

From the desk of Jeanne M. Kerkstra, Esq., CPA

*Viewpoint
Public Exposure of Private Contracts*

Probably by now everyone has heard of the ongoing divorce between George David, the former United Technologies Corp. CEO and current Chairman of the Board with his estranged wife, Marie Douglas-David, the Swedish countess.

Although it was technically a seven-year marriage, they have been living apart the past three years. According to the news, Mrs. Douglas-David filed for a divorce a couple of times previously but had withdrawn the petition each time.

So what does 4 years in marriage get someone? First, you have to take into consideration that Mr. David, 66 years old, is worth over \$250,000,000. His wife, 36 years old, claims that she gave up her high-end investment career to be married to Mr. David.

Subsequent to their marriage, Mr. David and Mrs. Douglas-David entered into a post-nuptial agreement. Under the terms of the agreement, she was to receive \$43,000,000 upon divorce. According to Mr. David, Mrs. Douglas-David was so thrilled with the drafting of the post-nuptial agreement that she gave the attorney who drafted the agreement, Mr. Beslow, a \$270,000 bonus. Now first you have to realize that the same person who helped Mrs. Douglas-David with her post-nuptial agreement is also her attorney for these divorce proceedings. Now take another look at the \$270,000 bonus. Odds are if they were trace where the funds came from for that "signing bonus", the funds would most certainly have come from Mr. David's bank accounts rather than Mrs. Douglas-David's. So, there are certainly issues with Mr. Beslow having represented Mrs. Douglas-David but seemingly being paid by Mr. David. And now here he is in the divorce proceedings seeking to shoot down that very same post-nuptial agreement.

For either a prenuptial or post-nuptial agreement to work, there are two main criteria that have to be met. First is full disclosure. That includes a complete listing of all the assets of the parties. Secondly, **independent** counsel. If indeed Mr. Beslow is playing both sides of the fence, then his representation of Mrs. Douglas-David in regards to the post-nuptial agreement was certainly not independent. At a minimum he should be excusing himself from representing Mrs. Douglas-David in the divorce case. And, there is a lot at stake. Mr. David has already offered the \$43,000,000 under the post-nuptial agreement to Mrs. Douglas-David to settle the divorce. She has rejected that offer. As an aside, she has presented to the court evidence of her spending habits showing that she requires \$51,000 a week. As such, the \$43,000,000 is not sufficient because she will have burned through it within 16 years at which time she will be a mere 52 years old. She is demanding \$100,000,000 from Mr. David.

What if she gets less than the \$43,000,000 under the post-nuptial agreement? What if she gets less than the \$100,000,000 under the divorce proceedings? If I were Mr. Beslow, I'd be concerned. In prosperous times, clients may unwisely not have picked up on conflicts of interest. However, in difficult times, such as these, clients may seek to re-examine these relationships. Trusted advisors would be wise not to place themselves in the path of a flood of litigation. If Ms. Douglas-David does not get her \$100,000,000, she might turn a jaded eye to her attorney,

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