of marital assets to her.
240. Husband assisted Elise and Charlotte with their college applications, purchased furnishings for their college housing, and moved them into college.
241. In late 2021, more than two years after their separation, the parties had an argument that resulted in both becoming physical with each other. Neither party was injured, and the Court does not assign this incident any weight in the division of the marital estate.

#### **Lost Economic Opportunity as a Result of the Marriage**

242. Wife was the children's primary caregiver, but there was insufficient credible evidence regarding any lost economic opportunity Wife might have experienced as a result of the marriage.
243. There was no credible evidence that Husband experienced any lost economic opportunity as a result of the marriage.

#### **Amount and Duration of Alimony**

244. Pursuant to the accompanying Judgment, Husband will be required to pay Wife \$5,000 per week in general term alimony until termination is triggered by the Alimony Reform Act, unless earlier modified by this Court.

### **Present and Future Needs of the Dependent Children**

245. All three of the parties' children have for some periods of time worked for DAB Co. They received gross pay of \$25,000 per year per child between 2018 and 2021 that was not directly tied to how many hours each worked. In addition, Charlotte and Elise worked for DAB Co. during 2023 and were paid hourly. The children's incomes were deposited into Abington Savings accounts in their names. The children have drawn from the accounts, and funds in the accounts were applied toward their college expenses.
246. Since the parties' separation, all three children have lived predominantly with Wife, but Elise and Charlotte have spent some periods of time living with Husband.
247. Elise and Wife had conflicts regarding Elise not following Wife's rules at home. Elise has lived with Husband at times since her senior year of high school.
248. Wife opposed Charlotte attending LSU, and Charlotte did not involve Wife in her college choice.
249. Since the separation, Wife bought a Jeep for Isabelle to drive. Wife used her inherited funds to buy the Jeep.
250. Charlotte and Elise drive cars purchased by Husband. Husband pays their cell phone bills and their car insurance costs. Husband also pays for Charlotte's travel to and from school and Charlotte's sorority expenses.
251. Husband paid the cost of Charlotte's gap year program.
252. Husband testified credibly that Elise's attendance at Curry College costs approximately \$18,000 per semester and that Charlotte's attendance at LSU costs approximately \$23,000 per semester.
253. Husband is currently contributing \$3,000 per month from his own funds to a 529 account with both Charlotte and Elise named as beneficiary.
254. As indicated above, Elise and Charlotte's 529 account had a balance of \$140,494 as of June of 2023, but since that time, two semesters at Curry College and one semester at LSU have been paid from those funds. Husband testified credibly that the balances in the parties' 529 accounts are insufficient to pay the remainder of Charlotte and Elise's college expenses.
255. Husband testified that he would like a portion of the proceeds from the sale of the parties' property to be set aside to pay Elise and Charlotte's remaining college expenses.

### **III. Rationale and Further Findings**

The primary issues in this case are asset/liability division, alimony, and college expenses. The Court has considered all factors under G. L. c. 208, §§ 34, 53 (a), and 55 (b).

#### *Factors Under G. L. c. 208, §§ 34 and 53 (a)*

This is a marriage lasting twenty-two years, six months (or 270 months) at the time Husband was served with Wife's Complaint for Divorce and lasting more than twenty-six years as of trial. Neither party has health issues that currently interfere with their ability to work.

Both parties contributed greatly to the marital enterprise. Husband was already working for his family's well established construction business at the time of the marriage, and seven years after the parties were married, Husband acquired ownership of the business. During the marriage, Husband was the primary financial provider, and his hard work provided financial security for the family and enabled Wife to focus on raising the parties' children. However, Wife also contributed to the marital enterprise the small income she earned while working and the more than \$1 million inheritance she received during the marriage. Wife was the primary contributor at home, serving as the children's primary caretaker, which included arranging their activities, taking care of them when sick, and doing most household chores. Wife's contributions at home enabled Husband to earn the high level of income that primarily resulted in the large marital estate the parties have amassed.

The parties' opportunities to acquire future income and assets differ greatly. Husband's ownership of a longstanding successful business provides him an excellent opportunity to acquire income and capital assets in the future. Moreover, he will be receiving an inheritance of uncertain value from his mother's estate after the administration process is complete. Conversely, Wife's ability to acquire income and assets in the future is limited to her low level of employment income, a small inheritance she is expecting to receive from her grandmother, what she receives in the way of support, and gains on the assets she is being awarded in the divorce. Although there was insufficient credible evidence regarding any lost economic opportunity Wife might have experienced as a result of the marriage, Husband did not lose any economic opportunity as a result of the marriage.

As detailed in the above factual findings, the parties enjoyed an upper-class lifestyle during the latter years of the marriage, and Wife spent money without any limitations. They acquired two homes now worth a total of several million dollars, traveled extensively, had multiple country club memberships at a total cost exceeding \$3,000 per month, and dined out at nice restaurants. Husband has a high level of employment income from DAB Co. (discussed in more detail below), and Wife has been attributed \$600 per week in gross minimum-wage income. Husband can maintain the marital lifestyle from his employment income, but Wife is unable to maintain the marital lifestyle without support from Husband.

### *Asset/Liability Division*

The marital estate has a total value of almost \$9 million. Husband requests an equal division of assets and liabilities, except that Husband's inheritance from his mother be assigned to him without offset to Wife. Wife also requests an almost equal division of assets, but using her value figures, and that Husband's inheritance from his mother be included among the marital assets being equally divided. She also requests in her post-trial submissions that Husband be solely responsible for any tax liability/retain any refund associated with the parties' joint 2022 and 2023 tax returns. This a different allocation than she requested in her testimony at trial, in which she stated that she thought Husband should be responsible for 90% of the parties' tax liabilities and that Wife should be responsible for the remaining 10%.

After due consideration of all mandatory and discretionary factors under G. L. c. 208, § 34, as discussed in more detail above, the Court finds that an equitable division of the assets results in an approximately equal division, except that each party will be entitled to retain their own operating bank account and inheritances that accrued to each party after the separation (i.e., Husband's inheritance from his mother, of which there was insufficient evidence of an approximate value at trial, and Wife's inheritance from her grandmother, with a value of approximately \$20,000), which shall be assigned to the receiving party without offset to the other. In making the determination regarding the parties' inheritances, the Court has considered the sources of the inheritances, that the inheritances were kept separate and not commingled with any joint property, and, most importantly, the timing of the passing of the individuals whose inheritances are at issue, which was after the parties had decided to end their marriage. Pursuant to the accompanying Judgment, the parties' retirement accounts are equalized, and the balances of the few remaining joint accounts shall be equally divided and the accounts subsequently closed.

The Former Marital Home will be sold and the proceeds equally divided between the parties, after \$150,000 is deposited into the parties' 529 account to be applied toward the children's remaining college expenses (as discussed below), and after Husband is reimbursed for the carrying costs/repairs on the Former Marital Home paid following this Judgment. Wife will retain the Florida Property, and Husband will retain his life insurance policies, his interests in DAB Co., the Dorothy J. Bosworth 2015 Trust, 485-487 BHP Trust LLC, and 15 RSP LLC. Each party will retain his/her own vehicles and other financial accounts. Husband shall pay Wife \$937,206.67 as property division to effectuate an equal division of the marital asset/liabilities being divided. This payment shall be due upon the sale of the Former Marital Home.

The Court finds that it is equitable for the parties' tax refunds and liabilities for any year in which they file or filed jointly, including 2024 if they so choose, to be equally allocated between them. Husband has paid virtually all of both parties' expenses between their 2019 separation and the entry of this Judgment, and the marital assets and liabilities are being divided approximately equally. Therefore, an equal division of any resulting tax liability/refund is also equitable.

Other than the mortgages on the parties' properties, the liability owed to Collier's Reserve, the assessment due on the Florida Property, and the parties' joint JetBlue credit card, which have been allocated between the parties as set forth in the accompanying Judgment and factored into the asset division, and the parties' joint tax liabilities, discussed above, each party's liabilities were incurred individually after the separation. The Court finds that an equitable division of liabilities results in each party retaining responsibility for his/her own remaining liabilities.

### *Child Support and College Expenses*

After considering all credible evidence presented at trial relating to the factors under § II (F) of the Massachusetts Child Support Guidelines ("Guidelines"), the Court exercises its discretion to decline to order child support for the two children who remain unemancipated: Charlotte and Elise. Both unemancipated children are in college, currently reside with Wife when not at school, and are principally dependent upon the parties for financial support. However, Husband has been contributing \$3,000 per month to the children's 529 account, which continued even following the parties' separation more than five years ago. Conversely, there was no credible evidence that Wife has made any contributions to the 529 account. As explained below, the Court has allocated between the parties the entirety of the children's college expenses. The Court also notes that neither party requested the entry of a child support order in his/her proposed judgment.

Elise is in college at Curry College, and Charlotte is in college at LSU. It appears from the credible evidence that as of trial, seven semesters at LSU (at \$23,000 per semester) and four semesters of Curry College (at approximately \$18,000 per semester) remained to be paid, for a total of approximately \$233,000. Although there was no direct evidence of the 529 account balance as of the conclusion of trial, the Court infers based on Husband's testimony regarding the college expenses he paid since trial commenced that the 529 account balance is approximately \$80,000 as of January of 2024. Wife requests that Husband be ordered to pay the entirety of the children's remaining college expenses, after the exhaustion of 529 funds. Husband requests that \$150,000 be set aside from the sale of the parties' property to pay the children's remaining college expenses not covered by 529 funds.

After considering all credible evidence presented at trial relating to the factors under Guidelines § II (G), the Court has determined that \$150,000 from the sale of the Former Marital Home shall be deposited into the unemancipated children's 529 account. The Court is treating this \$150,000 deposit as a \$75,000 contribution from each party toward the unemancipated children's college expenses. The unemancipated children's remaining college expenses shall be paid from the 529 account. Any deficiency shall be equally shared between the parties, and any amounts remaining after both children either graduate from college or otherwise become emancipated shall be divided equally between the parties. The Court also specifically finds that to the extent \$150,000 exceeds the total undergraduate, in-state resident costs of the University of Massachusetts-Amherst for the children's remaining years of college, after alimony is paid/received, the parties have the financial ability to set aside \$150,000 from the sale of the Former Marital Home for the unemancipated children's college expenses.

*Alimony*<sup>4</sup>

The parties agree that alimony is appropriate in this case but disagree as to the amount. Wife requests a \$5,115 weekly alimony order; Husband requests a \$1,108 weekly alimony order.

The Court has considered all factors under G. L. c. 208, § 53 (a). Wife has been attributed a gross minimum-wage income of \$600 per week, which would result in approximately \$500 per week in net income. As indicated in the factual findings above, Wife listed \$6,587 in weekly expenses for herself and all three children and stated in a footnote that she has provided estimates for the expenses Husband pays. Wife's schedule of expenses includes estimated expenses for both of the parties' properties and credibly denotes her personal expenses that have been reduced following the separation. After due consideration of all credible evidence, including the fact that the Former Marital Home will be sold following the divorce, that an unspecified portion of Wife's weekly expenses are attributable to the parties' emancipated child, and that Wife has reduced her spending on certain personal expenses following the separation, the Court finds that \$5,500 is a fair approximation of the expenses Wife will incur to maintain a lifestyle comparable to the one enjoyed by the parties during the marriage. Therefore, after considering Wife's own attributed gross employment income, Wife requires approximately \$5,000 per week in alimony to enable her to maintain the marital lifestyle.

The Court must determine Husband's income for alimony purposes to ascertain whether he has the ability to pay that level of alimony. Husband's income from his S Corporation, DAB Co., has fluctuated significantly from year to year. Moreover, as detailed in the above factual findings, Husband's income reflected on his tax returns and as ordinary business income on his K-1s differs greatly from Husband's draws/distributions from DAB Co. When a party is a shareholder of an S Corporation, "some relevant factors that the judge should weigh in determining what portion of undistributed corporate earnings may be available to a shareholder for a . . . support obligation" include: "First, a shareholder's level of control over corporate distributions—as measured by the shareholder's ownership interest—is a factor of substantial importance. . . . A majority shareholder may be relatively more likely to have access to retained funds and ability to manipulate pass-through income, and a sole shareholder even more so. . . . Second, the judge should evaluate the legitimate business interests justifying retained corporate earnings. . . . Although the business judgment rule cannot shield the shareholder from the factual inquiry we describe here, even majority shareholders in a close corporation may be constrained by their duty of utmost good faith and loyalty to the minority shareholders. . . . Third, the judge should weigh affirmative evidence of an attempt to shield income by means of retained earnings." *J.S. v. C.C.*, 454 Mass. 652, 663-664 (2009). "[A] majority or sole shareholder is presumed to have access to retained income and does carry the burden of proof" regarding "the treatment of an S corporation's undistributed earnings for purposes of determining income available for . . . support." *J.S.*, 454 Mass. at 664. Husband is 100% owner of DAB Co. and has the ability to manipulate his pass-through income. Husband did not present evidence regarding

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<sup>4</sup> Because child support is not being ordered, it is unnecessary for the Court to perform calculations under *Cavanagh v. Cavanagh*, 490 Mass. 398 (2022).

DAB Co.'s business interests justifying retaining corporate earnings. However, there was no credible evidence that Husband has attempted to shield income through retained earnings.

The Court finds that the best method to determine Husband's gross income for support purposes is to average the portion of the parties' total gross income as reflected on their 2018-2021 tax returns attributable to Husband, less dividend/interest/pension/annuity income. See Davae v. Davae, 100 Mass. App. Ct. 54, 59 (2021) (finding there was "no error in the judge's use of an average of the husband's past earnings as a basis for determining the husband's present earning capacity."); see also Whelan v. Whelan, 74 Mass. App. Ct. 616, 623 (2009) (quoting LaValley v. LaValley, 25 Mass. App. Ct. 918, 920 (1987)) (explaining that averaging one's income may be appropriate in instances where one's income "might 'fluctuate widely'" and thus an average is "'a reasonable indicator of [the husband's] long-term average income'"). The Court uses data from 2018 to 2021 because those are the four years of the parties' tax returns that are in evidence. The average of these four figures (i.e., \$528,748, \$939,118, \$511,128, and \$1,279,713) is \$814,677. The Court rounds this figure down to \$800,000 to recognize that Wife earned a small amount of employment income during this time period and finds this to be Husband's income for support purposes. With this level of income, Husband can both maintain the marital lifestyle himself and pay \$5,000 per week in alimony to Wife to enable her to maintain the marital lifestyle. This level of alimony is between 33% and 34% of the difference between the parties' incomes for support purposes.

Husband argues that it would be inequitable and impermissible "double dipping" for the Court to use an annual gross income for Husband above \$270,000 for support purposes, because that is the figure Mr. Bello used as reasonable officer compensation for Husband in the DAB Co. business valuation. By doing so, Husband argues, the Court would be "utilizing the same stream of income for both valuation and as the source of support."

"Double dipping is a term used 'to describe the seeming injustice that occurs when property is awarded to one spouse in an equitable distribution of marital assets and is then also considered as a source of income for purposes of imposing [or not imposing] support obligations.' Champion v. Champion, 54 Mass. App. Ct. 215, 219 (2002). '[T]here is nothing ... that prohibits double dipping as matter of law. . . . Rather, . . . the judge must look to the equities of the situation to make [her] determination' (quotations omitted). Fehrman-Cappuccino v. Cappuccino, 90 Mass. App. Ct. 525, 527 n.4 (2016)." Carbonneau v. Carbonneau, 94 Mass. App. Ct. 1112, 2018 WL 6369327 (2018) (unpublished memorandum and order pursuant to Rule 1:28).

The Court recognizes that had Mr. Bello used a higher reasonable compensation figure for Husband in the business valuation, Mr. Bello's ultimate opinion of value for DAB Co. would have been lower. However, Mr. Bello's task in valuing DAB Co. is entirely different than the Court's task in determining Husband's gross income for support purposes. In determining alimony, the Court is required pursuant to the Massachusetts Child Support Guidelines to consider Husband's *actual* "gross income from whatever source," not a hypothetical amount of income that is reasonable for an officer of the business performing the same roles and

responsibilities as Husband to earn under current market rates, as Mr. Bello determined in the DAB Co. business valuation.

Moreover, not a single piece of evidence reflects Husband earning an annual gross income as low as \$270,000 since 2018. Husband's own financial statements in evidence, dating from July 2021 to September 2023, reflect gross income of between \$8,230.62 and \$14,503.13 per week from DAB Co., which is the equivalent of between \$427,992.24 and \$754,162.76 per year. Husband has received DAB Co. K-1 distributions of at least \$440,000.00 every year since 2019, and even in the low outlier year of 2018, Husband received approximately \$290,000.00 in K-1 distributions, which is still higher than \$270,000.00. As of September 18, 2023, which is not even three-quarters of the way through the calendar year, Husband had already received \$245,996.00 in distributions from DAB Co. Husband's current draw at DAB Co. is \$35,666.00 per month, which is the equivalent of \$427,992.00 per year. Further, a gross annual income of \$270,000.00 is not at all reflective of the upper-class lifestyle the parties enjoyed during the latter part of the marriage.

After carefully considering the equities of the situation, the Court concludes that it would be inequitable to use \$270,000 as Husband's gross annual income for support purposes.

Husband shall pay Wife \$5,000 per week in general term alimony until its termination is triggered by the provisions of the Alimony Reform Act, unless his alimony obligation is earlier modified by this Court.

#### *Legal Fees, Expert Witness Fees, and Costs*

Arguments regarding fees and costs were heard at the conclusion of the last day of trial. Each party requested that the other be required to pay a portion of his or her legal fees, expert fees, and costs. Wife's counsel argued that Husband has used far more in marital assets to pay his legal fees and costs than Wife has. Wife requests an equalization of the amount of marital assets used by each party for fees and costs. Husband requests that Wife be ordered to pay \$151,794.61 toward his fees and costs due to Wife's extreme positions, duplicative motions, and the fact that Husband incurred significant fees due to Wife's refusal to engage her expert witness until late in the litigation.

Husband's Statement of Legal Fees and Costs filed on July 19, 2024 indicated that as of May 31, 2024, he had incurred \$338,663.62 in legal fees and \$1,747.43 in costs, for a total of \$340,411.05. As of May 31, 2024, he had paid his counsel \$296,250.43 and owed his counsel \$44,160.82. As of July 19, 2024, Husband's counsel had recorded but not yet billed fees of \$6,258.00. Wife's Affidavit of Counsel filed on July 25, 2024 indicated that she has incurred counsel fees and costs of more than \$550,000 as of June 30, 2024 and has paid her counsel a total of \$110,000 in legal fees and costs and \$37,725 in expert costs. The Court credits the representations in each party's statement/affidavit.

"[T]he court may, in its discretion, award costs and expenses, or either, to either party, whether or not the marital relation has terminated. In any case wherein costs and expenses, or

either, may be awarded hereunder to a party, they may be awarded to his or her counsel, or may be apportioned between them.” G. L. c. 208, § 38. The factors relevant to an exercise of judicial discretion in determining an award of counsel fees include “the ability of . . . counsel, the work performed, the results secured, the time spent, the hourly rates, the existence of contemporaneous time records, the financial positions of the parties, and [a party’s] obstructionist conduct which prolonged the proceedings. . . .” Cooper v. Cooper, 62 Mass. App. Ct. 130, 141 (2004) (quoting Downey v. Downey, 55 Mass. App. Ct. 812, 819 (2002)).

Both parties were represented by experienced counsel at hourly rates commensurate with their skills and experience. The alimony outcome aligns more closely with Wife’s position, and the asset/liability outcome aligns more closely with Husband’s position. Both parties will leave the marriage with substantial assets, although Husband’s earning capacity is higher than Wife’s. After taking into account the fact that Husband has paid most of his outstanding legal fees and costs from DAB Co. during the pendency of the case, totaling almost \$300,000, whereas Wife has only paid her counsel during the pendency of the case only a fraction of the amount she owes, a total of just under \$150,000, and after due consideration of the Cooper factors set forth above, the Court finds that the parties shall equalize the fees/costs paid to counsel and expert witnesses as of the date of this Judgment as provided in the accompanying Judgment.

#### **IV. Conclusions of Law**

1. The Court has jurisdiction over the parties and the subject matter. The Court is satisfied from the evidence presented that there has been an irretrievable breakdown of the marriage to the extent that the legitimate objects of matrimony have been destroyed. There remains no reasonable likelihood the marriage can be preserved and reconciliation efforts will not be successful. An irretrievable breakdown of the marriage has existed from the date of the filing of this complaint to the date of hearing. See G. L. c. 208, § 1B.
2. “In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive. In fixing the nature and value of the property to be so assigned, the court shall also consider the present and future needs of the dependent children of the marriage. The court may also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit.” G. L. c. 208, § 34.
3. The concept of property assignment or equitable division under G. L. c. 208, § 34 must be read to apply in a broad sense to the value of all contributions of the respective spouses toward the marital enterprise; it contemplated something more than determining

which spouse's money purchased a particular asset. See Putnam v. Putnam, 5 Mass. App. Ct. 10, 17 (1977).

4. Equitable, rather than equal, division of property is the ultimate goal of the statute addressing property division in a divorce suit, and to that end, a judge is required to consider the respective contributions of the parties to the marital partnership. See Williams v. Massa, 431 Mass. 619 (2000).
5. The purpose of the division of marital property is to recognize and equitably recompense the parties' respective contributions to the marital partnership; contributions to the marital partnership encompass differing considerations and an imbalance in contributions may have an effect on distribution. See Id.
6. For purpose of determining equitable division of marital property upon a divorce, a party's "estate" includes all property to which party holds title, however acquired. See Heins v. Ledis, 422 Mass. 477 (1996).
7. There is no specific formula to be followed for division of marital assets; rather the Court should consider each of the factors listed in G. L. c. 208, § 34, and thereafter fashion a judgment appropriate to those factors. See Belsky v. Belsky, 9 Mass. App. Ct. 852, 853 (1980).
8. The weight to be accorded to the statutory factors under G. L. c. 208, § 34 is committed to the discretion of the judge. See Ross v. Ross, 385 Mass. 30, 37 (1982).
9. Division of marital assets need not proceed on any precise mathematical formula but should be honest exercise of judicial discretion. See Downing v. Downing, 12 Mass. App. Ct. 968, 969 (1981).
10. In making awards under G. L. c. 208, § 34, the judge must make express findings indicating that he or she weighed each of the required factors and did not consider any irrelevant facts; the reasoning for the judge's conclusions must be apparent in the findings and ruling; the judgment will not be disturbed on appeal unless plainly wrong or excessive. See Heins v. Ledis, 422 Mass. 477, 480 (1996).
11. The Court may not consider factors which are not enumerated in G. L. c. 208, § 34 in making an order for property division. See Rice v. Rice, 372 Mass. 398, 401 (1977).
12. The Court must consider the mandatory factors set out in the statute and may consider the discretionary factors, i.e., the contributions of the parties to the acquisition, preservation and appreciation in value of their estates, and contributions as homemakers. See Drapek v. Drapek, 399 Mass. 240, 243 (1987).
13. "Unlike several other States that have enacted statutes governing the allocation of inherited or gifted assets in a divorce proceeding, Massachusetts has no hard and fast

rules on when such an allocation is appropriate. Once the judge included these assets as part of the marital estate, she had broad discretion to determine how to divide the entire estate equitably, . . . including discretion not to divide the inherited and gifted assets between the parties.” Williams, 431 Mass. at 626 (citations omitted).

14. In determining how to equitably divide inherited assets, “a judge is required to consider the respective contributions of the parties to the marital partnership, and a disparity in contributions may be reflected in the distribution of the inherited and gifted assets. . . . A judge may also consider . . . the source of the assets, each parties’ role in managing the assets, and whether the assets in question had been kept separate or commingled with the couple’s jointly owned property.” Williams, 431 Mass. at 626-7 (citations omitted).
15. “‘Alimony’, the payment of support from a spouse, who has the ability to pay, to a spouse in need of support for a reasonable length of time, under a court order.” G. L. c. 208, § 48.
16. “‘In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other facts as the court considers relevant and material.’” G. L. c. 208, § 53 (a).
17. “[T]he statutory authority of a court to award alimony continues to be grounded in the recipient spouse’s need for support and the supporting spouse’s ability to pay.” Pierce v. Pierce, 455 Mass. 286, 296 (2009) (citation omitted).
18. “The principles governing awards of alimony are well established. Need is a ‘primary consideration,’ Rosenberg v. Rosenberg, 33 Mass. App. Ct. 903, 904 (1992), and is ‘measured by the ‘station’ of the parties—by what is required to maintain a standard of living comparable to the one enjoyed during the marriage.’” D.L. v. G.L., 61 Mass. App. Ct. 488, 508 (2004) (quoting Grubert v. Grubert, 20 Mass App. Ct. 811, 819 (1985)).
19. “Although the [Alimony Reform] Act creates express guidelines to aid judges in fashioning alimony orders, it does not alter the principle that the central issue relevant to a financial award is the dependent spouse’s ‘need for support and maintenance in relationship to the respective financial circumstances of the parties.’” Hassey v. Hassey, 85 Mass. App. Ct. 518, 524-525 (2014) (quoting Partridge v. Partridge, 14 Mass. App. Ct. 918, 919 (1982)).
20. “[T]he amount of alimony should generally not exceed the recipient’s need or 30 to 35 percent of the difference between the parties’ gross incomes established at the time of the order being issued.” G. L. c. 208, § 53 (b).

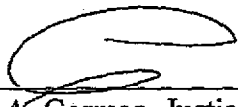
21. For alimony purposes, “income shall be defined as set forth in the Massachusetts child support guidelines.” G. L. c. 208, § 53 (b).
22. The Massachusetts Child Support Guidelines (“Guidelines”) state that “income is defined as gross income from whatever source, regardless of whether that income is recognized by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority.” Guidelines, § I (A). Sources of income under the Guidelines “include, but are not limited to, the following: 1. Salaries [and] wages . . . ; 8. income derived from businesses/partnerships; . . . [and] 21. perquisites or in-kind compensation to the extent that they represent a regular source of income.” Guidelines, § I (A).
23. “When a small business corporation elects to be an S corporation, its earnings or income is not taxed at the corporate entity level but is passed through and taxed to the individual shareholders on a pro rata basis, determined by each shareholder’s percentage ownership interest in the corporation; the pass-through occurs whether or not the income is actually distributed.” J.S. v. C.C., 454 Mass. 652, 660 n.10 (2009).
24. “[S]ome relevant factors that the judge should weigh in determining what portion of undistributed corporate earnings may be available to a shareholder for a . . . support obligation” include: “First, a shareholder’s level of control over corporate distributions—as measured by the shareholder’s ownership interest—is a factor of substantial importance. . . . A majority shareholder may be relatively more likely to have access to retained funds and ability to manipulate pass-through income, and a sole shareholder even more so. . . . Second, the judge should evaluate the legitimate business interests justifying retained corporate earnings. . . . Although the business judgment rule cannot shield the shareholder from the factual inquiry we describe here, even majority shareholders in a close corporation may be constrained by their duty of utmost good faith and loyalty to the minority shareholders. . . . Third, the judge should weigh affirmative evidence of an attempt to shield income by means of retained earnings.” J.S., 454 Mass. at 663-664.
25. “[A] majority or sole shareholder is presumed to have access to retained income and does carry the burden of proof” regarding “the treatment of an S corporation’s undistributed earnings for purposes of determining income available for . . . support.” J.S., 454 Mass. at 664.
26. “Double dipping is a term used ‘to describe the seeming injustice that occurs when property is awarded to one spouse in an equitable distribution of marital assets and is then also considered as a source of income for purposes of imposing [or not imposing] support obligations.’ Champion v. Champion, 54 Mass. App. Ct. 215, 219 (2002). ‘[T]here is nothing . . . that prohibits double dipping as matter of law. . . . Rather, . . . the judge must look to the equities of the situation to make [her] determination’ (quotations omitted). Fehrm-Cappuccino v. Cappuccino, 90 Mass. App. Ct. 525, 527 n.4 (2016).” Carbonneau

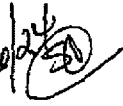
v. Carboneau, 94 Mass. App. Ct. 1112, 2018 WL 6369327 (2018) (unpublished memorandum and order pursuant to Rule 1:28).

27. “The court may require reasonable security for alimony in the event of the payor’s death during the alimony period. Security may include, but shall not be limited to, maintenance of life insurance.” G. L. c. 208, § 55 (a).
28. “Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order; and other obligations of the payor.” G. L. c. 208, § 55 (b).
29. “The court may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three, if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program[.]” G. L. c. 208, § 28.
30. The Court “has discretion either to order or to decline to order child support for children age 18 or older. . . . In determining whether to order child support for a child age 18 or older, the Court shall consider the reason for the child’s continued residence with and principal dependence on the recipient, the child’s academic circumstances, the child’s living situation, the available resources of the parents, and each parent’s contribution to the costs of post-secondary education for the child and/or other children of the family. The Court may also consider any other relevant factors.” Guidelines, § II(F).
31. “[T]he Court has discretion either to order or to decline to order a parent to contribute to post-secondary educational expenses. Contribution to post-secondary educational expenses is not presumptive. In determining whether to order contribution to post-secondary educational expenses, the Court shall consider the cost of the post-secondary education, the child’s aptitudes, the child’s living situation, the available resources of the parents and child, and the availability of financial aid. The Court may also consider any other relevant factors. No parent shall be ordered to pay an amount in excess of fifty percent of the undergraduate, in-state resident costs of the University of Massachusetts-Amherst, unless the Court enters written findings that a parent has the ability to pay a higher amount. Costs for this purpose are defined as mandatory fees, tuition, and room and board for the University of Massachusetts-Amherst[.]” Guidelines, § II(G).
32. A judge has considerable discretion in determining the necessity and the amount of attorney’s fees. See Moriarty v. Stone, 41 Mass. App. Ct. 151, 159 (1996).
33. “[T]he court may, in its discretion, award costs and expenses, or either, to either party, whether or not the marital relation has terminated. In any case wherein costs and expenses, or either, may be awarded hereunder to a party, they may be awarded to his or her counsel, or may be apportioned between them.” G. L. c. 208, § 38.

34. The factors relevant to an exercise of judicial discretion in determining an award of counsel fees include “the ability of . . . counsel, the work performed, the results secured, the time spent, the hourly rates, the existence of contemporaneous time records, the financial positions of the parties, and [a party’s] obstructionist conduct which prolonged the proceedings. . . .” Cooper v. Cooper, 62 Mass. App. Ct. 130, 141 (2004) (quoting Downey v. Downey, 55 Mass. App. Ct. 812, 819 (2002)).

Date: 12/26/24  
*mnc pro tunc to 11/7/24*

  
\_\_\_\_\_  
Patricia A. Gorman, Justice  
Norfolk Probate and Family Court

*12/26/24*  


**CONCLUSION OF VALUE REPORT  
OF A 100% EQUITY INTEREST IN  
DAVID A. BOSWORTH CO., INC.  
AS OF JUNE 30, 2022**

**REPORT DATE: DECEMBER 19, 2022**

**PRIVILEGED & CONFIDENTIAL**

edelstein

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December 19, 2022

Gary Todd, Esq.  
Todd & Weld, LLP  
One Federal Street  
Boston, MA 02110

Sent via Email

*Re: Business valuation of David A. Bosworth Co. in connection with divorce proceedings*

Dear Attorney Todd:

Edelstein & Company LLP was retained to prepare an independent conclusion of value report to determine the fair value of a 100% equity interest in David A. Bosworth Co., Inc. ("Dabco" or "Subject Company") as of June 30, 2022.

This assignment is a valuation engagement, as that term is defined in the Statement on Standards for Valuation Services (SSVS) of the American Institute of Certified Public Accountants (AICPA). A valuation engagement is when a valuation analyst applies valuation approaches and methods he or she deems appropriate in the circumstances to estimate the value of a subject interest. The valuation analyst expresses the results of the valuation engagement as a conclusion of value, which may be either a single amount or a range.

This valuation was performed solely to assist with a Massachusetts divorce matter. The resulting estimate of value should not be used for any other purpose or by any other party for any purpose.

The analysis and report conform to the SSVS and the professional standards for conducting business valuations issued by the National Association of Certified Valuators and Analysts (NACVA). This conclusion of value is presented as a summary report, as that term is defined in paragraph 71 of the SSVS.

The standard of value applied in this report is fair value. Fair value is a legally mandated standard applied to specific transactions and is commonly used in matters involving dissenter's rights, shareholder oppression, and divorce. Fair value for this valuation takes

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into consideration the Massachusetts Supreme Judicial Court (SJC) decisions, *Bernier v. Bernier*<sup>1</sup> and *J.S. v. G.C.*<sup>2</sup>

To achieve this equitable value the foundation of this valuation must consider the factors outlined in Internal Revenue Service (IRS) Revenue Ruling 59-60. Taking into account Revenue Ruling 59-60 and considering the applicable holdings in the above decisions, a fair value standard of value is determined.

The premise of value is as a going concern. As such, it is presumed that in the future, the assemblage of assets, resources and income producing items will continue in use to produce income and cash flow under the same management. Users of this valuation report should be aware that business valuations are based on future earnings potential that may or may not materialize.

Based upon the analysis described in this valuation report, and the facts and circumstances as of the valuation date, the estimated fair value of a 100% equity interest in David A. Bosworth Co., Inc. is \$2,759,000 (rounded) as of June 30, 2022.

This conclusion is subject to the Assumptions and Limiting Conditions found in Appendix C of this valuation report, and to the Valuation Certification and Signature of the Analyst found in Appendix A. The valuation analyst has no obligation to update this report or the conclusion of value for information that comes the analyst's attention after the date of this report.

Sincerely,

*Edelstein & Company LLP*

Edelstein & Company LLP

<sup>1</sup> 449 Mass. 774, 873 N.E.2d 216, SJC-09836.

<sup>2</sup> 454 Mass 652, 912 N.E. 2d 933, SJC-10315.

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David A. Bosworth Co., Inc.

June 30, 2022

Executive Summary

|                                       |                                     |
|---------------------------------------|-------------------------------------|
| Purpose of Valuation:                 | Massachusetts Divorce               |
| Standard of Value:                    | Fair Value                          |
| Premise of Value:                     | Going Concern                       |
| Level of Value:                       | Financial Control                   |
| Attorney/Client Name:                 | Gary Todd, Esq.                     |
| Business Name:                        | David A. Bosworth Co., Inc.         |
| Type of Entity:                       | S Corporation                       |
| Business Interest Valued:             | 100% Equity Interest                |
| Valuation Date:                       | June 30, 2022                       |
| Report Date:                          | December 19, 2022                   |
| Valuation Analyst Name:               | Marc Bello, CPA/ABV, CVA, MAFF, MST |
| Valuation Analyst Firm:               | Edelstein & Company LLP             |
| Fair Value of a 100% Equity Interest: | \$2,759,000 (Rounded)               |

## Introduction

### Scope

Edelstein & Company LLP was retained to prepare an independent conclusion of value report to determine the fair value of a 100% equity interest in David A. Bosworth Co., Inc. ("Dabco" or "Subject Company") as of June 30, 2022. The conclusion of value will be used for the sole purpose of a Massachusetts divorce. The distribution of this report is restricted to counsel and other parties involved in this legal matter. Any other use of this report is unauthorized, and the information included in this report should not be relied upon in such circumstances.

### Standard of Value

The standard of value applied in this report is fair value. Fair value for this valuation takes into consideration the Massachusetts Supreme Judicial Court decisions, *Bernier v. Bernier*<sup>3</sup> and *J.S. v. C.C.*<sup>4</sup> Within the *Bernier* decision, the SJC stated:

*The judge must take particular care to treat the parties not as arm's-length hypothetical buyers and sellers in a theoretical open market but as fiduciaries entitled to equitable distribution of their marital assets.*<sup>5</sup>

This decision addressed two significant valuation issues which were considered for this valuation engagement: tax affecting of a pass-through entity and the applicability of discounts. The tax affecting issue is relevant as the Subject Company is an S Corp for tax purposes – a pass through type entity. For valuation purposes an imputed tax rate is determined and applied to the business's income stream. Discounts for lack of marketability or control are not considered appropriate for this valuation engagement due to the standard of value applied. There is no contemplated sale or extraordinary circumstances that would necessitate the consideration of these discounts.

To achieve an equitable value, the foundation of this valuation must consider the factors outlined in Revenue Ruling 59-60. Applying the factors outlined in the Revenue Ruling results in a standard of value equivalent to fair market value. Fair market value is defined as:

*The price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts. Court decisions frequently state in addition that the hypothetical buyer and seller are assumed to be able, as*

<sup>3</sup> 449 Mass. 774, 873 N.E2d 216, SJC-09836.

<sup>4</sup> 454 Mass 652, 912 N.E. 2d933, SJC-10315.

<sup>5</sup> 449 Mass. 774, 873 N.E2d 216.

*well as willing, to trade and to be well informed about the property and concerning the market for such property.<sup>6</sup>*

Furthermore, fair market value assumes that the price is transacted in cash or cash equivalents.

Taking into account Revenue Ruling 59-60 as a foundational approach with consideration for the applicable holdings in the *Bernier* decision, the analyst arrives at a fair value standard of value. The primary difference between fair market value and fair value as it pertains to this engagement is the applicability of discounts. As indicated above, discounts are not applied to the conclusion of value.

### Premise of Value

This valuation report is prepared using the premise that the subject company is a going concern. The *International Glossary of Business Valuation Terms* defines "going concern" as "an ongoing operating business enterprise." This definition is expanded further in the glossary with the following:

*Going Concern Value [is] the value of the business enterprise that is expected to continue to operate into the future. The intangible elements of Going Concern Value result from factors such as having a trained work force, an operational plant, and the necessary licenses, systems, and procedures in place.<sup>7</sup>*

This means that it is presumed that, in the future, the assemblage of assets, resources and income producing items will continue in use to produce income and cash flow under the same management. The subject company is a going concern business enterprise.

### Levels of Value

Although valuation is a range concept, current valuation theory suggests that there are four basic "levels" of value applicable to a business or business interest. The levels of value are respectively:<sup>8</sup>

#### Strategic Control:

Strategic buyers can (and do) pay more for companies because they expect to realize synergies from acquisitions (e.g., perhaps through eliminating duplicate expenses or achieving cross-selling benefits) that increase future cash flows.

<sup>6</sup> IRS Revenue Ruling 59-60, 1959-1 CB 237 – IRC, §2.02.

<sup>7</sup> The *International Glossary of Business Valuation Terms* as adopted by the AICPA, ASA, CIBV, NACVA, and the IBA.

<sup>8</sup> Mercer, Z. Christopher and Harms, Travis, *Business Valuation – An Integrated Theory*, Second Edition, Wiley Finance, 2008, Chapter 3. The Levels of Value Chart is from the Mercer Capital website.

**Financial Control:**

Financial buyers acquire companies based on their ability to extract reasonable (to them) rates of return through the acquisition of companies, often on a leveraged basis.

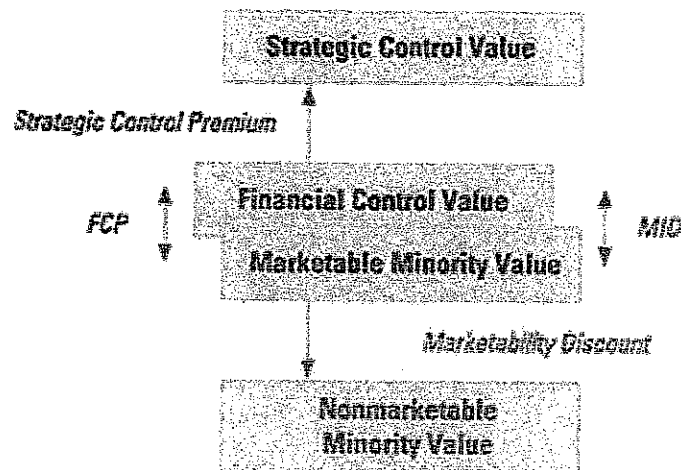
**Marketable Minority:**

Also termed "as if freely tradable minority interest" the value of a minority interest, lacking control, but enjoying the benefit of market liquidity. The conceptual difference between the financial control value and the marketable minority value is the financial control premium.

**Nonmarketable Minority Interest:**

The value of a minority interest, lacking both control and market liquidity.

The following chart illustrates the four conceptual levels of value and the implied discounts or premiums associated with each:



Based on the standard of value to achieve an equitable value of a 100% equity interest in David A. Bosworth Co., Inc., the level of value is on a financial control basis.

Sources of Information

The following is a list of the information relied upon for this assignment:

- David A. Bosworth Co., Inc. 2016-2021 reviewed financial statements.
- David A. Bosworth Co., Inc. June 30, 2022 internal financial statements.
- David A. Bosworth Co., Inc. 2016-2021 tax returns.
- David A. Bosworth Co., Inc. Accounts Receivable Aging Reports as of year ends 2019, 2020, 2021 and interim June 30, 2022.
- David A. Bosworth Co., Inc. Accounts Payable Aging Reports as of year ends 2019, 2020, 2021 and interim June 30, 2022.
- David A. Bosworth Co., Inc. Backlog Reports for year ends 2017 to 2021, and interim as of June 30, 2022.
- David A. Bosworth Co., Inc. various Bosworth family member W-2s for 2016-2021.
- David A. Bosworth Co., Inc. Fixed Asset details for year ends 2019, 2020, 2021 and interim as of June 30, 2022.
- David A. Bosworth Co., Inc. loan documents.
- David A. Bosworth Co., Inc. Restated Articles of Organization.
- Appraisal report of 15 Roc Sam Park Road, Braintree, MA prepared by LandVest as of March 15, 2022.
- Appraisal report of 10 Richardi Reservoir Road, Randolph, MA prepared by LandVest as of March 15, 2022.
- July 19 and October 24, 2022 letters Re: Inspection of Machinery and Equipment reporting analysis of fair market value.
- Subject Company website: <https://dabco.com/>
- Management interview with Charles Bosworth, President.
- Questionnaire completed by Charles Bosworth, President.
- Various texts, references, practice aids and databases commonly used by valuation analysts as cited throughout this report.

Approach

The approach is to determine an estimate of value which would provide a fair and reasonable return on investment to an investor or owner, in view of the facts known or foreseeable at the time. This estimate is based on, among other things, an evaluation of the risks facing the business and an estimate of the return on investment which would be required on alternative investments with similar levels of risk.

Both internal and external factors which influence the value of the business were reviewed, analyzed and interpreted. Internal factors include the business's financial position, results of operations and the size and marketability of the interest being valued. External factors include, among other things, the status of the industry and the position of the subject company relative to the industry.

The Internal Revenue Service Revenue Ruling 59-60 states:

*It is advisable to emphasize that in the valuation of the stock of closely held corporations or the stock of corporations where market quotations are either lacking or too scarce to be recognized, all available financial data, as well as all relevant factors affecting the fair market value, should be considered. The following factors, although not all-inclusive, are fundamental and require careful analysis in each case:*

- a) The nature of the business and the history of the enterprise from its inception.*
- b) The economic outlook in general and the condition and outlook of the specific industry in particular.*
- c) The book value of the stock and the financial condition of the business.*
- d) The earning capacity of the company.*
- e) The dividend-paying capacity.*
- f) Whether or not the enterprise has goodwill or other intangible value.*
- g) Sales of the stock and the size of the block of stock to be valued.*
- h) The market price of stocks of corporations engaged in the same or a similar line of business having their stocks actively traded in a free and open market, either on an exchange or over-the-counter.<sup>9</sup>*

These factors are also described in the professional valuation standards described above and the approach gives careful consideration to each.

<sup>9</sup> IRS Revenue Ruling 59-60, 1959-1 CB 237 – IRC, § 4.01.

Business valuation theory promulgates three basic approaches to value, as set forth below.<sup>10</sup>

Asset (Asset Based) Approach:

*A general way of determining a value indication of a business, business ownership interest, or security using one or more methods based on the value of the assets net of liabilities.*

Income (Income Based) Approach:

*A general way of determining a value indication of a business, business ownership interest, security, or intangible asset using one or more methods that convert anticipated economic benefits into a present single amount.*

Market (Market Based) Approach:

*A general way of determining a value indication of a business, business ownership interest, security, or intangible asset by using one or more methods that compare the subject to similar businesses, business ownership interests, securities, or intangible assets that have been sold.*

The various methods of valuation that appraisers use in practice are typically considered as subdivisions of these broad approaches. Valuation methods under the market and income approaches generally contain common characteristics such as measures of benefit streams, discount rates and/or capitalization rates and multiples.

Subsequent Events

The AICPA's SSVS defines a subsequent event as "[a]n event that occurs subsequent to the valuation date." Paragraph 43 of the standard further discusses the concept:

*Generally, the valuation analyst should consider only circumstances existing at the valuation date and events occurring up to the valuation date. An event that could affect the value may occur subsequent to the valuation date; such an occurrence is referred to as a subsequent event. Subsequent events are indicative of conditions that were not known or knowable at the valuation date, including conditions that arose subsequent to the valuation date. The valuation would not be updated to reflect those events or conditions. Moreover, the valuation report would typically not include a discussion of those events or conditions because a valuation is performed as of a point in time—the valuation date—and the events described in this subparagraph, occurring subsequent to that date, are not relevant to the value determined as of that date. In situations in which a valuation is meaningful to the intended user beyond the valuation date, the events may be of such nature and significance as to warrant*

<sup>10</sup> As defined in the International Glossary of Business Valuation Terms.

*disclosure (at the option of the valuation analyst) in a separate section of the report in order to keep users informed (paragraphs 52(p), 71(r), and 74). Such disclosure should clearly indicate that information regarding the events is provided for informational purposes only and does not affect the determination of value as of the specified valuation date.*

Based on the information gathered in this valuation, no additional subsequent event disclosures are warranted.

#### Reliance on a Specialist

This analysis considers the work of a third party specialist who provided real estate appraisals for properties owned by David A. Bosworth Co., Inc. and a related party. This included LandVest's appraisal reports of 15 Roc Sam Park Road, Braintree, MA and of 10 Richardi Reservoir Road, Randolph, MA, both as of March 15, 2022.

In addition, this analysis considers the work of Robert Rosa Jr. of C N Wood Co, pertaining to the market value of machinery and equipment as of July 15, 2022 (and updated also as of October 24, 2022).

The specialists' work was used in consideration of normalizing and non-operating adjustments. No responsibility is assumed by the valuation analysts for the specialists' work.

#### Assumptions

This valuation report relies on key assumptions detailed throughout the report. This valuation report has been prepared in accordance with the National Association of Certified Valuers and Analysts' Professional Standards and the Statement on Standards for Valuation Services (SSVS) of the American Institute of Certified Public Accountants. In accordance with these standards, a listing of Assumptions and Limiting Conditions are provided in Appendix C of this valuation report and the Valuation Certification and Signature of the Analyst are included in Appendix A.

### Analysis of the Subject Interest

An analysis of the subject interest is set forth by topic in the sections that follow. This includes an overview of the company, industry and economic conditions, financial analysis, normalizing and ongoing financial considerations, valuation methodologies, and conclusion of value.

### Subject Company Overview

The business was started in 1959 by brothers David and Walter Bosworth. The legal entity, David A. Bosworth Co., Inc., was organized in Massachusetts in early 1964. The brothers parted ways in this business in the 1980s with David retaining control of the corporation. Charles Bosworth (son of David) began working in the business in the 1990s. The Company was purchased by Charles Bosworth in 2005.

### Services & Customers

The main services that Dabco provides are site work, excavation, utility installation, and construction management services. The business also has additional offerings such as roadway and parking lot construction, asphalt paving, concrete flatwork and hardscaping, engineering and surveying, snow removal, and drainage rehabilitation and infiltration system design.

Work is performed for developers, property owners, general contractors and institutions. Work for general contractors is approximately two-thirds of the business. The vast majority of revenue comes from long-standing, repeat relationships.

Dabco's work is concentrated in greater Boston area.

### Ownership

As of the valuation date, Dabco is owned 100% by Mr. Charles Bosworth. The corporation has elected Subchapter S status, meaning that its earnings generally pass through to the owner for tax purposes.

### Management

Dabco's management team includes the following individuals:

*Charles Bosworth – President.* Charlie has been with the company for approximately three decades. He oversees all operations of the company. Additionally, he holds key relationships with general contractors.

*Bryan Sullivan - Vice President of Construction.* Bryan has worked at Dabco for over two decades. He manages the entire field staff.

*Dennis Foley – Director of Operations.* Dennis has worked at Dabco for more than two decades. He manages trucking deliveries and equipment.

*Catalina Chavier – Chief Financial Officer.* Catalina has been with Dabco for more than a decade. She is in charge of all of the financial aspects of the company.

*Nancy Bosworth – Office Manager.* Nancy worked for the business from 2004 to 2011, and was recently employed again in 2020 and onward.

*Joe Murphy – Director of Engineering & Estimating.* Joe worked for Dabco from approximately 2007 to 2012, and returned in 2018 and onward.

In addition to the above employees, they also have superintendents, engineering, and office staff on board. The Company has roughly 40 employees.

Dabco's work and labor-base is non-union.

#### Competition

There are many competitors in Dabco's service areas. The business competes with both non-union and union players. Major competitors of Dabco include J. Derenzo Co., J.R. Vinagro Corp., D'Allessandro Corp., GMC Construction, O Spirito, Inc., D&M Civil, and Emerald Excavating.

The Company operates in an environment where all jobs are competitively bid, with price being the an important factor. The business's employees are considered a competitive strength. However, employees have other options with retention difficult as of the valuation date.

Economic & Industry Conditions

A brief overview of the United States and regional economy are provided, as well as an overview of the various industry categories in which the business operates. A summary of each of these environments is set forth below. Additional research on the economy and industry have been maintained in the analyst's workpapers.

Economy

As of the valuation date the U.S. economy is in a state of flux. Financial market activities and headlines suggest in the first half of 2022 that the economy may be in recession or is headed for one. As of the valuation date, The National Bureau of Economic Research's Business Cycle Dating Committee has yet to call a recession.<sup>11</sup>

According to the Federal Open Market Committee (FOMC) economic projections from June 2022, median estimates of real GDP growth are expected to be below 2% for 2022, 2023, 2024, and in the long-run. Median inflation estimates are to remain elevated in 2022 (above 5%) before tapering to 2.6% in 2023 and closer to 2% thereafter.<sup>12</sup>

Based on release by the U.S Bureau of Labor Statistics, consumer prices have increased by 9.1% over the 12-month period ended June 2022. Energy, including fuel, utility gas and other categories are strong contributors. Food and new vehicles are also elevated.

According to MassBenchmarks' Current and Leading Economic Indices, real GDP slowed in the first two quarters of 2022, being approximately flat and by Q2 declining slightly at a 0.2% annualized rate. Real GDP change in the first half has been better than the wider US. In state figures are expected to pick up in Q3 and Q4. Unemployment remains low as of the valuation date in Massachusetts. Further, it was noted that metro Boston inflation is elevated like the Wider US. However, inflationary figures through Q2 are lesser than US-wide figures.<sup>13</sup>

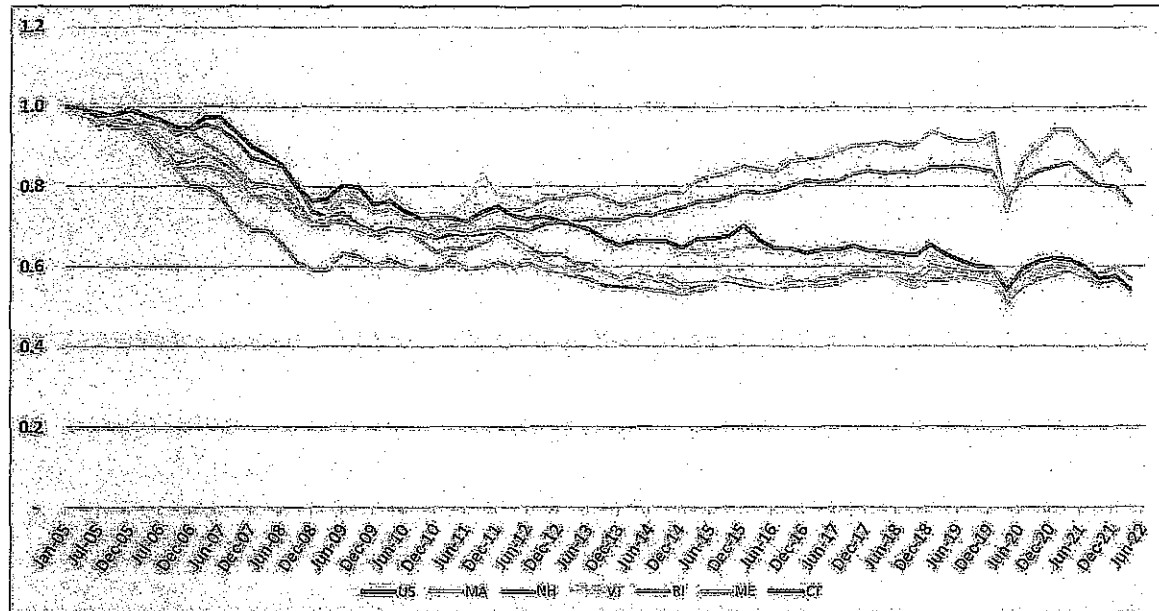
In the first half of the year, construction activity is starting to ease. Overall figures for the United States as well as the New England states have started to tick downward. The chart below shows the historical trend of construction real gross domestic product (GDP) in those geographies.<sup>14</sup>

<sup>11</sup> <https://www.nber.org/research/business-cycle-dating> last accessed December 8, 2022.

<sup>12</sup> Summary of Economic Projections per FOMC meeting held June 14-15, 2022.

<sup>13</sup> Clayton-Matthews, Alan. Massachusetts Current and Leading Economic Indices for June 2022, MassBenchmarks. July 28, 2022.

<sup>14</sup> The various indices on the chart are sourced from US Bureau of Economic Analysis data, as retrieved from FRED, Federal Reserve Bank of St. Louis economic data site. Last accessed on December 7, 2022.



## Industry

### Excavation Contractors<sup>15</sup>

This industry is primarily engaged in excavation for building construction (both residential and nonresidential), as well as nonbuilding construction excavation and trenching. This includes drilling shafts, foundation digging, drilling, and grading. Further, the industry is involved in work performed on new work, additions, alterations, and repairs.

Key external drivers for this industry include the following:

- Value of private nonresidential construction
- Value of residential construction
- Government investment
- Interest rates

The majority of industry revenue is derived from excavation work for buildings (approximately 35% from residential and 43% from nonresidential). Over the five years to 2022, the industry has trended strongly, despite the interruptions of COVID-19 starting in 2020. Notwithstanding the pandemic, annualized real revenue growth over the last five years is estimated at 0.7%. US industry-wide revenue was estimated at \$79 billion by

<sup>15</sup> IBISWorld Industry Report 23891a Excavation Contractors in the US, Kush Patel, February 2022.

David A. Bosworth Co., Inc.

June 30, 2022

early 2022. This builds in a marginal expected decline for the current year, led by changes in residential market demand.

Over the five years to 2027, industry revenue is expected to grow at a real rate of approximately 1% annualized. This is expected to be aided by a strong return of nonresidential activity, and tempered by weakness in residential.

Industry profitability has represented approximately 7% of revenue for the last several years. Key cost contributors are purchasing (around 35% of revenue), wages (28%), and depreciation (4%).

The industry category is mature and exhibits steady competition.

### Financial Analysis

Part of the valuation procedures is to analyze the financials of the business. The ensuing report section provides a summary of key highlights pertaining to the business's financial position and operating results.

The principal sources of information for this assignment included annual reviewed financial statements. To bridge to the mid-year valuation date of June 30<sup>th</sup>, internal financial statements are used.

Financial analysis covers topics such as financial position, earning capacity, normalization adjustments and ongoing expectations.

This financial analysis considers comparisons to industry benchmarks. For example, Annual Statement Studies published by The Risk Management Association ("RMA") were considered for industry code 238910 Site Preparation Contractors, on a national level and in the \$10-25 million size category.

Tabular summaries of historical financial statements are provided on ensuing pages, followed by discussion and analysis.

David A. Bosworth Co., Inc.

June 30, 2022

| David A. Bosworth Co., Inc.<br>Historical Balance Sheets<br><i>Source: 2016-2021 Reviewed Financials, June 30, 2022 Internal</i> |                     |                     |                     |                     |                     |                     |                     | (Common Sized) |               |               |               |               |               |               |               |
|----------------------------------------------------------------------------------------------------------------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
|                                                                                                                                  | As of December 31:  |                     |                     |                     |                     |                     |                     |                | June          |               |               |               |               |               |               |
|                                                                                                                                  | 2016                | 2017                | 2018                | 2019                | 2020                | 2021                | 2022                |                | 2016          | 2017          | 2018          | 2019          | 2020          | 2021          | 2022          |
| <b>Assets</b>                                                                                                                    |                     |                     |                     |                     |                     |                     |                     |                |               |               |               |               |               |               |               |
| <b>Current Assets</b>                                                                                                            |                     |                     |                     |                     |                     |                     |                     |                |               |               |               |               |               |               |               |
| Cash                                                                                                                             | \$ 1,524,493        | \$ 538,597          | \$ 399,719          | \$ 538,589          | \$ 228,474          | \$ 924,332          | \$ 676,869          |                | 22.1%         | 9.3%          | 4.4%          | 5.9%          | 2.4%          | 12.1%         | 8.3%          |
| Contract receivables, net                                                                                                        | 2,818,314           | 2,655,664           | 5,115,309           | 3,039,156           | 3,589,003           | 1,603,915           | 2,758,485           |                | 40.9%         | 45.7%         | 56.1%         | 33.3%         | 37.8%         | 21.0%         | 33.7%         |
| Retainage receivable                                                                                                             | -                   | -                   | -                   | 1,170,030           | -                   | -                   | -                   |                | 0.0%          | 0.0%          | 0.0%          | 12.8%         | 0.0%          | 0.0%          | 0.0%          |
| Contract Assets                                                                                                                  | -                   | 8,086               | -                   | 46,679              | 1,074,817           | 677,814             | 614,058             |                | 0.0%          | 0.1%          | 0.0%          | 0.5%          | 11.3%         | 8.8%          | 7.5%          |
| Loan receivable, stockholder                                                                                                     | 412,363             | 412,363             | 412,363             | 488,403             | 584,195             | 528,509             | 571,458             |                | 6.0%          | 7.1%          | 4.5%          | 9.3%          | 6.4%          | 6.9%          | 7.0%          |
| Prepaid expenses & Other                                                                                                         | 11,600              | -                   | 25,903              | 43,289              | 15,540              | 15,540              | 15,540              |                | 0.2%          | 0.0%          | 0.3%          | 0.5%          | 0.2%          | 0.2%          | 0.2%          |
| Employee retention credit receivable                                                                                             | -                   | -                   | -                   | -                   | -                   | 288,556             | 238,234             |                | 0.0%          | 0.0%          | 0.0%          | 0.0%          | 0.0%          | 3.8%          | 2.9%          |
| <b>Total Current Assets</b>                                                                                                      | <b>4,766,669</b>    | <b>3,614,710</b>    | <b>5,953,294</b>    | <b>5,324,148</b>    | <b>5,492,029</b>    | <b>4,938,666</b>    | <b>4,874,655</b>    |                | <b>69.1%</b>  | <b>62.3%</b>  | <b>65.3%</b>  | <b>58.4%</b>  | <b>57.8%</b>  | <b>52.8%</b>  | <b>59.5%</b>  |
| <b>Net Fixed Assets</b>                                                                                                          | <b>2,129,241</b>    | <b>2,190,693</b>    | <b>3,162,760</b>    | <b>3,796,270</b>    | <b>4,057,257</b>    | <b>3,614,419</b>    | <b>3,321,391</b>    |                | <b>30.9%</b>  | <b>37.7%</b>  | <b>34.7%</b>  | <b>41.6%</b>  | <b>42.2%</b>  | <b>47.2%</b>  | <b>40.5%</b>  |
| <b>Total Assets</b>                                                                                                              | <b>\$ 6,895,901</b> | <b>\$ 5,805,403</b> | <b>\$ 9,116,054</b> | <b>\$ 9,120,418</b> | <b>\$ 9,499,286</b> | <b>\$ 7,653,085</b> | <b>\$ 8,196,046</b> |                | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> |
| <b>Liabilities &amp; Equity</b>                                                                                                  |                     |                     |                     |                     |                     |                     |                     |                |               |               |               |               |               |               |               |
| <b>Liabilities</b>                                                                                                               |                     |                     |                     |                     |                     |                     |                     |                |               |               |               |               |               |               |               |
| <b>Current Liabilities</b>                                                                                                       |                     |                     |                     |                     |                     |                     |                     |                |               |               |               |               |               |               |               |
| Notes payable, line of credit                                                                                                    | \$ -                | \$ -                | \$ 650,000          | \$ 400,000          | \$ 403,544          | \$ 600,000          | \$ 1,211,000        |                | 0.0%          | 0.0%          | 7.1%          | 4.4%          | 4.2%          | 7.8%          | 14.8%         |
| Current maturities of long-term debt                                                                                             | 441,940             | 320,563             | 340,622             | 409,799             | 414,128             | 347,432             | 347,432             |                | 6.4%          | 5.5%          | 3.7%          | 4.6%          | 4.4%          | 4.5%          | 4.2%          |
| Accounts payable                                                                                                                 | 1,226,834           | 211,437             | 1,615,071           | 1,643,643           | 1,930,842           | 349,606             | 1,169,758           |                | 17.8%         | 3.6%          | 17.7%         | 18.0%         | 20.3%         | 4.6%          | 14.2%         |
| Accrued expenses                                                                                                                 | 83,249              | 42,481              | 145,518             | 121,326             | 103,662             | 886,972             | 155,285             |                | 1.2%          | 0.7%          | 1.6%          | 1.3%          | 1.1%          | 8.7%          | 1.9%          |
| Contract liabilities                                                                                                             | 1,623,720           | 2,696,595           | 2,825,007           | 2,674,093           | 1,780,970           | 1,020,646           | 1,006,348           |                | 23.6%         | 46.5%         | 31.0%         | 29.3%         | 18.7%         | 13.3%         | 12.3%         |
| <b>Total Current Liabilities</b>                                                                                                 | <b>3,380,843</b>    | <b>3,273,076</b>    | <b>5,576,218</b>    | <b>5,248,771</b>    | <b>4,633,346</b>    | <b>2,983,656</b>    | <b>3,880,823</b>    |                | <b>49.0%</b>  | <b>56.4%</b>  | <b>61.2%</b>  | <b>57.5%</b>  | <b>48.6%</b>  | <b>39.0%</b>  | <b>47.3%</b>  |
| <b>Long-Term Debt</b>                                                                                                            | <b>1,002,510</b>    | <b>488,226</b>      | <b>1,152,087</b>    | <b>1,457,481</b>    | <b>1,856,194</b>    | <b>1,683,639</b>    | <b>1,543,816</b>    |                | <b>14.5%</b>  | <b>8.4%</b>   | <b>12.6%</b>  | <b>16.0%</b>  | <b>19.5%</b>  | <b>22.0%</b>  | <b>18.8%</b>  |
| <b>Total Liabilities</b>                                                                                                         | <b>4,383,353</b>    | <b>3,761,302</b>    | <b>6,728,305</b>    | <b>6,706,252</b>    | <b>6,489,540</b>    | <b>4,667,295</b>    | <b>5,424,639</b>    |                | <b>63.6%</b>  | <b>64.8%</b>  | <b>73.8%</b>  | <b>73.5%</b>  | <b>68.3%</b>  | <b>61.0%</b>  | <b>66.2%</b>  |
| <b>Total Equity</b>                                                                                                              | <b>2,512,548</b>    | <b>2,044,101</b>    | <b>2,387,779</b>    | <b>2,414,164</b>    | <b>3,009,746</b>    | <b>2,985,790</b>    | <b>2,771,407</b>    |                | <b>36.4%</b>  | <b>35.2%</b>  | <b>26.2%</b>  | <b>26.5%</b>  | <b>31.7%</b>  | <b>39.0%</b>  | <b>33.8%</b>  |
| <b>Total Liabilities &amp; Equity</b>                                                                                            | <b>\$ 6,895,901</b> | <b>\$ 5,805,403</b> | <b>\$ 9,116,084</b> | <b>\$ 9,120,416</b> | <b>\$ 9,499,286</b> | <b>\$ 7,653,085</b> | <b>\$ 8,196,046</b> |                | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b> |

David A. Bosworth Co., Inc.

June 30, 2022

| David A. Bosworth Co., Inc.<br>Historical Income Statements<br>Source: 2016-2021 Reviewed Financials, June 30, 2022 Internal |                              |               |               |               |               |               |                     | (Common-Sized) |        |        |        |        |        |        |                     |
|------------------------------------------------------------------------------------------------------------------------------|------------------------------|---------------|---------------|---------------|---------------|---------------|---------------------|----------------|--------|--------|--------|--------|--------|--------|---------------------|
|                                                                                                                              | For Year Ending December 31, |               |               |               |               |               | YTD<br>June<br>2022 |                |        |        |        |        |        |        | YTD<br>June<br>2022 |
|                                                                                                                              | 2016                         | 2017          | 2018          | 2019          | 2020          | 2021          |                     | 2016           | 2017   | 2018   | 2019   | 2020   | 2021   |        |                     |
| Revenue                                                                                                                      | \$ 15,248,768                | \$ 10,977,666 | \$ 15,569,966 | \$ 15,455,949 | \$ 13,232,355 | \$ 15,466,259 | \$ 5,567,195        | 100.0%         | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0%              |
| Cost of Revenue                                                                                                              | 13,190,289                   | 9,064,761     | 13,084,433    | 12,741,971    | 10,923,505    | 12,899,752    | 5,340,437           | 86.6%          | 83.0%  | 83.9%  | 82.4%  | 82.6%  | 83.7%  | 84.7%  | 84.7%               |
| Gross Profit                                                                                                                 | 2,058,499                    | 1,852,874     | 2,465,533     | 2,713,978     | 2,308,850     | 2,566,497     | 926,748             | 13.5%          | 17.0%  | 16.1%  | 17.6%  | 17.4%  | 16.3%  | 15.3%  | 15.3%               |
| Operating Expenses                                                                                                           | 1,541,805                    | 1,644,284     | 1,801,572     | 1,972,753     | 2,078,105     | 2,180,628     | 906,998             | 10.1%          | 15.1%  | 11.6%  | 12.8%  | 15.7%  | 14.2%  | 14.4%  | 14.4%               |
| Operating Profit (Loss)                                                                                                      | 516,694                      | 208,590       | 703,961       | 741,225       | 230,745       | 385,869       | 59,750              | 3.4%           | 1.9%   | 4.5%   | 4.8%   | 1.8%   | 2.1%   | 0.9%   | 0.9%                |
| Other Income (Expense)                                                                                                       |                              |               |               |               |               |               |                     |                |        |        |        |        |        |        |                     |
| Other Income                                                                                                                 | 9,375                        | -             | -             | -             | 10,800        | -             | -                   | 0.1%           | 0.0%   | 0.0%   | 0.0%   | 0.1%   | 0.0%   | 0.0%   | 0.0%                |
| Gain on sale of property and equipment                                                                                       | 91,121                       | -             | 6,079         | 129           | 27,023        | -             | -                   | 0.6%           | 0.0%   | 0.0%   | 0.0%   | 0.2%   | 0.0%   | 0.0%   | 0.0%                |
| PPP Loan Forgiveness                                                                                                         | -                            | -             | -             | -             | 998,000       | -             | -                   | 0.0%           | 0.0%   | 0.0%   | 0.0%   | 7.5%   | 0.0%   | 0.0%   | 0.0%                |
| Interest Expense                                                                                                             | (77,176)                     | (47,045)      | (56,588)      | (117,522)     | (95,525)      | (90,049)      | (54,169)            | -0.5%          | -0.4%  | -0.4%  | -0.8%  | -0.7%  | -0.6%  | -0.9%  | -0.9%               |
| Employee Retention Credits                                                                                                   | -                            | -             | -             | -             | -             | 288,586       | -                   | 0.0%           | 0.0%   | 0.0%   | 0.0%   | 0.0%   | 1.9%   | 0.0%   | 0.0%                |
| Net Other Income (Expense)                                                                                                   | 23,320                       | (47,045)      | (50,509)      | (117,493)     | 928,498       | 198,537       | (54,169)            | 0.2%           | -0.4%  | -0.3%  | -0.8%  | 7.6%   | 1.3%   | -0.9%  | -0.9%               |
| Pretax Profit (Loss)                                                                                                         | 540,014                      | 161,545       | 653,452       | 623,732       | 1,161,253     | 524,376       | 5,611               | 3.6%           | 1.5%   | 4.2%   | 4.0%   | 8.8%   | 3.4%   | 0.1%   | 0.1%                |
| Tax Provision (Benefit)                                                                                                      | 31,335                       | 5,000         | 29,000        | 12,669        | 20,000        | 20,000        | -                   | 0.2%           | 0.0%   | 0.1%   | 0.1%   | 0.2%   | 0.1%   | 0.0%   | 0.0%                |
| Net Profit (Loss)                                                                                                            | \$ 508,679                   | \$ 156,545    | \$ 633,452    | \$ 611,123    | \$ 1,141,253  | \$ 504,376    | \$ 5,611            | 3.3%           | 1.4%   | 4.1%   | 4.0%   | 8.6%   | 3.3%   | 0.1%   | 0.1%                |

Financial Position

The concept of financial position is illustrated by a firm's balance sheet. The historical balance sheets were previously summarized herein.

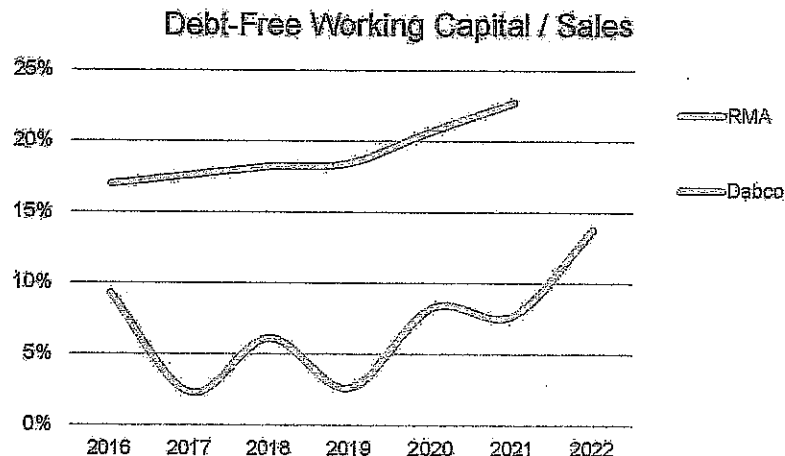
Components of financial condition meriting a closer look for valuation purposes included:

- Working Capital
- Fixed Assets
- Capital Structure Items: Debt and Equity

Working Capital

Working capital, often calculated as current assets less current liabilities, is a measure of a business's ability to cover near-term obligations. The current assets are largely comprised of receivables, other contract related assets. Current liabilities largely include short-term or current debts, accounts payable and contract liabilities.

Removing financing items and related party balances, Dabco's debt-free working capital has ranged from approximately 2% to 14% of sales (annual or annualized) over the historical period. By comparison to the RMA benchmark data, Dabco is below the computed average. For approximately 2016 to 2021,<sup>16</sup> the averages of RMA ranged from about 17% to 23%.



<sup>16</sup> Time period of RMA studies is not exact. However, the data of the last 6 studies available most commonly overlaps the 2016 to 2021 timeframe.

David A. Bosworth Co., Inc.

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As a component of working capital, the company's cash balance of approximately \$677,000 is in similar territory but marginally lower than the historical average since 2016.

### *Fixed Assets*

The fixed assets of Dabco are comprised of machinery and equipment, vehicles, land, buildings, and furniture and fixtures. The company purchased land in 2018 in Randolph. An enclosed garage was subsequently built on the land to act as a shop for the Company.

Levels of investment in assets such as machinery/equipment and vehicles carry the implication of a moderate capital intensity to the business. This is consistent with the wider industry context.

### *Capital Structure*

The Subject Company is historically financed by a mix of debt and equity. As of the valuation date, there is \$3.1 million of debt on Dabco's balance sheet. More than two-thirds of this debt is comprised of line of credit and real estate debts. There are also ordinary course equipment debts. It should be noted also that there are debts for luxury vehicles and an Economic Injury Disaster Loan.

Total debt as of June 30, 2022 represents 38% of the total balance sheet. By comparison, the average ratio of debt to total assets in the RMA data ranged from about 26% to 30% in recent years.

On the equity side of the capital structure, there have not been significant drivers of the fluctuation in equity other than an accumulation of earnings and periodic distributions made to Mr. Bosworth. The ratio of distributions to earnings has fluctuated but over the course of the last six completed years has cumulatively approximated nearly 90%.

**David A. Bosworth Co., Inc.**  
**Statement of Changes in Equity**  
Source: 2016-2021 Reviewed Financials

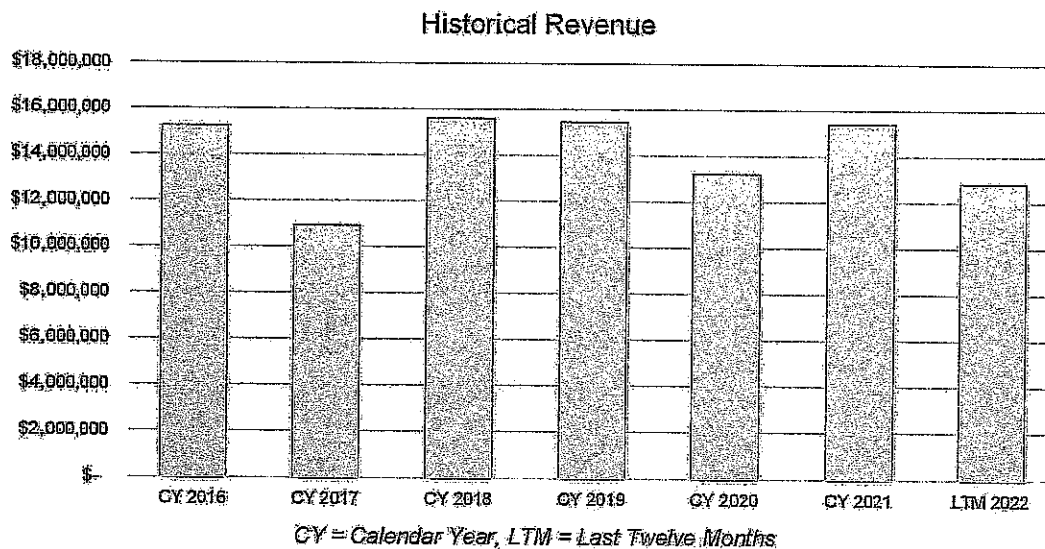
|                   | For Year Ending December 31, |              |              |              |              |              |
|-------------------|------------------------------|--------------|--------------|--------------|--------------|--------------|
|                   | 2016                         | 2017         | 2018         | 2019         | 2020         | 2021         |
| Beginning Equity  | \$2,568,861                  | \$2,512,548  | \$2,044,101  | \$2,387,779  | \$2,414,164  | \$3,009,746  |
| Net Profit (Loss) | 508,679                      | 156,545      | 633,462      | 611,123      | 1,141,253    | 504,876      |
| Distributions     | (564,992)                    | (624,992)    | (289,774)    | (584,738)    | (545,671)    | (528,332)    |
| Ending Equity     | \$ 2,512,548                 | \$ 2,044,101 | \$ 2,387,779 | \$ 2,414,164 | \$ 3,009,746 | \$ 2,986,290 |

### Operating Results

Historical income statements help the analyst to understand the reported earning capacity of the firm. The historical income statements were previously summarized herein.

### Revenue

Dabco operates in a cyclical business environment. Historical revenue has shown some volatility over the years analyzed, averaging about \$14 million. While there exists a variability driven by the nature of the construction environment in which Dabco operates, there was also the impact of temporary shut downs due to COVID in 2020. As of the valuation date, factors such as labor, supply, and cyclical change are impacting the business.



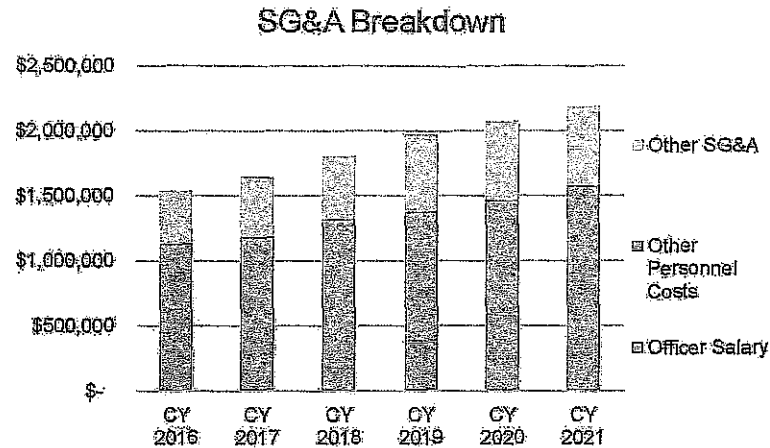
In addition the impact of factors identified above, Dabco's revenue stream includes concentrations from time to time. For example, the company's latest annual financial report noted that contract revenues with four customers accounted for 82% of revenue in 2020 and 75% in 2021.

### Cost Structure & Profitability

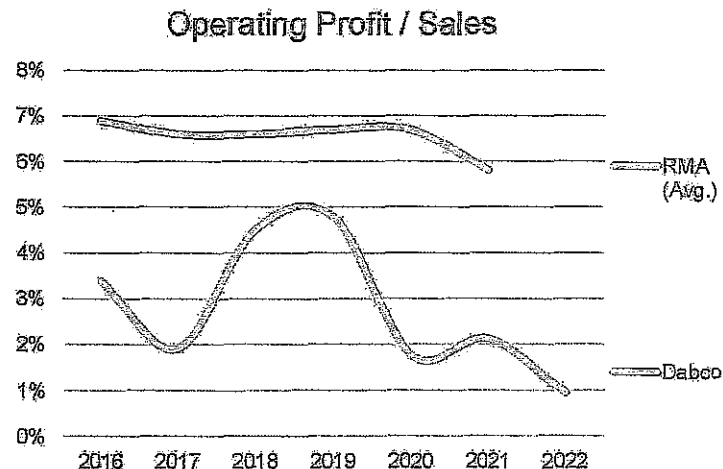
The business's gross profit represents the profit left over on contract work after applying direct costs (largely materials, subcontractors, in-house labor and depreciation charges). Dabco's gross margin as a percentage of sales has ranged approximately 14% to 18% over the historical period. As of the valuation date, Dabco's gross margin continues a

slight downward trend which has persisted over the last few periods. The historical average is around 16%, and the year-to-date June 2022 data is about 15%.

The cost of Mr. Bosworth's salary does not burden the gross profit margin, but rather falls to selling, general and administrative (SG&A) expenses. Over the historical period, annual SG&A costs have been rising. The primary costs have been personnel related.



The Subject Company's operating profit has varied from approximately 1% to 5% of revenue over the historical period. These levels of performance fall below the RMA averages. See chart below.



Normalization Adjustments

Normalization adjustments have been made to the historical financial statements of the subject company in order to more appropriately reflect its economics. These adjustments are focused in two areas: (1) the balance sheet as of the valuation date, and (2) historical profit and loss.

Balance Sheet Adjustments

This segment of the analysis will focus on the normalization of the business's net assets to better reflect the financial position as of the valuation date.

Loans Receivable, stockholder

Dabco's balance sheet reports a stockholder loan of approximately \$571,500. This loan has been removed as it is not expected to be repaid to the business.

Contract Assets:

Included in Contract Assets was \$450,000 related to the stockholder's capital contribution related to his 20% ownership in Milton LLC. This amount will be reclassified to shareholder distributions.

Employee Retention Credit

The company reported an employee retention credit on the balance sheet as of the valuation date. This was considered a non-operating asset, as it relates to a government subsidy program.

Fixed Assets – Real Estate & Vehicles

As previously noted, the business has a real estate asset in Randolph. There are also luxury vehicle assets on the books (Range Rover and BMW). The estimated market values of these assets are considered non-operating items for purpose of the valuation. As part of recognizing the non-operating values, additional normalizing adjustment must also be made to recognizing the difference between the book basis and values of the assets.

Non-Operating Debts

There are four non-operating debts as of the valuation date. Three out of four relate to the non-operating real estate and vehicles previously identified above. The fourth relates to government stimulus. These loans are itemized below:

|                             |                           |
|-----------------------------|---------------------------|
| Randolph Real Estate Loan   | \$1,111,386               |
| Land Rover Financial        | 83,443                    |
| TCF Auto Finance (for BMW)  | 38,651                    |
| SBA Loan (EIDL Program)     | <u>149,169</u>            |
| <b>Total Non-Op. Loans:</b> | <b><u>\$1,382,649</u></b> |

### Profit & Loss Adjustments

This segment of the analysis will focus on the normalization of operating profits. Each adjustment is described in more detail below.

### Officer Compensation Adjustment

When a business valuation is being conducted on a business in which the owner is also a day-to-day manager of the company, the amount of compensation paid to the owner should be analyzed to determine whether the compensation is indicative of market rates based on the roles and responsibilities of the officer.

Mr. Bosworth is the President of Dabco. His role covers both operational management as well as sales/relationships. He has decades of experience operating this company.

To estimate a reasonable rate of compensation for Mr. Bosworth, market survey data available from the Economic Research Institute's Salary Assessor database was examined for his role and in consideration of company specific attributes (e.g., location, industry category, scale, etc.). Overall company performance is also considered. Based on the analysis Mr. Bosworth's reasonable compensation was identified as \$270,000 per year. Mr. Bosworth's actual compensation is added back into the profits, and then his reasonable compensation is deducted.

David A. Bosworth Co., Inc.

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Non-Essential Family Compensation Adjustment

There are various family members of Mr. Bosworth who have been on payroll but are not essential to the operation of the business. Compensation of these individuals has been added back as additional profits of the business.

Related Party Rent Adjustment

The Braintree property at 15 Roc Sam Park Road is partially used by Dabco and partially by an outside tenant. The rents paid by the company to a related party were normalized to the appraised figure of the rents related to the part of the property used by Dabco.

The adjusted balance sheet is below. The page after reflects the normalizing of the income statement data.

David A. Bosworth Co., Inc.  
Adjusted Balance Sheet  
As of June 30, 2022

|                                       | Reported            | Non-Operating<br>Adjustments | Normalization<br>Adjustments | Adjusted            |
|---------------------------------------|---------------------|------------------------------|------------------------------|---------------------|
| <b>Assets</b>                         |                     |                              |                              |                     |
| <b>Current Assets</b>                 |                     |                              |                              |                     |
| Cash                                  | \$ 676,869          | \$ -                         | \$ -                         | \$ 676,869          |
| Contract receivables, net             | 2,758,495           | -                            | -                            | 2,758,495           |
| Contract Assets                       | 614,059             | -                            | (450,000)                    | 164,059             |
| Loan receivable, stockholder          | 671,458             | -                            | (571,458)                    | -                   |
| Prepaid expenses & Other              | 15,540              | -                            | -                            | 15,540              |
| Employee retention credit receivable  | 238,234             | (238,234)                    | -                            | -                   |
| <b>Total Current Assets</b>           | <b>4,874,555</b>    | <b>(238,234)</b>             | <b>(1,021,458)</b>           | <b>3,614,963</b>    |
| <b>Net Fixed Assets</b>               | <b>3,321,391</b>    | <b>(2,391,573)</b>           | <b>555,716</b>               | <b>1,485,534</b>    |
| <b>Total Assets</b>                   | <b>\$ 8,196,046</b> | <b>\$ (2,629,807)</b>        | <b>\$ (465,742)</b>          | <b>\$ 5,100,497</b> |
| <b>Liabilities &amp; Equity</b>       |                     |                              |                              |                     |
| <b>Liabilities</b>                    |                     |                              |                              |                     |
| <b>Current Liabilities</b>            |                     |                              |                              |                     |
| Note payable, line of credit          | \$ 1,211,000        | \$ -                         | \$ -                         | \$ 1,211,000        |
| Current maturities of long-term debt  | 347,432             | -                            | -                            | 347,432             |
| Accounts payable                      | 1,160,758           | -                            | -                            | 1,160,758           |
| Accrued expenses                      | 155,285             | -                            | -                            | 155,285             |
| Contract liabilities                  | 1,006,348           | -                            | -                            | 1,006,348           |
| <b>Total Current Liabilities</b>      | <b>3,880,823</b>    | <b>-</b>                     | <b>-</b>                     | <b>3,880,823</b>    |
| Long-term debt, net of current        | 1,543,816           | (1,382,649)                  | -                            | 161,167             |
| <b>Total Liabilities</b>              | <b>5,424,639</b>    | <b>(1,382,649)</b>           | <b>-</b>                     | <b>4,041,990</b>    |
| <b>Equity</b>                         | <b>2,771,407</b>    | <b>(1,247,158)</b>           | <b>(465,742)</b>             | <b>1,058,507</b>    |
| <b>Total Liabilities &amp; Equity</b> | <b>\$ 8,196,046</b> | <b>\$ (2,629,807)</b>        | <b>\$ (465,742)</b>          | <b>\$ 5,100,497</b> |

David A. Bosworth Co., Inc.

June 30, 2022

**David A. Bosworth Co., Inc.**  
**Adjustment of Historical Income Statements**

|                                             | For Year Ending December 31, |                   |                   |                   |                   |                   | YTD June 30,       |
|---------------------------------------------|------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------------------|
|                                             | 2016                         | 2017              | 2018              | 2019              | 2020              | 2021              | 2022               |
| <b>Revenue</b>                              | \$ 15,248,788                | \$ 10,917,635     | \$ 15,589,966     | \$ 16,455,949     | \$ 13,232,365     | \$ 15,406,259     | \$ 6,807,185       |
| <b>Operating Profit (Loss)</b>              | \$ 516,694                   | \$ 208,590        | \$ 708,951        | \$ 741,225        | \$ 292,755        | \$ 325,869        | \$ 59,780          |
| <b><u>Adjusted As Follows:</u></b>          |                              |                   |                   |                   |                   |                   |                    |
| <b><u>Officer Compensation:</u></b>         |                              |                   |                   |                   |                   |                   |                    |
| Charlie Bosworth Payroll, As Reported       | 20,000                       | 235,500           | 70,000            | 220,000           | 220,000           | 340,171           | -                  |
| Charlie Bosworth Payroll, As Adjusted       | (270,000)                    | (270,000)         | (270,000)         | (270,000)         | (270,000)         | (270,000)         | (135,000)          |
| Charlie Bosworth Payroll taxes, Adjusted    | (9,732)                      | (500)             | (6,521)           | (725)             | (725)             | 1,017             | (10,328)           |
| <b><u>Non-Essential Family Comp:</u></b>    |                              |                   |                   |                   |                   |                   |                    |
| Elise Bosworth Payroll                      | -                            | -                 | 25,000            | 25,000            | 25,000            | 25,000            | 2,336              |
| Isabelle Bosworth Payroll                   | -                            | -                 | 25,000            | 25,000            | 25,000            | 25,000            | -                  |
| Charlotte Bosworth Payroll                  | -                            | -                 | 25,000            | 25,000            | 25,000            | 25,000            | 880                |
| Delphine Bosworth Payroll                   | -                            | -                 | -                 | 52,000            | 47,000            | 52,000            | 27,000             |
| Dorothy Bosworth                            | 65,000                       | 65,000            | 66,635            | 66,665            | -                 | -                 | -                  |
| Payroll Tax Adjustment                      | 6,503                        | 6,503             | 12,365            | 14,717            | 9,333             | 9,716             | 2,312              |
| <b><u>Related Party Rent Adjustment</u></b> |                              |                   |                   |                   |                   |                   |                    |
| Rent as reported                            | 13,607                       | 12,658            | 13,312            | 13,975            | 15,331            | 15,003            | 7,617              |
| Rent as adjusted per appraisal              | (45,360)                     | (45,360)          | (45,360)          | (45,360)          | (45,360)          | (45,360)          | (22,680)           |
| <b><u>Adjustments Subtotal</u></b>          | <b>(199,989)</b>             | <b>23,800</b>     | <b>(64,569)</b>   | <b>124,992</b>    | <b>50,579</b>     | <b>177,547</b>    | <b>(127,863)</b>   |
| <b>Adjusted Operating Profit (Loss)</b>     | <b>\$ 316,712</b>            | <b>\$ 232,390</b> | <b>\$ 639,392</b> | <b>\$ 866,217</b> | <b>\$ 283,334</b> | <b>\$ 503,416</b> | <b>\$ (68,083)</b> |
| <b>Adjusted Profit Margin</b>               | <b>2.1%</b>                  | <b>2.1%</b>       | <b>4.1%</b>       | <b>5.6%</b>       | <b>2.1%</b>       | <b>3.3%</b>       | <b>-1.1%</b>       |

Ongoing & Forward-Looking Financial Measures

In addition to the historical financial data previously analyzed and normalized herein, the ongoing and forward-looking financial picture is considered.

The average annual revenues from 2016 to 2021 and estimated 2022 sales, was approximately \$14.1 million. This figure was determined to be the most appropriate measure as ongoing annual revenue of Dabco.

In analyzing ongoing operating margin, the average normalized annual operating profit margin from 2016 to 2021 and estimated annualized for the six months ending June 30, 2022 was 2.6% of revenue. This was determined to be the most appropriate measure of ongoing operating profit.

Profits are tax-effected and converted also to net cash flows in the event these performance figures will be used under an income methodology to valuation (see later report section).

The Subject Company does not record federal income taxes on its financial statements due to the pass-through nature of its legal entity. There are some state taxes at the entity level.

For a valuation conducted in conjunction with a Massachusetts divorce, in applying a fair value standard an imputed amount must be determined for income taxes to be applied against taxable income. Two central issues relate to imputing a tax rate for pass-through entities. The first is imputing a tax rate on taxable income. The second is the benefit for avoiding a corporate dividend tax.

For tax affecting a pass-through for a business valuation in a Massachusetts divorce, the analyst must be aware of precedence set by the Massachusetts Supreme Judicial Court and the Appellate Court's decision in *Bernier v. Bernier*. "As we have stated, the Supreme Judicial Court adopted generally the metric employed by the Kessler court, and on remand on the issue of valuation, to apply the tax affecting approach adopted by Kessler."<sup>17</sup> At the time these decisions were rendered the approach was to show a tax benefit to avoid double taxation comparing a C Corporation to a pass through entity. Following the Kessler metric literally is fraught with errors. First at the time of the analysis by the Kessler decision the Delaware Court properly applied corporate rates and individual tax rates that were identical. Today the rates could be drastically different. Second, the Kessler metric assumes 100% of income earned is distributed to an owner, a second flaw. A third flaw results when the pass-through entities taxable income rate and the dividend tax rate are the same. Even though the entity has taxable income the model will result in a zero percent imputed tax rate. In 2017, the Tax Cuts and Job Act was signed into law, this tax reform bill affects both Corporate and individual taxes which would create additional complexities which have unintended consequences which add

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<sup>17</sup> *Bernier v. Bernier* No 11-P-394, January 11, 2012 – June 29, 2012.

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flaws to the original Kessler model. The use of the Kessler metric would result in significant flaws to a valuation and usually overvalues a pass-through business.

The following analysis properly takes into account the changes of the Tax Cuts and Jobs Act of 2017 and the intention of the Bernier decision to determine an imputed tax rate of a pass-through entity which avoids double taxation compared to a C corporation.

To impute a tax rate a determination is made for the amount of normalized taxable income, distributions and also the taxation of officer's compensation. Analyzing taxable income and applying individual tax rates, the analyst essentially arrives at an after tax rate similar to a C corporation equivalent. This calculation considers tax rates based on the Tax Cuts and Jobs Act "TCJA."

The next consideration is for the benefit on pass-through distributions, through the avoidance of a dividend tax. Based on those inputs, a determination is made of the effective imputed tax rate applied against taxable income.

The modeling of the imputed tax rate must also take into account sunseting of the Section 199A deduction.

Taking each of these factors into account, the imputed tax rate was determined to be 23% for valuation purposes.

After tax-effecting, the next item to compute cash flows is the marginal investment in working capital as the business grows over time. For each dollar increase in revenue, a marginal investment is needed in working capital (which burdens cash flow).

#### Computation of Cash Flows

|                                |               |
|--------------------------------|---------------|
| Revenue                        | \$ 14,098,668 |
| (x) Operating Margin           | 2.6%          |
| Operating Profit               | \$ 367,384    |
| (-) Income Taxes               | (84,498)      |
| Net Operating Profit After Tax | 282,886       |

#### Adjust from Earnings to Cash Flow

|                                |            |
|--------------------------------|------------|
| (-) Working Capital Investment | (28,745)   |
| Net Cash Flow                  | \$ 254,141 |

|             |      |
|-------------|------|
| Growth Rate | 3.0% |
|-------------|------|

|                     |            |
|---------------------|------------|
| Net Cash Flow (NTM) | \$ 261,765 |
|---------------------|------------|

*NTM: Next 12 Months as of valuation date*

### Valuation Approaches

#### Asset Approach - Adjusted Book Value Method

This method establishes value by netting the market value of assets by the liabilities to determine the net asset value or net worth of the business. This approach is usually of greater importance when valuing companies that are marginally profitable or have no earnings history. This concept generally applies to a company with little value beyond the value of its tangible assets. The asset accumulation method is appropriate when the following criteria are met:

1. The subject company holds significant tangible assets;
2. There is little or no value added to the company's products or services from labor;
3. The company has no significant intangible assets; and
4. The balance sheet reflects all the company's tangible assets.

Examples of companies that typically are valued using this method are:

1. Real estate investment companies;
2. Holding companies and other investment companies;
3. Some natural resource companies;
4. Start-up businesses; and
5. Small businesses, which are easy and relatively inexpensive to start.

The net asset value of a business represents the current market value of individual assets less liabilities if the business were sold asset by asset. Theoretically, each asset and liability is valued at market and the difference between assets and liabilities is the value of the equity of the enterprise. Such an appraisal method may be appropriate for certain types of businesses, but much less useful for operating companies.

Based on the facts and circumstances of the subject interest, this method was rejected.

Market Approach Methods

The market approach is a general way of determining a value indication of a business, business ownership interest, security, or intangible asset by using one or more methods that compare the subject to similar businesses, business ownership interests, securities, or intangible assets that have been sold.<sup>18</sup> For the market approach to be used, there must be a sufficient number of similar companies or transactions to make comparisons, or, alternatively, the industry composition must be such that meaningful comparisons can be made.

The market approach includes sub-methods such as the guideline publicly traded company method, the guideline transaction method, and prior transaction method. Each is discussed in more detail below.

Guideline Publicly Traded Company Method

The guideline publicly traded company method consists of prices relative to underlying financial data in day-to-day trades of minority interest in active publicly traded companies, on either stock exchanges or the over-the-counter market.<sup>19</sup> Search criteria may include various factors, for example:

- The line or lines of business searched (e.g., SIC and/or NAICS code or codes)
- Size range (e.g., total revenues, total assets, number of employees)
- Geographical locations
- Range of profitability<sup>20</sup>

Dabco is not comparable to the public market. Accordingly, this method was rejected.

Guideline Transaction Method

The guideline transaction (merger and acquisition) method consists of prices relative to underlying fundamental data in transfers of controlling interests in companies (or operating units of companies).<sup>21</sup> The companies examined may have been either public or private prior to the transfer of control.

<sup>18</sup> As defined by the International Glossary of Business Valuation Terms.

<sup>19</sup> Laro, David and Pratt, Shannon, *Business Valuation and Taxes: Procedure, Law and Perspective*, Second Edition, Wiley, 2011, page 197.

<sup>20</sup> This is consistent with the factors described by Shannon Pratt and Alina Niculita in *Valuing a Business*, McGraw Hill, Fifth Edition, 2008, page 219.

<sup>21</sup> Pratt, Shannon P. and Alina V. Niculita, *Valuing a Business*, McGraw Hill, Fifth Edition, 2008, pages 310-311.

Business Valuation Resources, LLC's *DealStats* database was utilized to search for comparable transaction targets. Based on this procedure, a sufficient sample of guideline company transactions could not be determined. Accordingly, this method was rejected.

Prior Transactions

The prior sales method uses recent transactions involving the subject company's ownership interests. The principle of substitution is used to determine the value. This simply means that if one arm's-length transaction occurred at a given price and nothing has substantially changed, then another arm's-length transaction would occur at the same price.

There were no recent transactions in the company. Accordingly, this method was rejected.

Income Approach – Capitalization of Cash Flow Method

The capitalization of cash flow method is often used when the outlook for the subject company is relatively stable, and therefore utilizes a single period of stable benefits growing at a fixed rate into the future. However, in some instances, this method may be used when projections of future benefits are unavailable or cannot otherwise be reasonably determined. Furthermore, certain valuation contexts or court venues may not favorably view the use of explicit future projections, and therefore prefer this capitalization of a stable benefit stream.

The capitalization of cash flow requires an estimate of an ongoing benefit stream and a capitalization rate. The capitalization rate represents a required rate of return minus a sustainable growth rate. The inverse of a capitalization rate is a capitalization multiple (e.g., if the capitalization rate is 20%, then the inverse – 1 divided by 20% – would equal a multiple of 5 times cash flow). Capitalization of cash flow effectively determines the present value of the Company's ongoing economic benefit stream growing perpetually at a fixed rate and discounted at the required rate of return. The present value is representative of the estimated amount a willing buyer and a willing seller would exchange for the business.

The capitalization of cash flows produces an estimate that includes both tangible and intangible assets whereas the adjusted book value method yields only tangible assets. IRS Revenue Ruling 59-60 states:

*In general, the appraiser will accord primary consideration to earnings when valuing stocks of companies which sell products or services to the public.<sup>22</sup>*

Ongoing Benefit Stream

The after-tax cash flows were selected as the appropriate benefit stream as this approach considers future working capital needs and capital expenditure needs. Net cash flow in the form computed represents money available to compensate invested capital providers (e.g., debt and equity), assuming the business is a going concern and the subject company is able to support the projected operations. Net cash flow can also be reinvested in some incremental project not reflected in the net cash flows that have been discounted.

There are two reasons why the financial community tends to focus on net cash flow as the preferred measure of economic income to be discounted by the opportunity cost of capital. They are:

1. *Conceptual.* Net cash flow provides amounts that are available to compensate providers of capital for their investments in a discrete period of time. In a

<sup>22</sup> IRS Revenue Ruling 59-60, 1959-1 CB 237 – IRC Sec. 2031, §5(a).

valuation context, it is important that the numerator give the most accurate estimate of what the investor expects to get.

2. *Empirical.* It is the economic income measure that best matches discount rate estimates.<sup>23</sup>

Ongoing financial metrics were covered at the conclusion of the financial and normalization analyses previously in this report.

### Cost of Capital & Capitalization Rate Determination

The cost of capital – or the discount rate – represents the risk an investor is willing to accept for the potential reward an investment in the company will return. Different rates apply to different types of businesses. This risk is not calculated in a vacuum or a sterile environment but rather it is calculated based on the factors that can be contrasted against the investment in other vehicles that are available and in the specific environment as of the valuation date.

Discount rates are most often expressed in nominal terms. That is, they usually have an inflation estimate included in them.<sup>24</sup> In a consistent manner, the impact of inflation is included in the growth estimates for the benefit stream herein.

Furthermore, discount rates are frequently expressed on an after-tax basis. Equity capital discount rates are typically stated as after-tax rates based on certain market inputs. In instances where the subject company's capital structure also includes debt capital, the cost of debt is first measured as a pretax rate (e.g., an interest rate) and then converted to an after-tax rate. The after-tax costs of equity and debt would be weighted based on relative market values of each type of capital, and an overall cost of capital for the subject company is determined based on applying the after-tax rates to those weights.

The measurement of the discount rates for each type of capital applicable to the subject company is described in more detail below, followed by a numeric summary of the overall discount rate (cost of capital) applied in the valuation model.

### Cost of Equity

A methodology known as the buildup method is employed to estimate the cost of equity in this analysis. The buildup method layers different risk estimates to construct an equity discount rate. The appropriate equity discount rate components for the Subject Company are the risk-free rate, equity risk premium, size premium and company specific premium. The first three aspects are based on market-rate data points, wherein the fourth – company specific premium – is a qualitative assessment employed by valuation analysts.

<sup>23</sup> Pratt, Shannon and Roger J. Grabowski, *Cost of Capital Applications and Examples*, Fifth Edition, 2014, Wiley, Page 27.

<sup>24</sup> *Ibid*, Page 97.

1. **Risk-Free Rate:** the input in this analysis is based on 20-year U.S. Treasury bond yields quoted by the Federal Reserve as of the valuation date.
2. **Equity Risk Premium:** the input in this analysis for the incremental risk of an investment in equities is based on the historical long-term equity risk premium reported by Duff & Phelps' Cost of Capital Navigator.
3. **Size Premium:** the input in this analysis for the incremental risk of an investment in smaller sized equities is based on the bottom decile of public market data reported by Duff & Phelps' Cost of Capital Navigator. Like the prior input, this premium is also based in historical long-term market data averages.
4. **Company-Specific Risk:** this premium contains nonsystematic (non-market related) factors particular to the subject company and its individual risk characteristics. Factors affecting these assessments include financial condition and history of the company, life cycle stage, uncertain economic and industry factors such as commodity prices and changing consumer preferences, competitive influences and other market factors, and risks of competitive threats. The primary factors pertaining to the subject of this analysis are summarized as follows:
  - The Subject Company operates in competitive low-bid environment.
  - Dabco is impacted by labor and supply chain issues of the market as of the valuation date.
  - There are significant revenue concentration risks.
  - The business is not geographically diverse.

#### Cost of Debt

The company's currently effective rates on debt were used as the cost of debt. The cost of debt must also be tax-effected for valuation purposes.

#### Overall Cost of Capital Conclusion

The above inputs result in an overall cost of capital for this analysis, as shown on the cost of capital and capitalization rate chart shown later in this analysis.

Computing Capitalization Rate

After determining cost of capital, the sustainable growth rate is deducted to determine a capitalization rate. In the instance of a capitalization of cash flow methodology where a single period of sustainable cash flow is determined, this capitalization rate may be modified further by a mid-period convention when the subject business's cash flows are available throughout each period, as opposed to at the end of each period. This modification recognizes that cash flows received sooner will have greater present value. In the instance of the subject company, a mid-period convention was applied.

Key determinants in the sustainable growth rate are listed below.

- Historical track record and current state of the business's operations.
- The overall expected increases in inflation and real GDP of the U.S. economy. This was cited previously in the economic analysis.
- The growth of the Excavation Contractors industry. Industry revenue is expected to grow at a real rate of growth approximating 1% per annum over the next five years.<sup>25</sup> The overall growth rate for industry would need to incorporate an inflationary factor (see statistic in economic discussion).

The various components to the cost of capital and capitalization rate are summarized on the cost of capital and capitalization rate chart presented below.

| Rate Component                          | Rate         | Weight       |
|-----------------------------------------|--------------|--------------|
| <b>Cost of Equity</b>                   |              |              |
| Risk-Free Rate                          | 3.4%         |              |
| Equity Risk Premium                     | 7.5%         |              |
| Size Premium                            | 4.8%         |              |
| Company Specific Risk                   | 5.0%         |              |
| <b>Total Cost of Equity</b>             | <b>20.7%</b> | <b>46.9%</b> |
| <b>Cost of Debt</b>                     |              |              |
| Pre-Tax                                 | 4.6%         |              |
| (X) Tax Adjustment ( 1 - Tax Rate )     | 0.770        |              |
| <b>After-Tax Cost of Debt</b>           | <b>3.5%</b>  | <b>53.1%</b> |
| <b>Weighted Average Cost of Capital</b> | <b>11.6%</b> |              |
| <b>Discount Rate (WACC)</b>             | <b>11.6%</b> |              |
| (-) Growth Rate                         | 3.0%         |              |
| <b>Subtotal</b>                         | <b>8.6%</b>  |              |
| (X) Convention Adjustment               | 0.9466       |              |
| <b>Capitalization Rate</b>              | <b>8.1%</b>  |              |

<sup>25</sup> IBISWorld Industry Report 23891A, Excavation Contractors in the US, Kush Patel, February 2022.

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Indication of Value

The net cash flows of the subject business are divided by the capitalization rate to determine the indication of value. Based on the foregoing analysis, the indication of value is set forth below.

| Valuation Summary                           |              |
|---------------------------------------------|--------------|
| Net Cash Flow (NTM)                         | \$ 261,765   |
| (f) Capitalization Rate                     | 8.1%         |
| Indicated Invested Capital Value            | \$ 3,231,667 |
| (-) Debt Capital Outstanding                | (1,719,600)  |
| Operating Value of Equity                   | 1,512,067    |
| <u>Non-Operating Items</u>                  |              |
| (-) Non-Operating SBA Loan                  | (149,169)    |
| (+) Loans Receivable                        | -            |
| (+) FMV 10 Richardi Reservoir Rd, Randolph  | 2,250,000    |
| (-) Debt 10 Richardi Reservoir Rd, Randolph | (1,111,386)  |
| (+) Employee Retention Credit               | 238,234      |
| (+) BMW                                     | 45,425       |
| (-) BMW Loan                                | (38,651)     |
| (+) Landrover                               | 96,148       |
| (-) Landrover Loan                          | (63,443)     |
| Total Non-Operating Items                   | 1,247,158    |
| Total Business Equity Valuation             | \$ 2,759,224 |
| (x) Subject Ownership Percentage            | 100.0%       |
| Fair Value of Subject Interest              | \$ 2,759,224 |
| Fair Value of Subject Interest (Rounded)    | \$ 2,759,000 |

Conclusion of Value

Based upon the analysis described in this valuation report, and the facts and circumstances as of the valuation date, the estimated fair value of a 100% equity interest in David A. Bosworth Co., Inc. is \$2,759,000 (rounded) as of June 30, 2022.

## Appendix A – Certification & Signature of the Analyst

I certify to the best of my knowledge:

- 1) The statements of fact contained in this report are true and correct.
- 2) The reported analyses are limited only by the reported assumptions and limiting conditions, and are my unbiased professional analyses.
- 3) I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- 4) I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
- 5) My compensation is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the calculation result, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this conclusion of value.
- 6) My analyses were developed, and this report has been prepared in conformity with SSVS and the Professional Standards of the National Association of Certified Valuators and Analysts (Formerly known as the National Association of Certified Valuation Analysts).
- 7) Jesse Gillett, CPA/ABV, CFE and Christina Sayles, CPA, CVA provided assistance to the person signing this report.



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Marc Bello, CPA/ABV, CVA, MAFF, MST  
Partner  
Edelstein & Company LLP

**Appendix B – Qualifications of the Analyst**

**Marc D. Bello, CPA/ABV, CVA, MAFF, CFF, MST**

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Boston, Massachusetts 02110  
Tel. (617) 227-6161  
Fax. (617) 589-0530  
Email: [mbello@edelsteincpa.com](mailto:mbello@edelsteincpa.com)

**Business Experience:**

**Partner, Edelstein & Company LLP, Boston, MA (October 2002 – Present)**  
**Specialize in Business Valuation & Litigation Support Services.**

Perform valuations of closely held businesses, pass-through entities, professional practices, and intangible assets. Valuations have been conducted in connection with shareholder disputes, divorce proceedings, estate and gift taxation, stock option plans, merger and acquisitions and intangible assets.

Industry experience includes manufacturing, service, professional practices, health care, high technology, and construction.

Provide litigation support services in the areas of forensic accounting and taxation in connection with Corporate and Partnership disputes and divorce proceedings. Analysis includes damages sustained in connection with lost profits, business interruption, wrongful terminations, and hidden income.

Qualified as an expert witness in US Tax Court, Massachusetts Superior Courts, and Massachusetts Probate Courts in connection with business valuation and forensic accounting engagements.

**Manager of Financial Reporting, Rhodia ChiRex, Boston, MA**  
**(May 2001 – October 2002)**

Responsible for all the financial reporting and analysis required by our parent company in France, and the internal reporting for our divisions in England, Scotland, and the United States. Financial reporting included, monthly closes, quarterly forecasts, weekly budgets, and a monthly management report.

**Manager, Ambrosi Donahue Congdon & Company P.C., Newburyport, MA**  
**(1998- May 2001)**

Managed accounting and tax engagements for privately held companies.

**Senior, Grant Thornton, Boston, MA (1994 -1998)**

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Managed various audit and tax engagements for both public and private companies in the manufacturing, utility, retail, banking, and service industries.

**Education:**

Ithaca College, Bachelor of Science in Accounting  
Bentley College, Master of Science in Taxation

**Professional Licenses &  
Certifications:**

Certified Public Accountant  
Certified Valuation Analyst  
Accredited in Business Valuation  
Master Analyst in Financial Forensics  
Certified in Financial Forensics

**Advisory Boards:**

Litigation Forensic Board, National Association of Certified Valuators and Analysts, June 2015- May 2018, past chair

Education Quality Assurance Board, National Association of Certified Valuators and Analysts, June 2013- June 2014, past chair

Executive Advisory Board, National Association of Certified Valuators and Analysts, June 2010 - May 2013, past chair

Valuation Credentialing Board, National Association of Certified Valuators and Analysts, June 2008 - May 2010, past chair

Family Law Advisory Committee, Massachusetts Continuing Legal Education

**Publications & Publication Reviews:**

The Impact of the Tax Cuts and Job Act on Family Law Cases, Boston Bar Association, Family Law Newsletter, October 2018

Discovering the Value in Forensic Accounting, Massachusetts Family Business, March 2015

Is Your Company at Risk? Take-Away Lessons from the Market Basket Saga, Massachusetts Family Business, December 2014

Weighing Divorce Options, Private Wealth Magazine, January 7, 2014

Are stock options assets or income? It all depends..., Massachusetts Lawyers Weekly, December 9, 2013

Analyzing the History of Bernier After the Most Recent Massachusetts Appeals Court Decision, Bernier II, Business Valuation Update, November 2012

Annual Publication - Current Updates in Valuation, National Association of Certified Valuators and Analysts. Co-Author, June 2007-2017

BV Fundamental for CPA's, National Association of Certified Valuators and Analysts. Co-Author, March 2008

Fundamentals, Techniques and Theory, National Association of Certified Valuators and Analysts. Co-Author, 2007

Business Valuations: Applications and Calculations of the Income and Asset Approaches, National Association of Certified Valuators and Analysts. Reviewer, 2007

#### Professional Memberships:

National Association of Certified Valuators and Analysts  
Massachusetts Society of Certified Public Accountants  
American Institute of Certified Public Accountants  
American Academy of Matrimonial Lawyers Foundation

#### Community Activity & Honors:

2016, 2015, 2013, 2012, 2011, 2010, 2009 & 2008 Instructor of Exceptional Distinction, National Association of Certified Valuators and Analysts

2009 Outstanding Member Award, National Association of Certified Valuators and Analysts

2009-2015 Camp Bauercrest Board of Directors, Past Treasurer

**Speaking Engagements & Presentations:**

Instructor for the National Association of Certified Valuators and Analysts (NACVA) for the following courses:

- Best Practices in Business Valuation, 2020 – Present
- Business Valuation Certification and Training Center, 2019-Present
- Current Updates and Applications in Valuations," Lead instructor and developer, 2007 – June 2018
- Intermediate Business Valuation Workshop, 2010 - 2016

**Other Speaking Engagements:**

"Business Valuation for Family Law Attorneys," American Academy of Matrimonial Lawyers, March 2022

"Sex Lies and Non-Qualified Deferred Compensation Plans," American Academy of Matrimonial Lawyers, March 2022

"Locating People, Property & Assets," Massachusetts Continuing Legal Education, February 2022

"Business Ownership, Is it an Asset or Is it a Job" 2<sup>nd</sup> Annual CLE by the Sea, Greater Newburyport Bar Association, August 2021

"Interplay of Personal Goodwill and Business Valuations," 24<sup>th</sup> Annual Family Law Conference, Massachusetts Continuing Legal Education, June 2021

"Divorce Law Summer School, Improve your Financial IQ," Massachusetts Continuing Legal Education, May 2021

"Advanced Financial Concepts in Divorce Law," Massachusetts Continuing Legal Education, May 2021

"How the Subsequent Event Standards Impact your Business Valuation in Light of COVID-19", National Association of Certified Valuators and Analysts 2020 Financial Valuation Virtual Conference, November, and December 2020

"Navigating a Discounted Cash Flow Method in Family Law Cases, COVID-19 Edition, AAML- Foundation Forensic & Business Valuation, November 2020

"Overview of the Business Valuation Process," Trying Divorce Cases, Massachusetts Continuing Legal Education New England, October 2020

"How to Review & Critique a Business Appraisal: The 60 Minute Lawyer," Massachusetts Continuing Legal Education, October 2020

"Overview of Business Valuation," Complex Issues in Assets Division, Chair, Massachusetts Continuing Legal Education, October 2020

"Updated Impact of COVID-19 on Probate & Family Court – Part III", Massachusetts Continuing Legal Education, August 2020

"Business Interruption and Its Impact on Business Valuation: NE CLE by the C: Virtual Solutions for Solos and Small Law Firms, The Greater Newburyport Bar Association, Maine State Bar Association and New Hampshire Bar Association, July 2020

"Understanding Essential Documents Related to Business Valuations and Financial Damages and Crossing State Lines in Discovery Requests," Massachusetts Bar Association, 2nd Annual NE Strategic Solutions for Solos and Small Law Firms, July 2020

"Valuation and COVID-19", Greater Newburyport Bar Association, July 2020

"Business Valuation Benchmarking Techniques -Tools and Tips on How to Support and Enhance Your Business Valuation," NACVA Annual Consultants Conference, June 2019

"Crossing the Bridge to Liquidity – DLOM and DLOL," NACVA Annual Consultants Conference, June 2019

"Hardball with Hitchner -Solid Answers to Your Tough Questions, NACVA Annual Consultants Conference, June 2019

"The Impact of the Trump Tax Cuts and Job Act on Family Law Cases," Greater Lynn Bar Association and Essex County Bar Association, December 2018

"Alimony/Tax Update Impact of TCJA on Family Law," Greater Newburyport Bar Association, November 2018

"Alimony After Tax Reform," Massachusetts Bar Association, 28th Annual Family Law Conference, November 2018

"Alimony/Tax Update Impact of TCJA on Family Law, Round II – Preserve, Protect & Persevere," Greater Newburyport Bar Association, September 2018

"How Two Valuation Experts Can Arrive at Different Conclusion" NACVA Annual Consultants Conference, Las Vegas, June 2018

"Preserving the Deductibility/Inclusion of Alimony Under the TCJA 2017", American Academy of Matrimonial Lawyers, June 2018

"Tax Cuts & Jobs Act: How the New Law Affects Your Domestic Relations Cases" Barnstable County Bar Association" June 2018

"Alimony Update: The Impact of Tax Reform," Massachusetts Continuing Legal Education Family Law Conference, May 2018

"The Impact of the New Tax Law for Divorce Matters," Massachusetts Bar Association, 2018 Family Law Spring Symposium, April 2018

"Impact of Tax Reform on Family Law," The Greater Boston Family Law Inn of Court, April 2018

"Discovering Hidden Assets" Massachusetts Continuing Legal Education-Family Law Financial Forensics Agenda, Chairperson, Massachusetts Continuing Legal Education, March 2018

"The Impact of the New Tax Law on Collaborative Divorce Matters," MetroWest PG (MCLC), February 2018

"1st Look" at the Impact on Family Law of the Tax Cuts and Job Act", Massachusetts Continuing Legal Education, February 2018"

"The Impact of Tax Reform on Family Law" Greater Newburyport Bar Association" January 2018

"Techniques for Discovering Hidden Assets in the Marital Estate," AICPA Forensic & Valuation Services Conference, Las Vegas, November 2017

"Known or Knowable – Calibrating Your Crystal Ball," AICPA Forensic & Valuation Services Conference, Las Vegas, November 2017

"When Valuation of Assets & Support Collide in Divorce Cases," Massachusetts Continuing Legal Education, September 14, 2017

"Double Dip" again and again and again – Bringing Clarity to this Complex Issue, 2017 NACVA/CTI Annual Consultants Conference, June 2017

"Valuation Update, 20th Annual Conference-Family Law 2017," Massachusetts Continuing Education, May 19, 2017

"Practical Tips for Managing Small Business Valuations," Greater Newburyport Bar Association, March 2017

"Family Law Financial Forensics," Massachusetts Continuing Legal Education, January 2017

"Trending Matters in Business Valuation and Healthcare Valuation" and "Analyzing Personal Goodwill in Matrimonial and Estate Valuations" NACVA Business Valuation and Healthcare Valuation, Washington DC, September 2016

"The Three Valuation Approaches: Challenges and Issues," NACVA/CTI Annual Consultants' Conference, June 2016

"Overview of Business Valuation," The Greater Boston Family Law Inn of Court, November 16, 2016.

"Family Law Financial Forum 2016," Co-Chair, Massachusetts Continuing Legal Education. Subjects presented included: Financial Discover, Using Experts, and Division of Assets and Support

"How and When to Implement a Discount for Lack of Control in Your Valuation," NACVA/CTI Annual Consultants' Conference, June 2015

"Business Valuation and Financial Forensics Case Law Update," NACVA/CTI Annual Consultants' Conference, June 2015

"Divorce Finance Summit," February 2015, Co-Chair, Massachusetts Continuing Legal Education. Subjects presented included: Overview of Case Hypothetical and Current Trends in Personal Finance, Employment, Small Businesses; Analysis of Issues and Options (Webcast); Income Issues; Business Valuation Overview; Revisiting the Double Dip

"Trying Divorce Cases in Massachusetts," Massachusetts Continuing Legal Education, October 2015; Overview of Business Valuation and Methodology

"25th Annual Family Law Conference," October 2015, Faculty

"Valuation Issues in Divorce, Social Law Library," October 2015, Getting Fair Value For Your Client: Valuation Issues for Massachusetts Law Attorney

NACVA Wisconsin, November 2015, Subjects presented include S Corps; Cost of Capital; Personal Goodwill

"Calculation and Conclusion of Value and other Roles Valuators Play," NACVA/CTI Annual Consultants' Conference, June 2014

"Understanding Financial Discovery," Massachusetts Continuing Legal Education, June 2014

"Fundamentals of Sophisticated Practice Series Part II: Critical Tax and Creative Compensation Issues," Massachusetts Bar Association, February 5, 2015, and May 13, 2014

"Family Law Financial Forum 2014," Co-Chair, Massachusetts Continuing Legal Education. Subjects presented included Reading and understanding K-1, Misconceptions about Hidden Income, Financial factors relating to business ownership and financial issues in family law. May 2014

"Family Law 2014: 17th Annual Conference, "Business Panel on Income", Massachusetts Continuing Legal Education, April 2014

"Sophisticated Issues in Western Massachusetts Family Law Practice," Massachusetts Continuing Legal Education, College Education Expenses - Planning, Client Advice and Drafting Tips, February 25, 2014

"Uncovering Critical Issues for Valuators," NACVA National Conference, June 2013.

"Goodwill-This Time it is Personal but Next Time it is all Business," NACVA Connecticut State Chapter, May 2013

"Expert Testimony: Daubert/Lanigan and Business Valuation, Part 2, the Mock Hearing", Massachusetts Family and Probate American Inn of Court, March 2013

"Divorce Finance Summit 2013," Co-Chair, Massachusetts Continuing Legal Education, February 2013.

"2012 Annual Consultants Conference, Correlation of Cash Flow and Cost of Capital," Dallas TX, June 2012

"15th Annual Family Law Conference, The Correlation Between Support and Alimony," Massachusetts Continuing Legal Education, March 2012

"Divorce Finance Summit 2012," Co-Chair, Massachusetts Continuing Legal Education, February 2012

"Untangling Financial Matters: Finding Hidden Income; Deciphering Tax Returns; Effective Discover," Alimony Summit 2012 and 2011, Massachusetts Continuing Legal Education.

"A Deeper Look Income the Income Approach," California Society of CPA's, May 2011

"Hot Topics in Valuation," North Atlantic Regional Meeting, AGN International, Scottsdale, AZ, May 2011.

"Calculating Divorce: It's Getting Personal," Chair, Massachusetts Continuing Legal Education, June 2011

"The ABC's of Finance," 14th Annual Family Law Conference 2011, Massachusetts Continuing Legal Education, April 2011

"Divorce Finance Summit 2011," Co-Chair, Massachusetts Continuing Legal Education, February 2011

"Normalizing and Then Projecting Earnings," National Association of Certified Valuators and Analysts, Fall 2010.

"Valuation Methods: Alternatives and Decision Criteria," National Association of Certified Valuators and Analysts, Fall 2010.

"Insight to Understanding Tax Returns and Financial Statements in Domestic Relations Cases," Boston Bar Association, December 2010.

"Asset or Income? Income v. Distribution" 2010 Alimony Summit, Massachusetts Continuing Legal Education, September 2010.

"Trying Divorce Cases," Massachusetts Continuing Legal Education, September 2010

"Are They Assets or Are They Income," 2010 Family Law Conference, Massachusetts Continuing Legal Education, March 2010

"A Dialog on Complex Divorce-Related Business Issues," Paul Kane Online, Massachusetts Continuing Legal Education, March 2010

"Different Standards of Value in Litigation Valuations," Valuation, Forensic Accounting, and Litigation Services Conference, Florida Institute of CPA's, January 2010

"Federal Tax Issues in Family Law," 19th Annual Family Law Conference, November 2009

"Compensation & Valuation Issues affecting Alimony," 2009 Alimony Summit, Massachusetts Continuing Legal Education, October 2009

"Impact of New Case Law (including Bernier & Thornhill) on Business Valuation," BVR's 2nd Annual Summit on Business Valuation in Divorce, September 2009

"Standards of Value: When Should Fair Value Replace Fair Market Value?" Institute of Business Appraisers Symposium, May 2009

"Reading and Understanding Spreadsheets, Financial Statements & Tax Returns," Massachusetts Continuing Legal Education, July 2009

"Valuation Methods: Alternatives and Decision Criteria," National Association of Certified Valuators and Analysts, November 2008, and December 2009

"Normalizing and Then Projecting Earnings," National Association of Certified Valuators and Analysts, November 2008, and December 2009

"Enhance Your Family Law Financial IQ," Program Chair, Massachusetts Continuing Legal Education, July 2008

"Business Valuation Fundamentals for CPA – A Five-Part Webinar Series," National Association of Certified Valuators and Analysts, April, and May 2008

"Business Entities 101", 2008 Family Law Conference, Massachusetts Continuing Legal Education, March 2008

"Complex Issues in Valuation," 2008 Family Law Conference, Massachusetts Continuing Legal Education, March 2008

"Reading and Using Tax Returns in Divorce Cases," Massachusetts Bar Association, February 2008

"Understanding Business Valuation," Massachusetts Bar Association, February 2008

"Forensic Accounting and Bernier," Sophisticated Issues in Western Massachusetts Family Law Practice, Massachusetts Continuing Legal Education, Inc., January 2008

"Small Business Valuation Case Study Workshop," National Association of Certified Valuators and Analysts, December 2007

"Business Valuation in the Wake of the SJC decision of Bernier v. Bernier", American Academy of Matrimonial Lawyers, Massachusetts Chapter, October 2007

"Small Business Valuation Case Study Workshop," National Association of Certified Valuators and Analysts, October 2007

"Hidden Assets: Tactics, Strategies and Discovery Tools; Common Mistakes and How to Avoid Them; Recapture; Stock Options, Vested and Unvested," Alimony Summit, Massachusetts Continuing Legal Education, September 2007

"Making Money on Your Valuation Practice, National Association of Certified Valuators and Analysts, 14th Annual Conference, June 2007

"Difficult Assets, Difficult Income: Trick Valuation Issues," 2007 Family Law Conference, Massachusetts Continuing Legal Education, April 2007

"The Ugly Side of Family Law: How to Get Paid," 2007 Family Law Conference, Massachusetts Continuing Legal Education, April 2007

"Managing the Engagement," National Association of Certified Valuators and Analysts, 13th Annual Conference, May 2006

"Critical Business Valuation Issues for Practitioners," Suffolk University Law School, Center of Advanced Legal Studies, May 2005

### Appendix C – Assumptions & Limiting Conditions

- The conclusion of the value arrived at herein is valid only for the stated purpose as of the date of the valuation.
- Financial statements and other related information provided by the subject business and/or certain agents and representatives, in the course of this engagement, have been accepted without any verification as fully and correctly reflecting the enterprise's business conditions and operating results for the respective periods, except as specifically noted herein. The analyst has not audited, reviewed, or compiled the financial information provided and, accordingly, expresses no audit opinion or any other form of assurance on this information.
- The valuation approaches and methodologies used in the analyst's work do not comprise an examination or any attest service of the financial statements in accordance with generally accepted auditing standards. No opinion is expressed and the analyst accepts no responsibility for the accuracy and completeness of the financial information (audited, reviewed, compiled, internal, prospective, or tax returns), or other data provided by the subject business and/or certain agents and representatives in this process.
- This engagement was not contingent upon developing or reporting predetermined results. Compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, nor the occurrence of a subsequent event directly related to the intended use of this conclusion of value.
- Since neither the subject business, nor its advisors have notified otherwise, it is assumed that there is full compliance with all applicable federal, state, and local laws and regulations.
- Public information, purchased private information and industry statistical information are from sources deemed to be reliable; however, no representation is made as to the accuracy or completeness of such information, and the analyst has accepted the information without further verification.
- The conclusion of value arrived at herein is based on the assumption that the current level of management expertise and effectiveness will continue to be maintained, and that the character and integrity of the enterprise through any sale, reorganization, exchange, or diminution of the owner's participation would not be materially or significantly changed.
- This report and the conclusion of value arrived at herein are for the exclusive use of the client for the sole and specific purposes as noted herein. They may not be used for any other purpose or by any other party for any purpose. Furthermore, the report and conclusion of value are not intended by the author and should not be construed by the reader to be investment advice in any manner whatsoever. The conclusion of value represents the considered opinion of the analyst, based on information furnished by the subject business and other sources.

- Neither all nor any part of the contents of this report (especially the conclusion of value, the identity of any valuation specialists, or the firm with which such valuation specialists are connected or any reference to any of their professional designations) should be disseminated to the public through advertising media, public relations, news media, sales media, mail, direct transmittal, or any other means of communication without the prior written consent and approval of the analyst and Edelstein & Company, LLP.
- Future services regarding the subject matter of this report, including, but not limited to testimony or attendance in court, shall not be required of the analyst or by Edelstein & Company LLP unless previous arrangements have been made in writing.
- The analyst and Edelstein & Company LLP is not an environmental consultant, and it takes no responsibility for any actual or potential environmental liabilities. Any person entitled to rely on this report, wishing to know whether such liabilities exist, or the scope and their effect on the value of the property, is encouraged to obtain a professional environmental assessment. The analyst and Edelstein & Company LLP does not conduct or provide environmental assessments and has not performed one for the subject property.
- The analyst and Edelstein & Company LLP has not made a specific compliance survey or analysis of the subject property to determine whether is subject to, or in compliance with, the American Disabilities Act of 1990, and this valuation does not consider the effect, if any, of noncompliance.
- No change of any item in this conclusion of value report shall be made by anyone other than the analyst, and the neither the analyst nor Edelstein & Company LLP shall have any responsibility for any such unauthorized change.
- This valuation reflects facts and conditions existing at the date of this valuation. Subsequent events have not been considered, and the analyst has no obligation to update the report for such events and conditions.
- The analyst and Edelstein & Company LLP does not purport to be a guarantor of value. Valuation of closely held companies is an imprecise science, with value being a question of fact, and reasonable people can differ in their estimates of value. However, conceptually sound and commonly accepted methods and procedures of valuation were performed in determining the estimate of value included in this report. Neither the analyst nor Edelstein & Company LLP is liable for any use, reliance, financial applications, report distribution or other utilization of any kind, by any party not having written authorization from Edelstein & Company LLP.
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- The opinion offered in this report does not constitute an offer to buy or sell the shares.
- The valuation analyst, by reason of performing this valuation and preparing this report, is not to be required to give expert testimony nor to be in attendance in court or at any government, professional or regulatory hearing, including IRS matters with reference to the matters contained herein, unless prior written arrangements have been made with Edelstein & Company LLP regarding such additional engagement as to the timing, fee arrangements, and nature of the services required.
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